This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

TFA
D
1916
Suppl.
1919
v.1

1919 SUPPLEMENT

TO

UNITED STATES COMPILED STATUTES ANNOTATED

EMBRACING

THE STATUTES OF THE UNITED STATES OF A GENERAL AND PERMANENT NATURE ENACTED FROM

DECEMBER 20, 1916, TO MARCH 4, 1919

AND DECISIONS CONSTRUING AND APPLYING ALL THE FEDERAL STATUTES CONTAINED IN THE U. S. COMP. ST. ANNOTATED, 1916, AND IN THIS SUPPLEMENT, FROM THE CLOSE OF THE ANNOTATED EDITION OF 1916 TO MARCH 1, 1919

INCORPORATING UNDER THE HEADINGS OF THE REVISED STATUTES THE SUBSEQUENT LAWS, TOGETHER WITH EXPLANATORY AND HISTORICAL NOTES, AS WELL AS NOTES SETTING OUT THE SUBSTANCE OF EXECUTIVE PROCLAMATIONS ISSUED IN PURSUANCE OF CONGRESSIONAL AUTHORIZATION

TEXT AND ANNOTATIONS
COMPILED BY THE PUBLISHERS' EDITORIAL STAFF

IN 2 VOLUMES

VOLUME 1

ST. PAUL
WEST PUBLISHING CO.
1920

COPYRIGHT, 1920
BY
WEST PUBLISHING COMPANY

(1 SUPP.U.S.COMP.'19)

266381

PREFACE

THE publisher of the United States Compiled Statutes Annotated, 1916, presents, in two volumes, a Supplement continuing that publication, with its various features. All laws of general application enacted after December 20, 1916, the date of the closing of the main edition, and up to and including March 4, 1919, have been included in the Supplement. The new laws have been classified in accordance with the scheme of division employed in the edition of 1916 and according to the method of distribution adopted by the Revised Statutes of the United States. To determine whether a provision now appearing in the edition of 1916 is still intact and a part of the laws of the United States, the searcher can turn to the same section number in the Supplement. If the number does not appear in the Supplement, the reader can take it for granted that no change has been made in the former provision. If the provision has been repealed or superseded, a note will appear in the Supplement, under the appropriate section number, indicating the subsequent history of the legislation.

The annotations have been continued on the plan of the former edition to March 1, 1919. To facilitate ready reference from the edition of 1916 to the Supplement, the notes have been given the same numbers that they bore in the original edition.

In addition to the text of the statutes, executive proclamations have been inserted in the notes following text provisions giving power to the executive to declare by proclamation some matter or fact essential to the operation or enforcement of the act.

TABLE OF CONTENTS

VOLS. 1-2

		Page
Preface	(Vol. 1)	iii
Table of Titles and Chapters	(" ")	v
Compiled Statutes Supplement 1919 (Annotated)	(Vols. 1–2)	1–2414
Organic Laws of the United States of America—		
Northwest Territorial Government Act	(Vol. 2)	2415
Constitution (Annotated)	(" ")	2416
Table of Revised Statute Sections	(" ")	2683
Chronological Table of Laws	(" ")	2685
Table of Acts Cited by Popular Name	(" ")	2703
General Index	(" ")	2705

TABLE OF TITLES AND CHAPTERS

OF U. S. COMPILED STATUTES ANNOTATED, SUPPLEMENT 1919
CARRYING NEW TEXT OR NEW ANNOTATIONS

FOLLOWING THE PLAN ADOPTED BY CONGRESS IN THE

REVISED STATUTES OF 1874 AND 1878

WITH SUCH ADDITIONAL TITLES AND CHAPTERS AS HAVE BEEN FOUND NECESSARY FOR THE INCORPORATION OF THE NEW LEGISLATION

VOLUME 1

TITLE II

THE CONGRESS

Chap.		Sec.
1.	Election of Senators	14b
2.	Apportionment and election of Representatives	17
4.	Compensation of Members	40
5.	Officers and persons in the employ of the Senate and House of Representatives	58
6.	The Library of Congress	129
7.	Congressional investigations	155
8A.	Contributions for purpose of influencing elections	188

TITLE III

THE PRESIDENT

2. Office and compensation of the President 227

TITLE IV

PROVISIONS APPLICABLE TO ALL THE EXECUTIVE DEPARTMENTS 234

TITLE V

THE DEPARTMENT OF STATE 294

TITLE VI

THE DEPARTMENT OF WAR

A. The Department and the Secretary of War 312

TITLE VII

THE DEPARTMENT OF THE TREASURY

1. The Department 351a
2. The Secretary of the Treasury 382
3. The Comptroller 401
4. The Auditors 416
5. The Treasurer 472
6. The Register 485
8. The Commissioner of Internal Revenue 490
9. The Comptroller of the Currency 495

Chap. Sec.
11. The Bureau of the Mint..... 508
11A. The Bureau of Engraving and Printing..... 510
11B. The Bureau of War Risk Insurance..... 514a

TITLE VIII

THE DEPARTMENT OF JUSTICE..... 515

TITLE IX

THE POST-OFFICE DEPARTMENT..... 568

TITLE X

THE DEPARTMENT OF THE NAVY

A. The Department and the Secretary of the Navy..... 611
B. The Hydrographic Office..... 657a

TITLE XI

THE DEPARTMENT OF THE INTERIOR

1. The Department..... 666
2. The Secretary of the Interior..... 681
3. The General Land-Office..... 690
4. The Commissioner of Indian Affairs..... 713
5. The Commissioner of Pensions..... 727
6. The Patent-Office..... 736
9. The Office of Education..... 766
9B. The Bureau of Mines..... 783a

TITLE XII

THE DEPARTMENT OF AGRICULTURE

A. The Department and the Secretary of Agriculture..... 790a
B. The Weather Bureau..... 841
C. The Bureau of Animal Industry..... 850

TITLE XII A

THE DEPARTMENT OF COMMERCE

A. The Department and the Secretary of Commerce..... 854
B. The Bureau of Foreign and Domestic Commerce..... 873
D. The Bureau of Navigation..... 891
E. The Bureau of Light-Houses..... 896
F. The Bureau of Fisheries..... 907a
G. The Census Office..... 915
H. The Bureau of Standards..... 925

TITLE XII B

THE DEPARTMENT OF LABOR

A. The Department and the Secretary of Labor..... 932
B. The Bureau of Labor Statistics..... 944
C. The Bureau of Immigration..... 955a
D. The Bureau of Naturalization..... 961
E. The Children's Bureau..... 965

TITLE XII C

THE JUDICIAL CODE

1. District Courts—Organization..... 968
2. District Courts—Jurisdiction..... 991
3. District Courts—Removal of causes..... 1010

Chap. Sec.
4. District Courts—Miscellaneous provisions..... 1023
5. District Courts—Districts, and provisions applicable to particular states.. 1051
6. Circuit Courts of Appeals..... 1109
7. The Court of Claims..... 1127
8. The Court of Customs Appeals.....1179a
10. The Supreme Court..... 1207
11. Provisions common to more than one court..... 1233
12. Juries 1252
13. General provisions..... 1266
14. Repealing provisions..... 1274

TITLE XIII

THE JUDICIARY

13. Habeas corpus..... 1281
14. District attorneys, marshals, clerks and other court officers, and commissioners 1296
16. Fees and compensation of officers..... 1375
17. Evidence 1464
18. Procedure 1534
19. Limitations 1707
21. The Court of Claims—Jurisdiction, powers and procedure..... ——

TITLE XIV

THE ARMY

1. Organization 1714
2. Retirement 2073aa
3. Pay and allowances..... 2089
4. The Military Academy..... 2206
4A. Military instruction in educational institutions.....2289aa
4B. Desertions 2297
5. Articles of War.....2308a
6. The United States Disciplinary Barracks.....2458a

TITLE XV

THE NAVY

1. Organization 2471a
2. General provisions relating to officers..... 2619
3. Retired officers and men of the Navy..... 2653
4. Rank and precedence, promotion and advancement.....2660a
5. The Naval Academy.....2726bb
6. Vessels and navy-yards and naval stations.....2776a
7. General provisions relating to the Navy..... 2805
8. Pay, emoluments, and allowances.....2816a
8A. The Naval Reserve Force.....2900½a
9. The Marine Corps.....2901a
9A. Naval Flying Corps.....2952½cc
10. Articles for the government of the Navy.....2980a

TITLE XVI

THE MILITIA

A. The National Guard, and the unorganized militia..... 3041
B. Naval Militia, and National Naval Volunteers.....3078a

TITLE XVI A

SOLDIERS' AND SAILORS' CIVIL RELIEF.....3078¼a

TITLE XVI B

VOCATIONAL REHABILITATION OF SOLDIERS AND SAILORS 3078½a

TITLE XVII

ARMS, ARMORIES, ARSENALS, ORDNANCE AND FORTIFICATIONS AND NITRATE PLANTS

Chap. Sec.
A. Arms, armories, arsenals and nitrate plants....3084a

TITLE XVII A

NATIONAL DEFENSE

Council of national defense....3115ee
Mobilization of industries....3115f
Advisory committee for aeronautics....3115ll
Wharves, docks, piers, etc....3115jj
Aircraft board and aircraft patents....$3115^{1}/_{22}$a
National war labor board.... —
Special preparedness fund.... —
Ships and war material....$3115^{1}/_{16}$a
Charters, freight rates, and regulation of loading, discharge, movement, etc., of vessels....$3115^{1}/_{16}$a
Conservation of food....$3115^{1}/_{8}$a
Conservation of supply and control of distribution of necessaries....$3115^{1}/_{8}$c
Conservation of supply and control of distribution of ores, metals and minerals....$3115^{1}/_{8}$s
Manufacture, etc., of explosives....$3115^{1}/_{4}$a
Trading with the enemy....$3115^{1}/_{2}$a
Federal controlled transportation systems....$3115^{3}/_{4}$a
Federal controlled telegraph, telephone, marine cable, or radio systems....$3115^{3}/_{4}$x
War finance corporation and capital issues committee....$3115^{4}/_{5}$a
Housing for war-industry employés....$3115^{5}/_{6}$a
War emergency services....$3115^{7}/_{8}$a
Committee on public information....$3115^{7}/_{8}$b
Condemnation of property for generating electric energy....$3115^{11}/_{12}$a
Prohibition zones....$3115^{11}/_{12}$e
Manufacture, sale, etc., of intoxicating liquors....$3115^{11}/_{12}$f
Adjustment of war contracts....$3115^{14}/_{15}$a

TITLE XVIII

DIPLOMATIC AND CONSULAR OFFICERS

1. Diplomatic officers 3116
2. Consular officers....3141a
3. Provisions common to diplomatic and consular officers.... 3198

TITLE XIX

PROVISIONS APPLICABLE TO SEVERAL CLASSES OF PUBLIC OFFICERS AND EMPLOYÉS

A. Appointment, qualification, compensation, and services, in general....3214a
B. Civil Service Commission and classified civil service.... 3271

TITLE XIX A

OFFICIAL [AND PENAL] BONDS.... 3294

TITLE XXI

SEAT OF GOVERNMENT, INCLUDING THE PUBLIC BUILDINGS AND GROUNDS, PARKS, AND RESERVATIONS

A. Public buildings and grounds, parks and wharves....3311a
B. Capitol building and grounds.... 3370
BB. Intoxicating liquors in the District of Columbia....$3421^{1}/_{4}$a
BBB. Women and minor employés in District of Columbia....$3421^{1}/_{2}$a

TITLE XXII

THE STATES.... 3424

TITLE XXIII

THE TERRITORIES AND INSULAR POSSESSIONS

Chap.		Sec.
1.	Provisions common to all the Territories	3483
3A.	Alaska	3530
3B.	Hawaii	3698
3C.	Porto Rico	3747
3D.	The Philippine Islands	3810
3F.	The Virgin Islands (The Danish West Indies)	3924¼a

TITLE XXIV

CIVIL RIGHTS 3925

TITLE XXV

CITIZENSHIP 3946

TITLE XXVIII

INDIANS

1.	Officers of Indian affairs, their duties and compensation	3979½
2.	Performance of engagements between the United States and Indians	4034
3.	Government and protection of Indians	4106
4.	Government of Indian country	4129
4A.	Education of Indians	4161
4B.	Rights of way through Indian lands	4181
4C.	Allotment of Indian lands	4195

TITLE XXIX

IMMIGRATION

A.	Regulation and restriction of immigration in general	4242
B.	Exclusion of Chinese	4290

TITLE XXX

NATURALIZATION 4351

TITLE XXXI

THE CENSUS 4385

TITLE XXXII

THE PUBLIC LANDS

1.	Surveyors and deputy surveyors	4435
2.	Registers and receivers	4469
3A.	Withdrawal from settlement, location, sale, or entry	4523
4.	Pre-emptions	——
5.	Homesteads	4530
6.	Mineral lands and mining resources	4613
6A.	Timber and stone lands	4671
6B.	Desert and arid lands, and irrigation and reclamation	4674
7.	Sale and disposal of the public lands	4756
8.	Reservation and sale of town-sites on the public lands	4784
9.	Survey of the public lands	4803
10A.	Reservations and grants to states for public purposes	4860
10B.	Grants in aid of railroads and wagon roads	4882
10C.	Rights of way and other easements in public lands	4918
10D.	Grants of swamp and overflowed lands	4958
10E.	Drainage under state laws	4976a
10F.	Protection of timber and depredations	4980
10G.	Unlawful inclosures or occupancy; obstructing settlement or transit	4997
10H.	Abandoned military reservations	5012
10I.	Ceded Indian reservations	5014

Chap. Sec.
10J. Public lands in Oklahoma..... 5025
10K. Public lands in Alaska..... 5046
11. Miscellaneous provisions relating to the public lands..... 5097

TITLE XXXII A

THE NATIONAL FORESTS..... 5121

TITLE XXXII B

THE NATIONAL PARKS, RESERVATIONS, AND MONUMENTS 5196

TITLE XXXIII

DUTIES UPON IMPORTS

A. Tariff schedules..... 5291
B. The tariff commission.....5326bb

TITLE XXXIV

COLLECTION OF DUTIES UPON IMPORTS

1. Collection-districts, ports, and officers 5327
2. Qualifications, pay, and duties of officers..... 5359
4. Entry of merchandise..... 5481
5. Unlading 5556
6. Appraisal 5591
7. The bond and warehouse system.....5650a
7A. Immediate transportation in bond to inland ports..... 5695
8. Payment 5714
10. Enforcement of duty-laws and punishment for violations..... 5763
11. Provisions applying to commerce with contiguous countries..... 5809

TITLE XXXV

INTERNAL REVENUE

1. Officers of internal revenue.....5851a
2. Of assessments and collections..... 5895
3. Special taxes..... 5965
4. Distilled spirits and wines..... 5981
5. Fermented liquors..... 6144
5A. Sirups, extracts, soft drinks, mineral waters and carbonic acid gas....6161½a
6. Tobacco and snuff..... 6168
7. Cigars.....6202a
7A. Oleomargarine, adulterated butter, and process or renovated butter.... 6215
7E. Opium for smoking.....6287a
7F. Opium, coca leaves, and compounds, manufacturers, etc., thereof.....6287g
8. Banks and bankers..... 6293
8A. Special excise tax on corporations..... 6300
8B. Excise tax on dealings in cotton futures.....6309a
8C. Transportation facilities by public utilities.....6309⅛a
8D. Insurance policies.....6309¼a
8DD. Tax on transportation and other facilities, and on insurance.....6309½a
8E. Theater, etc., admissions and club dues or fees.....6309½a
8EE. Tax on admissions and dues.....6309⅝a
8F. Miscellaneous articles.....6309¾a
8G. Excise taxes.....6309⅞a
9. Stamp-taxes on specific objects.....6318a
9A. Incomes 6319
9AA. Income tax.....6336⅛a
9B. Munition manufacturer's tax.....6336¼a
9C. Excess-profits tax.....6336⅜a
9CC. War-profits and excess-profits tax.....6336 7/16a
10A. Estate tax.....6336½a
10B. Tax on employment of child-labor..... ..6336⅞a
11. Provisions common to several objects of taxation.....6340a
11A. Increase of internal revenue (Revenue Act of 1916).....6371bb
11B. War revenue (Revenue Act of 1917).....6371⅛a
11C. Revenue Act of 1918.....6371¼a

VOLUME 2

TITLE XXXVI

Chap. Sec.
DEBTS DUE BY OR TO THE UNITED STATES..... 6372

TITLE XXXVII

COINAGE 6432

TITLE XXXVIII

THE CURRENCY..... 6553b

TITLE XXXIX

LEGAL TENDER..... 6575

TITLE XL

THE PUBLIC MONEYS..... 6603

TITLE XLI

APPROPRIATIONS 6676a

TITLE XLII

THE PUBLIC DEBT..... 6810

TITLE XLIII

PUBLIC CONTRACTS..... 6832

TITLE XLIII A

PUBLIC BUILDINGS AND WORKS..... 6903a

TITLE XLIV

THE PUBLIC PROPERTY..... 6941

TITLE XLV

PUBLIC PRINTING, ADVERTISEMENTS, AND PUBLIC DOCUMENTS 6953a

TITLE XLVI

THE POSTAL SERVICE

1. Post-offices and postmasters..... 7190
2. Carriers, branch offices, and receiving-boxes..... 7300aa
3. Mail-matter 7302
4. Postage 7345
5. Postage-stamps, postal cards, and envelopes..... 7392
6. Registered mail..... 7405
8. Contracts for carrying the mails..... 7427
9. Carrying the mail..... 7456
9A. Rural Post Roads..... 7477bb
10. Railway service..... 7478
11. Foreign mail-service..... 7539a
12. Post-office inspectors..... 7548a
13A. Postal savings depositories..... 7580
14. Accounts and revenues..... 7607

TITLE XLVII

Chap. Sec.
FOREIGN RELATIONS..... 7615

TITLE XLVIII

REGULATION OF COMMERCE AND NAVIGATION

1. Registry and recording.....7709aa
2. Clearance and entry..... 7789
5. Navigation 7841
6. Transportation of passengers and merchandise..... 8002
7. Log books..... 8037

TITLE L

REGULATION OF VESSELS IN DOMESTIC COMMERCE..... 8083

TITLE L A

UNITED STATES SHIPPING BOARD, NAVAL AUXILIARY AND RESERVE, AND MERCHANT MARINE.....8146a

TITLE LII

REGULATION OF STEAM-VESSELS

1. Inspection 8155
2. Transportation of passengers and merchandise..... 8225

TITLE LII A

REGULATION OF MOTOR BOATS..... 8279

TITLE LIII

MERCHANT SEAMEN

1. Shipping-commissioners 8287
2. Shipment 8300
3. Wages and effects..... 8315
4. Discharge 8338
5. Protection and relief..... 8345
6. Fees of shipping-commissioners..... 8378
7. Offenses and punishments..... 8380

TITLE LV

LIGHTS AND BUOYS.....8435c

TITLE LV A

THE COAST GUARD

A. General Provisions.....8459½a
B. The Revenue-Cutter Service.....8459½b

TITLE LVI

THE COAST AND GEODETIC SURVEY.....8548a

TITLE LVI A

REGULATION OF COMMON CARRIERS OF INTERSTATE AND FOREIGN COMMERCE

A. Regulation of transportation..... 8563
B. Bills of lading.....8604a

Chap. Sec.
C. Safety appliances and equipments on railroad engines and cars, and protection of employés and travelers 8605
D. Care of animals in transit 8651
E. Liability for injuries to employés 8657
F. Arbitration between carriers and employés 8675a
G. Hours of service of employés 8677

TITLE LVI B

REGULATION OF INTERSTATE AND FOREIGN COMMERCE AS TO PARTICULAR SUBJECTS

A. Animals, meats, and meat and dairy products 8681
B. Food, drugs, and liquors 8717
D. Grain standards 8747½
E. Warehouses 8747¾
F. Insect pests 8758
H. Viruses, serums, toxins, antitoxins, and analogous products 8785
I. Teas 8791
J. Opium 8800
L. Prevention of white-slave traffic 8812
M. Child labor 8819a

TITLE LVI C

MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE 8820

TITLE LVI D

FEDERAL TRADE COMMISSION, PREVENTION OF UNFAIR COMPETITION AND PROMOTION OF EXPORT TRADE 8836¼a

TITLE LVI E

PROTECTION OF MIGRATORY GAME AND INSECTIVOROUS BIRDS 8837

TITLE LVI F

PROTECTION OF FUR SEALS AND OTHER FUR-BEARING ANIMALS 8850

TITLE LVI H

AGRICULTURAL COLLEGES AND EXPERIMENT STATIONS

B. Agricultural experiment stations 8878

TITLE LVI I

WEIGHTS AND MEASURES AND STANDARD TIME 8907r

TITLE LVI J

LABOR

C. Hours of labor 8918
D. Compensation for injuries to employés of United States 8932a

TITLE LVII

PENSIONS 8933

TITLE LVIII

THE PUBLIC HEALTH

Chap. Sec.
A. The Public Health Service....9136a
B. Sanitation and quarantine.... 9173
C. Leprosy 9188a
D. Social Hygiene....9188¼(a)

TITLE LIX

HOSPITALS, ASYLUMS, AND CEMETERIES

1. Hospital relief for seamen....9189a
1A. Navy Hospitals, Naval Home, and Army and Navy Hospitals....9204a
3. The National Home for Disabled Volunteer Soldiers.... 9258
4. The Government Hospital for the Insane....9301aa
5. The Columbia Institution for the Deaf....9355a
6. National cemeteries.... 9368

TITLE LIX A

EDUCATION AND EDUCATIONAL INSTITUTIONS

F. Vocational education....9390¼a

TITLE LIX B

NATIONAL TRAINING SCHOOLS

A. National Training School for Boys....9409b

TITLE LX

PATENTS, TRADE-MARKS, AND COPYRIGHTS

1. Patents 9427
2. Trade-marks 9485
3. Copyrights 9517

TITLE LXI

BANKRUPTCY

1. Definitions 9585
2. Creation of courts of bankruptcy and their jurisdiction.... 9586
3. Bankrupt 9587
4. Courts and procedure therein.... 9602
5. Officers, their duties and compensation.... 9622
6. Creditors 9639
7. Estates 9645

TITLE LXII

NATIONAL BANKS

1. Organization and powers.... 9659
2. Obtaining and issuing circulating notes....9698a
3. Regulation of the banking business.... 9755
3A. Federal reserve banks.... 9786
4. Dissolution and receivership.... 9806

TITLE LXII A

FEDERAL FARM LOANS....9835w

TITLE LXIII

RIVERS, HARBORS, AND CANALS

Chap. Sec.
A. Navigable waters....9844a
B. Improvements of rivers and harbors....9866a
C. Preservation and protection of rivers and harbors and of improvements.. 9910
DD. Regulation of vessels in ports of United States....9959¼a
E. Bridges over navigable waters.... 9962
F. Dams and water power.... 9976
G. The Mississippi River Commission....9995a
GG. Waterways Commission....10003¼a
H. The California Débris Commission....10004
HH. Control of floods of Mississippi and Sacramento rivers....10030¼a
I. The Panama Canal and the Canal Zone....10038

TITLE LXIV

RAILWAYS 10057

TITLE LXV

TELEGRAPHS 10072

TITLE LXVI

EXTRADITION 10110

TITLE LXVIII

REMISSION OF FINES, PENALTIES, AND FORFEITURES....10130

TITLE LXIX A

THE CRIMINAL CODE

1. Offenses against the existence of the Government....10165
2. Offenses against neutrality....10173
3. Offenses against the elective franchise and civil rights of citizens....10183
4. Offenses against the operations of the Government....10196
5. Offenses relating to official duties....10265
6. Offenses against public justice....10295
7. Offenses against the currency, coinage, etc....10320
8. Offenses against the postal service....10360
9. Offenses against foreign and interstate commerce....10402
10. The slave trade and peonage....10441
11. Offenses within the admiralty and maritime and the territorial jurisdiction of the United States....10445
12. Piracy and other offenses upon the seas....10469
13. Certain offenses in the territories....10489
13A. Search warrants....10496¼a
14. General and special provisions....10502
15. Repealing provisions....10515

TITLE LXX

CRIMES

9. Prisoners and their treatment....10521

TITLE LXXIII

THE SMITHSONIAN INSTITUTION....10567

UNITED STATES COMPILED STATUTES

ANNOTATED

SUPPLEMENT 1919

VOLUME 1

TITLE II—THE CONGRESS

CHAPTER ONE—ELECTION OF SENATORS

§ 14b. (Act June 4, 1914, c. 103, § 2.) Mode of election of Senators.

Notes of Decisions

Effect of passage of state law.—This act was superseded by a state primary election law upon the effective date of such law. U. S. v. Gradwell, 37 S. Ct. 407, 61 L. Ed. 857.

Conspiracy to commit election fraud.—Under this act there was no protection of rights of candidate at primary election in West Virginia, there being no state law on the subject, and hence conspiracy to commit election fraud did not fall within Criminal Code, §§ 19, 37 (Comp. St. 1916, §§ 10183, 10201). U. S. v. O'Toole (D. C.) 236 F. 993, judgment affirmed Same v. Gradwell, 37 S. Ct. 407, 61 L. Ed. 857.

Conviction of candidate of felony.—Proceeding to restrain secretary of state from placing on primary nominating ballot the name of a candidate for United States Senator, on ground that after filing his affidavit as candidate he was convicted of felony in federal court, and was under sentence to imprisonment, dismissed. State v. Schmahl (Minn.) 167 N. W. 481.

CHAPTER TWO—APPORTIONMENT AND ELECTION OF REPRESENTATIVES

§ 17. (Act Aug. 8, 1911, c. 5, § 3.) Election by districts.

Notes of Decisions

Validity of act redistricting state.—Laws N. Y. 1917, c. 797, dividing state into congressional districts pursuant to Act Cong. Aug. 8, 1911, c. 5, reapportioning number of Representatives, etc., is valid, although Laws N. Y. 1911, c. 890, also redistricted state immediately following said congressional reapportionment. People ex rel. Fitzgerald v. Voorhis, 119 N. E. 106, 222 N. Y. 494, affirming order (Sup.) 168 N. Y. S. 1124.

What statute controls election.—Laws N. Y. 1917, c. 797, dividing state into congressional districts, applies to election for filling vacancy caused by resignation of Representative whose district at time of his election was fixed by Laws N. Y. 1911, c. 890. People ex rel. Fitzgerald v. Voorhis, 119 N. E. 106, 222 N. Y. 494, affirming order (Sup.) 168 N. Y. S. 1124.

Executive proclamation, calling special election to fill vacancy in specified congressional district, refers to district as then fixed by Laws N. Y. 1917, c. 797, and not to district as it existed under Laws N. Y. 1911, c. 890, when resigning Representative was elected. Id.

§ 18. (Act Aug. 8, 1911, c. 5, § 4.) Redistricting under state laws.

Notes of Decisions

Constitutionality.—Courts may not treat provisions of congressional apportionment act under which referendum is recognized as repugnant to republican form of government guaranteed by Const. art. 4, § 4, since Congress has exclusive authority to uphold the guaranty. State of Ohio ex rel. Davis v. Hildebrant, 36 S. Ct. 708, 241 U. S. 565, 60 L. Ed. 1172, affirming 114 N. E. 55, 94 Ohio St. 154.

Recognition by Congress in this act of referendum as part of state power in creating congressional districts, does not violate Const. art. 1, § 4, that times and manner of holding elections for representatives shall be prescribed by the Legislature of each state. Id.

Exercise of legislative power.—Congress by this act intended that, where the referendum is treated as part of the legislative power, it should be held as the state legislative power for the purpose of creating congressional districts. State of Ohio ex rel. Davis v. Hildebrant, 36 S. Ct. 708, 241 U. S. 565, 60 L. Ed. 1172, affirming 114 N. E. 55, 94 Ohio St. 154.

Result of election.—The Congressional Redistricting Act, having failed of approval on submission to referendum, is invalid. State v. Hildebrant (Ohio) 114 N. E. 55.

CHAPTER FOUR—COMPENSATION OF MEMBERS

§ 40. (R. S. § 38, as amended, Act March 3, 1875, c. 130, § 1.) Representatives' salaries payable monthly.

The Sergeant at Arms of the House of Representatives was authorized and directed to pay to the members of the House of Representatives of the 65th Congress, who had been serving with the military or naval forces of the United States in the war with Germany and her allies, compensation from and after the day of their discharge from military or naval duty at the rate provided by law for Representatives in Congress, upon the resumption and during the continuance of their duties as Representatives in Congress, by Res. March 3, 1919, c. 117, 40 Stat. 1324.

§ 43a. (Res. March 3, 1919, c. 117.) Compensation to members serving with military or naval forces.

See note under § 40.

§ 57. (Act July 31, 1894, c. 174, § 1.) Salaries of Senators filling vacancies.

Cited without definite application, Illinois Surety Co. v. United States, to Use of Peeler, 36 S. Ct. 321, 60 L. Ed. 609.

CHAPTER FIVE—OFFICERS AND PERSONS IN THE EMPLOY OF THE SENATE AND HOUSE OF REPRESENTATIVES

Sec.
58. Officers and employés of Senate.
59. Officers and employés of House.
73. Janitors to committees of House.
74a. Clerks to Senators.
75. Clerks to Members and Delegates of House.
76. Clerks to Members of House.
76a. Clerks to members, delegates and resident commissioners.
78. Pay of official reporters.
106a. Legislative Drafting Service; duties.

§ 58. (R. S. § 52.) Officers and employés of Senate.

For enumeration of officers and employés of the Senate, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 59. (R. S. § 53.) Officers and employés of House.

For enumeration of officers and employés of House of Representatives, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 73. (Act March 1, 1919, c. 86, § 1.) Janitors to committees of House.

Janitors under the foregoing shall be appointed by the chairmen, respectively, of said committees, and shall perform under the direction of the Doorkeeper all of the duties heretofore required of messengers detailed to said committees by the Doorkeeper, and shall be subject to removal by the Doorkeeper at any time after the termination of the Congress during which they were appointed. (40 Stat. 1218.)

This section is a provision following an appropriation for clerks, messengers, and janitors to certain enumerated committees of the House of Representatives, in the legislative, executive, and judicial appropriation for the fiscal year 1920, cited above. It has been repeated in prior legislative, executive, and judicial appropriation acts.

§ 74a. (Act March 1, 1919, c. 86, § 1.) Clerks to Senators.

Clerical Assistance to Senators: For clerical assistance to Senators who are not chairmen of the committees specifically provided for herein: * * Such clerks and assistant clerks shall be ex of-

ficio clerks and assistant clerks of any committee of which their Senator is chairman. (40 Stat. 1215.)

This section is a provision following an appropriation for clerks and messengers to certain enumerated committees of the Senate in the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

§ 75. (Res. March 3, 1893, No. 21.) Clerks to Members and Delegates of House.

The annual legislative, executive, and judicial appropriation acts make appropriations for clerk hire for Members, Delegates, and Resident Commissioners, accompanied by a provision that no part thereof shall be paid to any member, Delegate, or Resident Commissioner. See Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 76. (Act July 7, 1898, c. 571, § 1.) Clerks to members of House.

For current appropriation for clerks to members of House of Representatives, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 76a. (Act March 1, 1919, c. 86, § 1.) Clerks to members, delegates and resident commissioners.

See note under § 76.

§ 78. (Act June 22, 1874, c. 388, § 1.) Pay of official reporters.

For current appropriation for the official reporters, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 106a. (Act Feb. 24, 1919, c. 18, § 1303.) Legislative Drafting Service; duties.

(a) There is hereby created a Legislative Drafting Service under the direction of two draftsmen, one of whom shall be appointed by the President of the Senate, and one by the Speaker of the House of Representatives, without reference to political affiliations and solely on the ground of fitness to perform the duties of the office. Each draftsman shall receive a salary of $5,000 a year, payable monthly. The draftsmen shall, subject to the approval of the President of the Senate and the Speaker of the House of Representatives, employ and fix the compensation of such assistant draftsmen, clerks, and other employees, and purchase such furniture, office equipment, books, stationery, and other supplies, as may be necessary for the proper performance of the duties of the service and as may be appropriated for by Congress.

(b) The Drafting Service shall aid in drafting public bills and resolutions or amendments thereto on the request of any committee of either House of Congress, but the Library Committee of the Senate and the Library Committee of the House of Representatives, respectively, may determine the preference, if any, to be given to such requests of the committees of either House, respectively. The draftsmen shall, from time to time, prescribe rules and regulations for the conduct of the work of the service for the committees of each House, subject to the approval of the Library Committee of each House, respectively.

(c) For the remainder of the current fiscal year there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $25,000, or so much thereof as may be necessary, for the purpose of defraying the expenses of the establishment and maintenance of the service, including the payment of salaries herein authorized. One-half of all appropriations for the service shall be disbursed by the Secretary of the Senate and one-half by the Clerk of the House of Representatives. (40 Stat. 1141.)

This section is § 1303 of the Revenue Act of 1918 (Title XIII—General Administrative Provisions), cited above.

CHAPTER SIX—THE LIBRARY OF CONGRESS

§ 129. (Act Feb. 19, 1897, c. 265, § 1.) Appointment of Librarian, and government of Library.

For current appropriation for Librarian, Chief Assistant Librarian, etc., with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 134a. (Act March 4, 1915, c. 141, § 1.) Superintendent of Library building and grounds; salary.

The legislative, executive, and judicial appropriation act for the fiscal year 1919, Act July 3, 1918, c. 130, § 1, 40 Stat. 757, and that for the fiscal year 1920, Act March 1, 1919, c. 86, § 1, 40 Stat. 1213, fix the salary of the Superintendent of the Library buildings and grounds at $3,600 per annum.

CHAPTER SEVEN—CONGRESSIONAL INVESTIGATIONS

§ 155. (R. S. § 101.) Oaths to witnesses.

Power of committee to investigate acts of district attorney.—A subcommittee of the House of Representatives, acting under a resolution for the impeachment of a United States district attorney, is acting within constitutional limits when it investigates the attorney's acts. U. S. v. Gordon (D. C.) 235 F. 422.

CHAPTER EIGHT A—CONTRIBUTIONS FOR PURPOSE OF INFLUENCING ELECTIONS

§ 188. (Act June 25, 1910, c. 392, § 1.) "Political committee" defined.

Adoption of state laws.—That Congress has provided for expenses to be incurred in primary elections by candidates for House of Representatives and Senate is no adoption as federal legislation of state laws on the subject. U. S. v. O'Toole (D. C.) 236 F. 993, judgment affirmed Same v. Gradwell, 37 S. Ct. 407, 243 U. S. 476, 61 L. Ed. 857.

§ 192. (Act June 25, 1910, c. 392, § 5, as amended, Act Aug. 19, 1911, c. 33, § 1.) Statements by treasurer to be filed, etc.

See U. S. v. Gradwell, 37 S. Ct. 407, 61 L. Ed. 857.

Habeas corpus on ground of unconstitutionality of statute.—See Ex parte Blair (D. C.) 253 F. 800.

§ 195. (1) (Act June 25, 1910, c. 392, § 8, as amended, Act Aug. 19, 1911, c. 33, § 2, and Act Aug. 23, 1912, c. 349.) Candidate defined.

See U. S. v. Gradwell, 37 S. Ct. 407, 61 L. Ed. 857; Ex parte Blair (D. C.) 253 F. 800.

TITLE III—THE PRESIDENT

CHAPTER TWO—OFFICE AND COMPENSATION OF THE PRESIDENT

§ 227. (R. S. § 155.) Officers of the President's household.

For enumeration and fixing of compensation, see Act March 1, 1919, ch. 86, § 1, 40 Stat. 1213.

§ 229. (Act March 1, 1919, c. 86, § 1.) Detail of employés of Executive Departments to office of President.

Employees of the executive departments and other establishments of the executive branch of the Government may be detailed from time to time to the office of the President of the United States for such temporary assistance as may be necessary. (40 Stat. 1222.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

TITLE IV—PROVISIONS APPLICABLE TO ALL THE EXECUTIVE DEPARTMENTS

Sec.
234. Salaries of heads of Departments.
235. Departmental regulations.
242. Classification of Department clerks.
243a. Employment of wives of soldiers and sailors.
246. Salaries of clerks and employés.
249. Officers, clerks, etc., how employed.
251a. Transfer of clerks from executive departments to independent establishments.
251b. Employment of employés of executive departments, in other executive departments, at increased compensation.
251c. Branches of government of District of Columbia as governmental establishments.
252a. Details of persons in classified service at Washington for service outside District.
258. Disbursing clerks.
259. Vacancies; temporarily filling.
260. Vacancies in subordinate offices.
270. Evidence for suits in Court of Claims.
283a. Coordination of executive agencies.
283b. Transfer of personnel or duties.
283c. Executive agency for control of aeroplanes.
283d. Expenditure of appropriations.
283e. Abolition of bureaus.
283f. Acts suspended; termination of act.

§ 234. (R. S. § 160.) Salaries of heads of Departments.

See legislative, executive, and judicial appropriation act, Act March 1, 1919, c. 86, 40 Stat. 1213.

§ 235. (R. S. § 161.) Departmental regulations.

2. Regulations not to be inconsistent with law.—See Illinois Cent. R. Co. v. U. S., 52 Ct. Cl. 53.

Departmental regulation that soldier's homestead declaratory statement may be executed before any officer authorized to administer oaths held not inconsistent with act providing for administering of oaths by certain United States official in district in which land is situated, or provision of Rev. St. § 2293 (Comp. St. 1916, § 4545). U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926.

5. Regulations for carrying out particular laws.—Regulation requiring affidavit to soldier's homestead declaration giving him preferential right under Homestead Law, Rev. St. §§ 2304–2309 (Comp. St. 1916, §§ 4592–4594, 4602, 4603, 4605), could be adopted by the Land Department under Rev. St. §§ 441, 453, 2478 (Comp. St. 1916, §§ 681, 699, 5120), and this section, notwithstanding reference to pre-emption cases in section 2309 (Comp. St. 1916, § 4605). U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926.

Under Cr. Code, § 194 (Comp. St. 1916, § 10364), and this section, and regulation of Post Office Department, prescribing what should constitute a letter box within the Criminal Code, held within the authority conferred upon the Postmaster General. Rosen v. U. S., 38 S. Ct. 148, 245 U. S. 467, 62 L. Ed. 406, affirming judgments 237 F. 810, 151 C. C. A. 52, and Pakas v. U. S., 240 F. 350, 153 C. C. A. 276.

Under this section the Postmaster General has authority to designate a private box for the receipt of mail as a letter box, within the meaning of Criminal Code, § 194 (Comp. St. 1916, § 10364). Pakas v. U. S., 240 F. 350, 153 C. C. A. 276.

6. Custody, use, etc., of property.—Mail is property, within this section, and belongs for certain purposes to the United States. Pakas v. U. S., 240 F. 350, 153 C. C. A. 276.

9. Force and effect of regulations as law.—Under Criminal Code, § 194 (Comp. St. 1916, § 10364), and this section, and regulation of Post Office Department, boxes placed in hall of building for receipt of mail, held authorized depositories of mail matter as respected stealing of mail matter. Rosen v. U. S., 38 S. Ct. 148, 245 U. S. 467, 62 L. Ed. 406, affirming judgments 237 F. 810, 151 C. C. A. 52, and Pakas v. U. S., 240 F. 350, 153 C. C. A. 276.

Rules and regulations adopted pursuant to power conferred on head of department held to have the force of law if consistent therewith, reasonable, and within the scope of the power conferred. In re Aliens (D. C.) 231 F. 335.

11. Violations of regulations.—Under this section, and Criminal Code, § 194 (Comp. St. 1916, § 10364), a conviction for receiving property taken from letters stolen from a private box, designated as a letter box, is authorized. Pakas v. U. S., 240 F. 350, 153 C. C. A. 276.

Cited without definite application, Illinois Surety Co. v. United States, to Use of Peeler, 36 S. Ct. 321; In re Valecia Condensed Milk Co. (C. C. A.) 240 F. 310.

§ 242. (R. S. § 163.) Classification of Department clerks.

Change of classification as affecting rights as to compensation.—Widow of one originally appointed assistant weigher of customs, statutes not providing for such assistants, later appointed by collector clerk, class 3, new office, to act as acting United States weigher, and still later appointed clerk, class 4, could not recover from United States salary of her deceased husband as United States weigher of customs from time of appointment as clerk, class 3, up to his death, though he performed some or all duties of weigher. MacMath v. U. S., 39 S. Ct. 31, 63 L. Ed. —.

§ 243a. (Act Aug. 31, 1918, c. 166, § 5.) Employment of wives of soldiers and sailors.

The wife of a soldier or sailor serving in the present war shall not be disqualified for any position or appointment under the Government because she is a married woman. (40 Stat. 956.)

This was section 5 of an act entitled "An act amending the act entitled 'An act to authorize the President to increase temporarily the Military Establishment of the United States,' approved May eighteenth, nineteen hundred and seventeen," cited above.

§ 246. (R. S. § 167.) Salaries of clerks and employés.

For enumeration of clerks and employés in the various departments, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 249. (Act Aug. 5, 1882, c. 389, § 4.) Officers, clerks, etc., how employed.

Transfer between departments.—Designation of clerk in Department of Commerce to perform additional services without extra pay in Department of Labor is not an "employment," prohibited by Comp. St. 1916, § 6778, nor by this section, as to employment without specific authority of Congress. 30 Op. Atty. Gen. 129.

§ 251a. (Act Oct. 6, 1917, c. 79, § 6.) Transfer of clerks from executive departments to independent establishments.

Section five of the Act of June twenty-second, nineteen hundred and six, prohibiting the transfer of employees from one executive department to another, shall apply with equal force and effect to the transfer of employees from executive departments to independent establishments and vice versa and to the transfer of employees from one independent establishment to another: Provided, That the United States Shipping Board Emergency Fleet Corporation shall be considered a Government establishment for the purposes of this section. (40 Stat. 383.)

This was section 6 of the urgent deficiency appropriation act for the year 1918, and prior years, cited above.

§ 251b. (Act Oct. 6, 1917, c. 79, § 7.) Employment of employés of executive departments, in other executive departments, at increased compensation.

No civil employee in any of the executive departments or other Government establishments, or who has been employed therein within the period of one year next preceding his proposed employment in any other executive department or other Government establishment, shall be employed hereafter and paid from a lump-sum appropriation in any other executive department or other Government establishment at an increased rate of compensation. And no civil employee in any of the executive departments or other Government establishments or who has been employed therein within the period of one year next preceding his proposed employment in any other executive department or other Government establishment and who may be employed in another executive department or other Government establishment shall be granted an increase in compensation within the period of one year following such reemployment: Provided, That the United States Shipping Board Emergency Fleet Corporation shall be considered a Government

establishment for the purposes of this section: Provided further, That this section shall not be construed to repeal section five of the Act of June twenty-second, nineteen hundred and six, which prohibits the transfer of employés from one department to another. (40 Stat. 383.)

This was section 7 of the urgent deficiency appropriation act for the fiscal year 1918, and prior years, cited above.

§ 251c. (Act March 28, 1918, c. 28, § 2.) Branches of Government of District of Columbia as governmental establishments.

All branches of the government of the District of Columbia shall be considered a governmental establishment for the purposes of section seven of the deficiency appropriation Act approved October sixth, nineteen hundred and seventeen. (40 Stat. 498.)

This was section 2 of the urgent deficiency appropriation act for the year 1918, and prior years, on account of war expenses, cited above.

§ 252a. (Act March 1, 1919, c. 86, § 6.) Details of persons in classified service at Washington for service outside District.

In expending appropriations made in this Act persons in the classified service in the District of Columbia, shall not be detailed for service outside of the District of Columbia except for or in connection with work pertaining directly to the service at the seat of government of the department or other Government establishment from which the detail is made: Provided, That nothing in this section shall be deemed to apply to the investigation of any matter or the preparation, prosecution, or defense of any suit by the Department of Justice. (40 Stat. 1267.)

This section is § 6 of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. The appropriations referred to are those made for officers, etc., in the legislative, executive, and judicial departments. The provisions of this section have been repeated in prior legislative, executive, and judicial appropriation acts.

§ 258. (R. S. § 176.) Disbursing clerks.

The appointment of special disbursing agents for the duration of the war with Germany, to disburse the appropriation for the expenses of the audit of accounts of the military establishment in foreign countries, is authorized by a provision of Act Sept. 24, 1917, c. 56, § 12, post, § 420a.

Notes of Decisions

Failure to make appropriation.—Failure of Congress to make specific provision for salary of disbursing clerk in Department of Labor, authorized by Comp. St. 1916, § 933, does not preclude his appointment, in view of this section. 30 Op. Atty. Gen. 129.

§ 259. (R. S. § 177.) Vacancies; temporarily filling.

Powers of special assistant attorney.—Under Act June 30, 1906, Rev. St. §§ 161, 348, 360 (Comp. St. 1916, §§ 235, 517, 535), and this section, attorney, not resident of district wherein prosecutions were instituted, having been appointed special assistant, by letter signed by Assistant Attorney General, for Attorney General, held authorized to participate in grand jury proceedings. May v. U. S., 236 F. 495, 149 C. C. A. 547.

De facto officer.—Assistant to Attorney General appointed for special prosecutions under Rev. St. §§ 161, 348, 360 (Comp. St. 1916, §§ 235, 517, 535), and this section and Act June 30, 1906, held at least a de facto officer so that, on motion to quash indictment, his right to appear before grand jury could not be questioned. May v. U. S., 236 F. 495, 149 C. C. A. 547.

§ 260. (R. S. § 178.) Vacancies in subordinate offices.

Admissibility of certificates of Comptroller of Currency.—In view of this section and Rev. St. §§ 327, 884 (Comp. St. 1916, §§ 498, 1496), as to certificates of Comptroller of the Currency, all certificates from the office of the Comptroller of the Currency of the United States, authenticated by seal, are admissible. Weitzel v. Brown, 112 N. E. 945, 224 Mass. 190.

§ 270. (R. S. § 188.) Evidence for suits in Court of Claims.

Cited without definite application,
United States Fidelity & Guaranty Co. v. U. S., 50 Ct. Cl. 316.

§ 283a. (Act May 20, 1918, c. 78, § 1.) Co-ordination of executive agencies.

For the national security and defense, for the successful prosecution of the war, for the support and maintenance of the Army and Navy, for the better utilization of resources and industries, and for the more effective exercise and more efficient administration by the President of his powers as Commander in Chief of the land and naval forces the President is hereby authorized to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this Act, and to this end is authorized to make such regulations and to issue such orders as he may deem necessary, which regulations and orders shall be in writing and shall be filed with the head of the department affected and constitute a public record: Provided, That this Act shall remain in force during the continuance of the present war and for six months after the termination of the war by the proclamation of the treaty of peace, or at such earlier time as the President may designate: Provided further, That the termination of this Act shall not affect any act done or any right or obligation accruing or accrued pursuant to this Act and during the time that this Act is in force: Provided further, That the authority by this Act granted shall be exercised only in matters relating to the conduct of the present war. (40 Stat. 556.)

This section, and the five sections next following, were an act entitled "An act authorizing the President to co-ordinate or consolidate executive bureaus, agencies, and offices, and for other purposes, in the interest of economy and the more efficient concentration of the government," cited above.

§ 283b. (Act May 20, 1918, c. 78, § 2.) Transfer of personnel or duties.

In carrying out the purposes of this Act the President is authorized to utilize, coordinate, or consolidate any executive or administrative commissions, bureaus, agencies, offices, or officers now existing by law, to transfer any duties or powers from one existing department, commission, bureau, agency, office, or officer to another, to transfer the personnel thereof or any part of it either by detail or assignment, together with the whole or any part of the records and public property belonging thereto. (40 Stat. 556.)

See note to § 283a, ante.

§ 283c. (Act May 20, 1918, c. 78, § 3.) Executive agency for control of aeroplanes.

The President is further authorized to establish an executive agency which may exercise such jurisdiction and control over the production of aeroplanes, aeroplane engines, and aircraft equipment as in his judgment may be advantageous; and, further, to transfer to such agency, for its use, all or any moneys heretofore appropriated for the production of aeroplanes, aeroplane engines, and aircraft equipment. (40 Stat. 557.)

See note to § 283a, ante.

§ 283d. (Act May 20, 1918, c. 78, § 4.) Expenditure of appropriations.

For the purpose of carrying out the provisions of this Act, any moneys heretofore and hereafter appropriated for the use of any

executive department, commission, bureau, agency, office, or officer shall be expended only for the purposes for which it was appropriated under the direction of such other agency as may be directed by the President hereunder to perform and execute said function. (40 Stat. 557.)

See note to § 283a, ante.

§ 283e. (Act May 20, 1918, c. 78, § 5.) Abolition of bureaus.

Should the President, in redistributing the functions among the executive agencies as provided in this Act, conclude that any bureau should be abolished and it or their duties and functions conferred upon some other department or bureau or eliminated entirely, he shall report his conclusions to Congress with such recommendations as he may deem proper. (40 Stat. 557.)

See note to § 283a, ante.

§ 283f. (Act May 20, 1918, c. 78, § 6.) Acts suspended; termination of act.

All laws or parts of laws conflicting with the provisions of this Act are to the extent of such conflict suspended while this Act is in force.

Upon the termination of this Act all executive or administrative agencies, departments, commissions, bureaus, offices, or officers shall exercise the same functions, duties, and powers as heretofore or as hereafter by law may be provided, any authorization of the President under this Act to the contrary notwithstanding. (40 Stat. 557.)

See note to § 283a, ante.

TITLE V—THE DEPARTMENT OF STATE

Sec.
294. Assistant Solicitors.
295. Law clerk to edit laws.
297. Salaries of Secretary, Assistant Secretaries, and other officers.
300. Management of foreign affairs.
301. Custody of seals and property.

§ 294. (Act March 1, 1919, c. 86, § 1.) Assistant Solicitors.

Department of State. * * Assistant solicitors of the department, to be appointed by the Secretary—five at $3,000 each, two at $2,500 each. * * (40 Stat. 1224.)

This section is a part of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It supersedes similar provisions in the prior legislative, executive, and judicial appropriation acts.

§ 295. (Act March 1, 1919, c. 86, § 1.) Law clerk to edit laws.

Department of State. * * Law clerk and assistant, to be selected by the Secretary to edit the laws of Congress and perform such other duties as may be required of them, at $2,500 and $1,500, respectively. * * (40 Stat. 1224.)

This section is a part of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It supersedes similar provisions in the prior legislative, executive, and judicial appropriation acts.

§ 297. (Act March 1, 1919, c. 86, § 1.) Salaries of Secretary, Assistant Secretaries, and other officers.

Department of State. For Secretary of State, $12,000; Under Secretary of State, to be appointed by the President, by and with the advice and consent of the Senate, $7,500; Assistant Secretary, $5,000; Second and Third Assistant Secretaries, at $4,500 each; director of the consular service, $4,500; officers to aid in important drafting work—five at $4,500 each, ten at $3,500 each, fourteen at $3,000 each, seventeen at $2,500 each, to be appointed by the Secretary, any one of whom may be employed as chief of division of far eastern, Latin-American, near eastern, or European affairs, or upon other work in connection with foreign relations; * * chief clerk who shall sign such official papers and documents as the Secretary may direct, $3,000; law clerks—one $2,500, two at $2,250 each, three at $2,000 each; * * chiefs of bureaus—two at $2,250 each, five at $2,100 each; two translators, at $2,100 each; additional to chief of Bureau of Accounts as disbursing clerk, $200; private secretary to the Secretary, $2,500; private secretary to the Under Secretary, $2,000; clerk to the Secretary, $1,800. * * (40 Stat. 1224.)

This section is a part of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It supersedes similar provisions in the prior legislative, executive, and judicial appropriation acts.

§ 300. (R. S. § 202.) Management of foreign affairs.

Cited without definite application,
Whelpley v. Grosvold (C. C. A.) 249 F. 812.

§ 301. (R. S. § 203.) Custody of seals and property.

Since this section, and §§ 319 and 617, respectively, make the Secretary of State, Secretary of War, and Secretary of Navy, in express terms, custodians of property of respective departments, they, as mere custodians, cannot without consent of Congress, reassign quarters in the State, War, and Navy Building. 30 Op. Atty. Gen. 70.

TITLE VI—THE DEPARTMENT OF WAR

CHAPTER A—THE DEPARTMENT AND THE SECRETARY OF WAR

Sec.
312. Assistant Secretaries of War.
314. Subordinate officers.
315a. Chief clerk authorized to sign papers.
317. Assignment of clerks and employés to duty in War Department.
319. Custody of the departmental records and property.
322. Transportation of troops.
334a. Reports of Secretaries of War, Treasury, and Navy.
335a. Claims for damages to private property from military operations; duties of Auditor for War Department.
335b. Same; military operations; presentation and approval.
335c. Same; laws governing.
335d. Same; appropriation available for.
335e. Same; effect of act.

§ 312. (Act March 5, 1890, c. 26, as amended, Act April 6, 1918, c. 46.) Assistant Secretaries of War.

There shall be in the Department of War an Assistant Secretary, a Second Assistant Secretary, and a Third Assistant Secretary, each of whom shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall be entitled to a salary of $5,000 per annum, payable monthly, and the Second Assistant Secretary and Third Assistant Secretary shall each be entitled to a salary of $4,500 per annum, payable monthly, and shall perform such duties in the Department of War as shall be prescribed by the Secretary or as may be required by law. (26 Stat. 17. 40 Stat. 515.)

The legislative, executive, and judicial appropriation act for the fiscal year 1920, Act March 1, 1919, c. 86, § 1, 40 Stat. 1213, fixes the salary of the Assistant Secretary at $5,000; of the Second Assistant Secretary at $4,500; and makes no appropriation for the "Third Assistant Secretary."

§ 314. (R. S. § 215, as amended, Act Feb. 27, 1877, c. 69, § 1.) Subordinate officers.

The urgent deficiency appropriation act for the year 1918, and prior years, on account of war expenses, Act March 28, 1918, c. 28, § 1, 40 Stat. 459, provides for the temporary employment of such additional force of clerks, etc., as may be necessary to the prompt dispatch of official business in the War Department and its bureaus, requires the Secretary of War to submit to Congress a statement showing the number and designation of the persons employed and the annual rate of compensation paid to each, and provides that no more than thirty persons shall be employed at a rate of compensation in excess of $1,800 per annum each and not exceeding $2,400 per annum each.

The legislative, executive, and judicial appropriation act for the fiscal year 1920, Act March 1, 1919, c. 86, § 1, 40 Stat. 1213, makes the following provision for subordinate officers in the Department: "Private secretary to the Secretary, $2,500; clerk to the Secretary, $2,000; stenographer to the Secretary, $2,000; clerk to the Assistant Secretary, $2,400; assistant chief clerk, $2,400; disbursing clerk, $2,750; appointment clerk, $2,250; four chiefs of divisions, at $2,000 each; superintendent of buildings outside of State, War, and Navy Department Building, in addition to compensation as chief of division, $500; chief telegrapher, $1,800," and certain enumerated clerks.

§ 315a. (Act March 1, 1919, c. 86, § 1.) Chief clerk authorized to sign papers.

Office of the Secretary: * * Assistant and chief clerk, who shall sign such official papers and documents as the Secretary may direct, $4,000. * * (40 Stat. 1225.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. Prior legislative, executive, and judicial appropriation acts have contained a similar provision.

§ 317. (Act July 9, 1918, c. 143.) Assignment of clerks and employés to duty in War Department.

No clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty in any bureau of the War Department. (40 Stat. 853.)

This was a provision of the army appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

§ 319. (R. S. § 217.) Custody of the departmental records and property.

Reassignment of quarters.—Since §§ 301, 617, and this section respectively make the Secretary of State, Secretary of War, and Secretary of Navy, in express terms, custodians of property of respective departments, they, as mere custodians, cannot, without consent of Congress, reassign quarters in the State, War, and Navy Building. 30 Op. Atty. Gen. 70.

§ 322. (R. S. § 220.) Transportation of troops.

Rates and charges.—After plaintiff accepts transportation requests calling for a given rate, the furnishing of the transportation, and the rendering of bills at that rate, it is too late to raise any question under a theory that the rate was only available when payment was made in cash. Louisville & N. R. Co. v. U. S., 52 Ct. Cl. 259.

§ 334a. (Act June 15, 1917, c. 29, § 5.) Reports of Secretaries of War, Treasury, and Navy.

In addition to the reports now required by law, the Secretaries of the Treasury, War, and Navy shall each on the first Monday in December, nineteen hundred and seventeen, and annually thereafter, transmit to the Congress a detailed statement of all expenditures under this Act. (40 Stat. 217.)

This was section 5 of the urgent deficiencies appropriation act for the military and naval establishments on account of war expenses for the fiscal year 1917, cited above.

§ 335a. (Act Oct. 6, 1917, c. 79, § 1.) Claims for damages to private property from military operations; duties of Auditor for War Department.

See post, § 6404a, and note thereunder.

§ 335b. (Act April 18, 1918, c. 57, § 1.) Same; military operations; presentation and approval.

Claims of inhabitants of France or of any other European country not an enemy or ally of an enemy for damages caused by American military forces may be presented to any officer designated by the President, and when approved by such an officer shall be paid under regulations made by the Secretary of War. (40 Stat. 532.)

This section, and the three sections next following, were an act entitled "An act to give indemnity for damages caused by American forces abroad," cited above.

§ 335c. (Act April 18, 1918, c. 57, § 2.) Same; laws governing.

Claims under this statute shall not be approved unless they would be payable according to the law or practice governing the military forces of the country in which they occur. (40 Stat. 532.)

See note to § 335b, ante.

§ 335d. (Act April 18, 1918, c. 57, § 3.) Same; appropriation available for.

Hereafter appropriations for the incidental expenses of the Quartermaster Corps shall be available for paying the claims herein described. (40 Stat. 532.)

See note to § 335b, ante.

§ 335e. (Act April 18, 1918, c. 57, § 4.) Same; effect of act.

This statute does not supersede other modes of indemnity now in existence and does not diminish responsibility of any member of the military forces to the person injured or to the United States. (40 Stat. 532.)

See note to § 335b, ante.

TITLE VII—THE DEPARTMENT OF THE TREASURY

Chap.		Sec.
1.	The Department	351a
2.	The Secretary of the Treasury	382
3.	The Comptroller	401
4.	The Auditors	416
5.	The Treasurer	472
6.	The Register	485
8.	The Commissioner of Internal Revenue	490
9.	The Comptroller of the Currency	495
11.	The Bureau of the Mint	508
11A.	The Bureau of Engraving and Printing	510
11B.	The Bureau of War Risk Insurance	514a

CHAPTER ONE—THE DEPARTMENT

Sec.
351a. Additional Assistant Secretaries.
352. Organization of Department, offices, and salaries.
352a. Positions in office of Auditor for Post Office Department.
353. Chief clerk to be chief executive officer of Department.
356. Division of Bookkeeping and Warrants.
357. Supervising Architect.
368. Public accounts to be settled.
378a. Enforcement of laws relating to Treasury Department; employment of persons paid from certain appropriations for.

§ 351a. (Act Oct. 6, 1917, c. 79, § 1.) Additional Assistant Secretaries.

For two additional Assistant Secretaries of the Treasury, to be appointed by the President, by and with the advice and consent of the Senate, who are authorized at the rate of $5,000 per annum each from the date of this Act to the close of the present war and six months thereafter. * * (40 Stat. 347.)

This was a provision of the urgent deficiency appropriation act for the fiscal year 1918, cited above.

§ 352. (Act March 3, 1875, c. 130, § 2). Organization of Department, offices, and salaries.

For current appropriations for officers and employés of the Treasury Department differing somewhat from the provisions of this section, see Act July 3, 1918, c. 130, § 1, 40 Stat. 757; Act March 1, 1919, c. 86, § 1, 40 Stat. 1213. The latter act provides for an assistant to the Secretary, at $5,000, for three Assistant Secretaries, at $5,000 each, and for two additional Assistant Secretaries, at $5,000 each. It also provides for a government actuary, under the control of the Treasury, at $4,000.

§ 352a. (Act March 3, 1917, c. 163, § 1.) Positions in office of Auditor for Post Office Department.

Hereafter the Secretary of the Treasury may diminish from time to time, as vacancies occur by death, resignation, or otherwise, the number of positions of the several grades below the grade of chief of division in the Office of the Auditor for the Post Office Department and use the unexpended balances of the appropriations for the positions so diminished as a fund to pay the compensation, as fixed by the Secretary of the Treasury, of such number of employees as may be necessary to audit the accounts and vouchers of the Postal Service. (39 Stat. 1086.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1918, cited above.

§ 353. (Act March 1, 1919, c. 86, § 1.) Chief clerk to be chief executive officer of Department.

Office of chief clerk and superintendent: Chief clerk, including $300 as superintendent of Treasury Building, who shall be the chief

executive officer of the department and who may be designated by the Secretary of the Treasury to sign official papers and documents during the temporary absence of the Secretary and the Assistant Secretaries of the department, $4,000. * * (40 Stat. 1225.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior legislative, executive, and judicial appropriation acts.

§ 356. (Act July 31, 1894, c. 174, § 10.) Division of Bookkeeping and Warrants.

What are "public moneys."—Moneys received by the Federal Reserve Board, under section 10 of the Federal Reserve Act of December 23, 1913 (38 Stat. 261), are "public moneys" within the meaning of the auditing statutes, and consequently are subject to audit by one of the auditors of the Treasury Department under § 420, or this section. 30 Op. Atty. Gen. 308.

Books as evidence.—Books of record prepared by treasury officials held admissible in action by United States to recover dividends on corporate stock owned by it, to show that payment of such dividends had not been made. Chesapeake & Delaware Canal Co. v. U. S., 240 F. 903, 153 C. C. A. 589.

§ 357. (Act Aug. 23, 1912, c. 350, § 1.) Supervising Architect.

For current appropriations for officers and employés in the office of the Supervising Architect, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 368. (R. S. § 236.) Public accounts to be settled.

Cited without definite application, Illinois Surety Co. v. United States, to Use of Peeler, 36 S. Ct. 321, 60 L. Ed. 609.

§ 378a. (Act July 1, 1918, c. 113, § 1.) Enforcement of laws relating to Treasury Department; employment of persons paid from certain appropriations for.

The Secretary of the Treasury is authorized to use for, and in connection with, the enforcement of the laws relating to the Treasury Department and the several branches of the public service under its control, not exceeding at any one time four persons paid from the appropriation for the collection of customs, four persons paid from the appropriation for salaries and expenses of internal-revenue agents or from the appropriation for the foregoing purpose, and four persons paid from the appropriation for suppressing counterfeiting and other crimes, but not exceeding six persons so detailed shall be employed at any one time hereunder: Provided, That nothing herein contained shall be construed to deprive the Secretary of the Treasury from making any detail now otherwise authorized by existing law. (40 Stat. 642.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

CHAPTER TWO—THE SECRETARY OF THE TREASURY

§ 382. (R. S. § 249.) Collection of duties.

Cited without definite application, Vitelli & Son v. U. S., 7 Ct. Cust. App. 243.

§ 384. (R. S. § 251.) Rules, regulations, and forms.

Cited without definite application, Vitelli & Son v. U. S., 7 Ct. Cust. App. 243.

§ 386. (R. S. § 257.) Reports of Secretary.

The Secretaries of the Treasury, War, and Navy are required to transmit annually to Congress detailed statements of all expenditures under the urgent deficiencies act for the military and naval establishments on account of war expenses for the fiscal year 1917, by section 5 thereof, ante, § 334a.

§ 390. (Act July 31, 1894, c. 174, § 12, as amended, Act May 28, 1896, c. 252, § 4.) Reports of officers delinquent.

Cited without definite application, Illinois Surety Co. v. United States, to Use of Peeler, 36 S. Ct. 321, 60 L. Ed. 609.

CHAPTER THREE—THE COMPTROLLER

Sec.
401. Comptroller.
404. Assistant Comptroller; chief clerk.
406. Power of Comptroller to direct settlement of accounts.
410. Powers as to inspection of accounts in District of Columbia.
414a. Chief clerk; countersigning warrants.
415a. Chief of examining division.

§ 401. (R. S. § 268.) Comptroller.

For current appropriation for Comptroller and Assistant Comptroller of the Treasury, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 404. (Act July 31, 1894, c. 174, § 4.) Assistant Comptroller; chief clerk.

The appointment of an assistant comptroller, for the period of the war with Germany, for the performance of certain duties relating to the audit in other countries of the accounts of the military establishment, is authorized by a provision of Act Sept. 24, 1917, c. 56, § 12, 40 Stat. 293, post, § 420a.

§ 406. (R. S. § 271, as amended, Act July 31, 1894, c. 174, § 6.) Powers of Comptroller to direct settlement of accounts.

Cited without definite application, Illinois Surety Co. v. United States, to Use of Peeler, 36 S. Ct. 321, 60 L. Ed. 609.

§ 410. (Act Feb. 19, 1897, c. 265, § 1.) Powers as to inspection of accounts in District of Columbia.

See 30 Op. Atty. Gen. 308.

§ 414a. (Act July 3, 1918, c. 130, § 1.) Chief clerk; countersigning warrants.

The Chief Clerk in the office of Comptroller of the Treasury hereafter shall have the power, in the name of the comptroller, to countersign all classes of warrants. (40 Stat. 773.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1919, cited above.

§ 415a. (Act March 1, 1919, c. 86, § 1.) Chief of examining division.

The comptroller may designate a national-bank examiner to act as chief of the examining division in his office. (40 Stat. 1230.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

CHAPTER FOUR—THE AUDITORS

Sec.
416. Auditors.
418. Position of deputy auditor abolished.
420. Auditors; settlement of accounts.
420a. Place of audit of accounts of military establishment.
420b. Same; date of determination of war.
425. Conclusiveness of balances certified; revision of accounts.
437. Regulations.
457. Settlement of expenses of intercourse with foreign nations.

§ 416. (R. S. § 276.) Auditors.

For current appropriations for the Auditors, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 418. (Act March 4, 1911, c. 237, § 1.) Position of deputy auditor abolished.

The appointment of an assistant auditor, for the period of the war with Germany, for the performance of certain duties relating to the audit in other countries of the accounts of the military establishment, by a provision of Act Sept. 24, 1917, c. 56, § 12, 40 Stat. 293, post, § 420a.

§ 420. (Act July 31, 1894, c. 174, § 7.) Auditors; settlement of accounts.

The Auditor for the War Department is required to settle certain claims for damages to and loss of private property incident to army operations, by a provision of Act Oct. 6, 1917, c. 79, § 1, 40 Stat. 345, post, § 6404a.

Notes of Decisions

What are "public moneys."—Moneys received by the Federal Reserve Board, under section 10 of the Federal Reserve Act of December 23, 1913 (38 Stat. 261), are "public moneys" within the meaning of the auditing statutes, and consequently are subject to audit by one of the auditors of the Treasury Department, under this section or § 356. 30 Op. Atty. Gen. 309.

§ 420a. (Act Sept. 24, 1917, c. 56, § 12.) Place of audit of accounts of military establishment.

The Secretary of the Treasury is authorized during the war, whenever it shall appear that the public interests require that any of the accounts of the Military Establishment be audited at any place other than the seat of Government, to direct the Comptroller of the Treasury and the Auditor for the War Department to exercise, either in person or through assistants, the powers and perform the duties of their offices at any place or places away from the seat of Government in the manner that is or may be required by law at the seat of Government and in accordance with the provisions of this section.

(a) Performance of duties.

When the Secretary of the Treasury shall exercise the authority herein referred to, the powers and duties of the said comptroller and auditor, under and pursuant to the provisions of the Act of July thirty-first, eighteen hundred and ninety-four, and all other laws conferring jurisdiction upon those officers, shall be exercised and performed in the same manner as nearly as practicable and with the same effect away from the seat of Government as they are now exercised and performed and have effect at the seat of Gov-

ernment, and decisions authorized by law to be rendered by the comptroller at the request of disbursing officers may be rendered with the same effect by such assistants as may be authorized by him to perform that duty.

(b) Performance of duties in foreign countries.

When pursuant to this section the said comptroller and auditor shall perform their duties at a place in a foreign country, the balances arising upon the settlement of accounts and claims of the Military Establishment shall be certified by the auditor to the Division of Bookkeeping and Warrants of the Treasury Department as now provided for the certification of balances by said auditor in Washington, and the balances so found due shall be final and conclusive upon all branches of the Government, except that any person whose account has been settled or the commanding officer of the Army abroad, or the comptroller may obtain a revision of such settlement by the comptroller upon application therefor within three months, the decision to be likewise final and conclusive and the differences arising upon such revision to be certified to and stated by the auditor as now provided by law: Provided, That certificates of balances due may be transmitted to and paid by the proper disbursing officer abroad instead of by warrant: Provided further, That any person whose account has been settled, or the Secretary of War, may obtain a reopening and review of any settlement made pursuant to this section upon application to the Comptroller of the Treasury in Washington within one year after the close of the war, and the action of the comptroller thereon shall be final and conclusive in the same manner as herein provided in the case of a balance found due by the auditor.

(c) Preservation of accounts.

The comptroller and auditor shall preserve the accounts, and the vouchers and papers connected therewith, and the files of their offices in the foreign country and transmit them to Washington within six months after the close of the war and at such earlier time as may be directed by the Secretary of the Treasury as to any or all accounts, vouchers, papers, and files.

(d) Assistant comptroller and assistant auditor.

The Secretary of the Treasury is authorized to appoint an assistant comptroller and an assistant auditor and to fix their compensation, and to designate from among the persons to be employed hereunder one or more to act in the absence or disability of such assistant comptroller and assistant auditor. He shall also prescribe the number and maximum compensation to be paid to agents, accountants, clerks, translators, interpreters, and other persons who may be employed in the work under this section by the comptroller and auditor. The assistant comptroller and assistant auditor shall have full power to perform in a foreign country all the duties with reference to the settlement there of the accounts of the Military Establishment that the comptroller and auditor now have at the seat of Government and in foreign countries under the provisions of this section, and shall perform such duties in accordance with the instructions received from and rules and regulations made by the comptroller and auditor. Such persons as are residing in a foreign country when first employed hereunder shall not be required to take an oath of office or be required to be employed pursuant to the laws, rules, and regulations relating to the classified civil service, nor shall they be reimbursed for subsistence expenses at their post of duty or for expenses in traveling to or from the United States.

(e) Examination of books of contracting, purchasing, and disbursing officers.

It shall be the duty of all contracting, purchasing, and disbursing officers to allow any representative of the comptroller or auditor to examine all books, records, and papers in any way connected with the receipt, disbursement, or disposal of public money, and to render such accounts and at such times as may be required by the comptroller. No administrative examination by the War Department shall be required of accounts rendered and settled abroad, and the time within which these accounts shall be rendered by disbursing officers shall be prescribed by the comptroller, who shall have power to waive any delinquency as to time or form in the rendition of these accounts. All contracts connected with accounts to be settled by the auditor abroad shall be filed in his office there.

(f) Employés restored to former positions.

Any person appointed or employed under the provisions of this section who at the time is in the service of the United States shall, upon termination of his services hereunder, be restored to the position held by him at the time of such employment. No provision of existing law shall be construed to prevent the payment of money appropriated for the salary of any Government officer or employee at the seat of Government who may be detailed to perform duty under this section outside the District of Columbia, and such details are hereby authorized.

(g) Appropriation for payment of expenses.

For the payment of the expenses in carrying into effect this section, including traveling expenses, per diem of $4 in lieu of subsistence for officers and employees absent from Washington, rent, cablegrams and telegrams, printing, law books, books of reference, periodicals, stationery, office equipment and exchange thereof, supplies, and all other necessary expenses, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of $300,000, of which not exceeding $25,000 may be expended at Washington for the purpose of this section, but no officer or employee shall receive for duty in Washington any compensation other than his regular salary.

(h) Special disbursing agents of appropriation.

The Secretary of the Treasury may designate not more than two persons employed hereunder to act as special disbursing agents of the appropriation herein, to serve under the direction of the comptroller, and their accounts shall be rendered to and settled by the accounting officers of the Treasury in Washington. All persons employed under this section shall perform such additional duties as the Secretary of the Treasury may direct.

(i) Authority to administer oaths to American citizens.

The comptroller and the auditor, and such persons as may be authorized in writing by either of them, may administer oaths to American citizens in respect to any matter within the jurisdiction of either of said officers and certify the official character, when known, of any foreign officer whose jurat or certificate may be necessary on any paper to be filed with them.

(j) Sale of Army stores to employés.

Persons engaged in work abroad under the provisions of this section may purchase from Army stores for cash and at cost price for their own use such articles or stores as may be sold to officers and enlisted men.

(k) Termination of effective force of section.

The authority granted under this section shall terminate six months after the close of the war or at such earlier date as the Secretary of the Treasury may direct, and it shall be the duty of the comptroller and auditor to make such reports as the Secretary of the Treasury may require of the expenditures made and work done pursuant to this section, and such reports shall be transmitted to the Congress at such time as he may decide to be compatible with the public interest.

(l) Limit on compensation of officers.

No officers, employees, or agents appointed or employed under this section shall receive more salary or compensation than like officers, employees, or agents of the Government now receive. (40 Stat. 293.)

This section, and the section next following, were a part of an act entitled "An act to authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign governments, and for other purposes," cited above. The other sections of the act relate to the designation of depositories of public moneys in foreign countries, and the issue of bonds, etc., by the United States, and are set forth post, §§ 6612a, 6829kk–6829pp, 6831.

§ 420b. (Act Sept. 24, 1917, c. 56, § 13.) Same; date of termination of war.

For the purposes of this Act the date of the termination of the war between the United States and the Imperial German Government shall be fixed by proclamation of the President of the United States. (40 Stat. 295.)

See note to § 420a, ante.

§ 425. (Act July 31, 1894, c. 174, § 8.) Conclusiveness of balances certified; revision of accounts.

Decisions of Comptroller on questions involving payments to be made.—The provision authorizing disbursing officers to submit questions involving payments to be made by them to the Comptroller of the Treasury held not to apply to the salary of an officer fixed by law, and for the payment of which an appropriation has been made. Smith v. Jackson, 241 F. 747, 154 C. C. A. 449.

Cited without definite application, Illinois Surety Co. v. United States, to Use of Peeler, 36 S. Ct. 321, 60 L. Ed. 609.

§ 437. (Act July 31, 1894, c. 174, § 22.) Regulations.

Conflict with statute.—Army regulation, in attempted compliance with this section, requiring presentation of claims of officers for lost property through War Department, cannot amend or affect requirement of Comp. St. 1916, § 6403(4), that the claim be presented within two years; and presentation to the War Department within two years does not save the claim. Newcomber v. U. S., 51 Ct. Cl. 408.

§ 457. (R. S. § 291.) Settlement of expenses of intercourse with foreign nations.

The diplomatic and consular service appropriation act for the fiscal year 1920, Act March 4, 1919, c. 123, 40 Stat. 1325, contains the following: "To enable the President to meet unforeseen emergencies arising in the Diplomatic and Consular Service and to extend the commercial and other interests of the United States and to meet the necessary expenses attendant upon the execution of the neutrality Act, to be expended pursuant to the requirement of section 291 of the Revised Statutes, $700,000, together with the unexpended balance of the appropriation made for this object for the fiscal year 1919, which is hereby reappropriated and made available for this purpose."

CHAPTER FIVE—THE TREASURER

§ 472. (R. S. § 301.) Treasurer.

For current appropriation for the Treasurer, Assistant Treasurer, and clerks and employés in the office of the Treasurer, see Act July 1, 1919, c. 86, § 1, 40 Stat. 1213.

CHAPTER SIX—THE REGISTER

§ 485. (R. S. § 312.) Register.

For current appropriation for the Register of the Treasury, Assistant Register, etc., see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 487. (R. S. § 314.) Assistant Register.

Salary of Assistant Register fixed at $2,500 by appropriation act of March 1, 1919, ch. 86, 40 Stat. 1213.

CHAPTER EIGHT—THE COMMISSIONER OF INTERNAL REVENUE

Sec.
490. Commissioner of Internal Revenue.
490a. Commissioner; salary.
493. Deputy Commissioner of Internal Revenue.
493a. Deputy Commissioners and assistant to Commissioner; salaries.
494a. Deputy Commissioner; designation to act as Commissioner.

§ 490. (R. S. § 319.) Commissioner of Internal Revenue.

The salary of the Commissioner is fixed at $10,000, by the legislative, executive, and judicial appropriation act of March 1, 1919, ch. 86, 40 Stat. 1213. See, also, § 490a, post.

§ 490a. (Act Feb. 24, 1919, c. 18, § 1300.) Commissioner; salary.

Hereafter the salary of the Commissioner shall be $10,000 a year. The difference between the amount appropriated under existing law and the salary herein established shall, for the period between the passage of this Act and July 1, 1919, be paid out of the appropriations for collecting internal revenue. (40 Stat. 1140.)

This section is § 1300 of the Revenue Act of 1918 (Title XIII—General Administrative Provisions), cited above.

The term "Commissioner" means the Commissioner of Internal Revenue. See § 6371¼a, post.

For current appropriation for the Commissioner of Internal Revenue, Assistant Commissioner, deputy commissioners, etc., see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 493. (R. S. § 322.) Deputy Commissioner of Internal Revenue.

The current appropriation act of March 1, 1919, ch. 86, § 1, 40 Stat. 1213, provides for five deputy commissioners, with salary of $5,000 each.

§ 493a. (Act Feb. 24, 1919, c. 18, § 1301(a).) Deputy Commissioners and assistant to Commissioner; salaries.

(a) Hereafter there may be employed in the Bureau of Internal Revenue, in lieu of the deputy commissioners whose salaries are now fixed by law, five deputy commissioners and an assistant to the Commissioner, who shall each receive a salary of $5,000 a year, payable monthly. The assistant to the Commissioner may be authorized by the Commissioner to perform any duties which the deputy commissioners may perform under existing law. (40 Stat. 1140.)

This section is paragraph (a) of § 1301 of the Revenue Act of 1918 (Title XIII—General Administrative Provisions), cited above.

§ 494a. (Act Oct. 6, 1917, c. 79, § 1.) Deputy Commissioner; designation to act as Commissioner.

The Commissioner of Internal Revenue is authorized to assign to deputy commissioners such duties as he may prescribe, and the Secretary of the Treasury may designate any one of them to act as Commissioner of Internal Revenue during the commissioner's absence. (40 Stat. 348.)

This was a provision of the urgent deficiency appropriation act for the fiscal year 1918, cited above.

CHAPTER NINE—THE COMPTROLLER OF THE CURRENCY

§ 495. (R. S. § 324, as amended, Act Dec. 23, 1913, c. 6, § 10.) Bureau of Comptroller of Currency.

What are "public moneys."—Moneys received by the Federal Reserve Board, under section 10 of the Federal Reserve Act of December 23, 1913 (38 Stat. 261), are "public moneys" within the meaning of the auditing statutes, and consequently are subject to audit by one of the auditors of the Treasury Department under § 420 or § 356. 30 Op. Atty. Gen. 308.

§ 496. (R. S. § 325.) Comptroller of Currency; salary.

For current appropriation for the Comptroller of the Currency, deputy comptrollers, etc., see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 498. (R. S. § 327.) Deputy Comptroller.

Effect of certificates in general.—All certificates from the office of the Comptroller of the Currency of the United States, authenticated by seal, are admissible. Weitzel v. Brown, 112 N. E. 945, 224 Mass. 190.

Deputy acting as comptroller.—Under this section, order of deputy comptroller of currency as acting comptroller will, in absence of showing to contrary, be presumed lawful. Simmons & Kell v. Freeman (Ga.) 90 S. E. 965.

Certificate, signed by acting comptroller of currency levying assessment against stockholders in insolvent national bank, was admissible in evidence. Id.

Certificate signed by deputy comptroller of currency as acting comptroller in accordance with this section is a sufficient certificate by Comptroller of Currency. Id.

Order of acting comptroller of currency with reference to insolvency of national bank is admissible in evidence, in action against stockholders to collect assessment, despite objections that acting comptroller had no authority to order appointment of receiver and that no appointment of such comptroller was shown. Id.

§ 500. (R. S. § 328.) Clerks.

See current appropriation act of March 1, 1919, ch. 86, § 1, 40 Stat. 1213, enumerating and fixing salaries of clerks, etc.

CHAPTER ELEVEN—THE BUREAU OF THE MINT

§ 508. (R. S. § 344.) Salary and expenses of Director.

For current appropriation for Director of the Mint, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

CHAPTER ELEVEN A—THE BUREAU OF ENGRAVING AND PRINTING

§ 510. (Act June 4, 1897, c. 2, § 1.) Powers of and reports by Director.

For current appropriation for the Director of the Bureau of Engraving and Printing, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 513b. (Act March 1, 1919, c. 86, § 1.) Limitation on expenditure of funds.

Bureau of Engraving and Printing. * * No other fund appropriated by this or any other Act shall be used for services, in the Bureau of Engraving and Printing, of the character specified in this paragraph, except in cases of emergency arising after the passage of this Act, and then only on the written approval of the Secretary of the Treasury, and in every such case of emergency a detailed statement of the expenditures on account thereof shall be reported to Congress at the beginning of each regular session. (40 Stat. 1231.)

This section is a provision accompanying an appropriation for the Bureau of Engraving and Printing in the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

CHAPTER ELEVEN B—THE BUREAU OF WAR RISK INSURANCE

This chapter originally consisted of Act Sept. 2, 1914, c. 293, and Act Aug. 11, 1916, c. 332. It was amended by Act March 3, 1917, c. 169, § 2, 39 Stat. 1131, Act June 12, 1917, c. 26, 40 Stat. 102, and Act Oct. 6, 1917, c. 105, 40 Stat. 398, to read as set forth here.

ARTICLE I

Sec.
514a. Bureau established; Director; salary; Divisions; commissioners; salaries.
514b. Insurance of American vessels, freight, masters, officers and crews of vessels.
514b½. Insurance of vessels of foreign friendly flags, masters, officers and crews thereof, and freight thereon.
514bb. Reinsurance of vessels.
514c. Form of policy; premiums; salvage.
514cc. Insurance of officers and crews of American vessels.
514ccc. Same; insurance by Bureau; premiums.
514e. Advisory Board; adjusters.
514ee. Services of claim agents or attorneys.
514g. Appropriation for payment of losses.
514h. Appropriation for expenses.
514i. Suspension of operation of act.
514ii. Suspension of act.
514k. Application of §§ 2–7.
514kk. Powers and duties of Director; compensation of claim agents; unlawful charges.
514kkk. Deputies, assistants, actuaries; advisory board.
514kkkk. Subpœnas; information and reports of officials.
514*l*. Annual estimate of appropriations.
514*ll*. Appropriation for expenses; civil service rules.
514*lll*. Military and naval family allowance appropriation.
514*llll*. Military and naval compensation appropriation.
514m. Military and naval insurance appropriation.
514mm. Military and naval pay deposit fund.
514mmm. Evidence of marriage of claimants; definitions.
514mmmm. Payments to minors.
514n. Information by Bureau to persons in military or naval service.
514nn. False statements in claims.
514nnn. Fraudulent acceptance of payments.
514nnn⅛. Fraudulent obtaining or receiving of payments.
514nnn¼. Allotments, allowances, compensation, and insurance not assignable and exempt from claims and taxation.
514nnn½. Effect of discharge from service.
514nnn¾. Citation of act.

ARTICLE II. ALLOTMENTS AND FAMILY ALLOWANCES

Sec.
514nnnn. Application of article.
514o. Allotments; compulsory and voluntary.
514oo. Voluntary allotments.
514oo(1). Voluntary allotments; continuance of payments of.
514ooo. Deposit of unallotted pay to credit of enlisted men.
514oooo. Family allowances; amount; payment.
514p. Same; compulsory allotment prerequisite; when.
514pp. Same; conditions prerequisite to payment to Class B.
514ppp. Same; limitations on amounts payable to Class B.
514pppp. Apportionment of allotments and family allowance between Classes A and B.
514q. Payments of allotments to Treasury Department.
514qq. Investigations as to allowances and allotments.
514qq¼. Pay status of missing enlisted men.
514qq½. Time of taking effect of certain sections.

ARTICLE III. COMPENSATION FOR DEATH OR DISABILITY

514qqq. To whom payable.
514qqqq. Death; amounts; apportionment.
514qqqq½. Time of taking effect of amendment to preceding section.
514r. Disability; amounts.
514rr. Same; disability; examination of persons receiving.
514rrr. [Repealed.]
514rrrr. Review of awards.
514s. Time of death or disability.
514ss. Official record of death.
514sss. Death inflicted as lawful punishment; dismissal or dishonorable discharge.
514ssss. Time of filing claim.
514t. Payment of compensation prior to filing claim.
514tt. [Repealed.]
514ttt. Compensation to persons receiving service or retirement pay; pension laws.
514tttt. Assignment of right of action for injury causing death or disability.

ARTICLE IV. INSURANCE

514u. Amount.
514uu. Application for; time for making.
514uu⅛. Same; time of taking effect of amendments of preceding section.
514uu½. Same; extension of time for.
514uuu. Terms and conditions of contracts; beneficiaries.
514uuu½. Designation of beneficiaries.
514v. Expense of administration and excess of cost; premium rates.
514vv. Form of insurance; conversion.
514vvv. [Stricken.]
514w. Credits to disbursing clerk for payments of insurance installments.

ARTICLE I

§ 514a. (Act Sept. 2, 1914, c. 293, § 1, as amended, Act June 12, 1917, c. 26, § 1, and Act Oct. 6, 1917, c. 105, § 1.) Bureau established; Director; salary; Divisions; commissioners; salaries.

There is established in the Treasury Department a Bureau to be known as the Bureau of War Risk Insurance, the director of which shall receive a salary at the rate of $5,000 per annum.

That there be in such bureau a Division of Marine and Seamen's Insurance and a Division of Military and Naval Insurance in charge of a commissioner of Marine and Seamen's Insurance and a commissioner of Military and Naval Insurance, respectively, each of whom shall receive a salary of $4,000 per annum. (38 Stat. 711. 40 Stat. 102, 398.)

The amendment of this section by Act Oct. 6, 1917, c. 105, § 1, 40 Stat. 398, cited above consisted in the addition of the second paragraph.

For current appropriations for the officers and employés of the Bureau of War Risk Insurance, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 514b. (Act Sept. 2, 1914, c. 293, § 2, as amended, Act June 12, 1917, c. 26, § 2.) Insurance of American vessels, freight, masters, officers and crews of vessels.

The said Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States of American vessels, their freight and passage moneys, cargoes shipped or to be shipped therein, and personal effects of the masters, officers, and crews thereof against loss or damage by the risks

of war, whenever it shall appear to the Secretary that American vessels, shippers or importers in American vessels, or the masters, officers, or crews of such vessels, are unable in any trade to secure adequate war-risk insurance on reasonable terms.

The Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States, as further provided in section three a, of masters, officers, and crews of American merchant vessels against loss of life or personal injury by the risks of war, and for compensation during detention following capture by enemies of the United States whenever it shall appear to the Secretary that in any trade the need for such insurance exists. (38 Stat. 711. 40 Stat. 102.)

This section was amended by Act June 12, 1917, c. 26, § 2, 40 Stat. 102, by adding after the words "shipped or to be shipped therein," the words "and personal effects of the masters, officers, and crews thereof," and, after the words "shippers or importers on American vessels," the words "or the masters, officers, or crews of such vessels," and by adding the last paragraph, so as to make the section read as set forth here.

§ 514b½. (Act Sept. 2, 1914, c. 293, § 2b, as added, Act July 11, 1918, c. 145, § 1.) Insurance of vessels of foreign friendly flags, masters, officers and crews thereof, and freight thereon.

When it appears to the Secretary of the Treasury that vessels of foreign friendly flags, or their masters, officers, or crews, or shippers or importers in such vessels, are unable in any trade to secure adequate war-risk insurance on reasonable terms, the Bureau of War Risk Insurance, with the approval of the Secretary, is hereby authorized to make provisions for the insurance by the United States of (1) such vessels of foreign friendly flags, their freight and passage moneys, and personal effects of the masters, officers, and crews thereof against the risks of war when such vessels are chartered or operated by the United States Shipping Board or its agent, or chartered by any person a citizen of the United States, and (2) the cargoes to be shipped in such vessels of foreign friendly flags, whether or not they are so chartered. Such insurance on the vessel, however, is authorized only when the United States Shipping Board or its agent operates the vessel or the charterers are, by the terms of the charter party or contract with the vessel owners, required to assume the war risk or provide insurance protecting the vessel owners against war risk during the term of the charter or hire of the vessel.

The Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, is also hereby authorized to insure the masters, officers, and crews of vessels operated or chartered as aforesaid against the loss of life or personal injury by the risk of war and for compensation during the detention following capture by enemies of the United States, whenever it appears to the Secretary that the owners, operators, or charterers of such vessels are unable, in any trade, to secure such insurance on reasonable terms. (40 Stat. 897.)

§ 514bb. (Act Sept. 2, 1914, c. 293, § 2a, as added, Act June 12, 1917, c. 26, § 3.) Reinsurance of vessels.

The Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, is hereby authorized to make provisions for the reinsurance by the United States of vessels of foreign friendly flags or their cargoes, or both, when such vessels or their cargoes are insured by the Government of any country which is at war with an enemy of the United States; and, further, to reinsure with the Governments of any countries which are at war with an enemy

of the United States American vessels and their cargoes. (40 Stat. 103.)

This section was added by Act July 12, 1917, c. 26, § 3, 40 Stat. 103, cited above.

§ 514c. (Act Sept. 2, 1914, c. 293, § 3, as amended, Act June 12, 1917, c. 26, § 4.) Form of policy; premiums; salvage.

The Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, is hereby authorized to adopt and publish forms of war-risk policies and to fix reasonable rates of premium for the policies which it is authorized to issue under this Act, which rates shall be subject to such change to each port and for each class as the Secretary shall find may be required by the circumstances. All proceeds of the aforesaid premium and from salvage which have been or are hereafter received shall be covered into the Treasury of the United States to the credit of the Bureau of War Risk Insurance, and in addition to all other appropriations made under this Act are hereby permanently appropriated for the purpose of paying losses and return premiums accruing under this Act. (38 Stat. 711. 40 Stat. 103.)

This section originally read as follows: "The Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, is hereby authorized to adopt and publish a form of war risk policy, and to fix reasonable rates of premium for the insurance of American vessels, their freight and passage moneys and cargoes against war risks, which rates shall be subject to such change, to each port and for each class, as the Secretary shall find may be required by the circumstances. The proceeds of the aforesaid premiums when received shall be covered into the Treasury of the United States." It was amended by Act June 12, 1917, c. 26, § 4, 40 Stat. 103, cited above, to read as set forth here.

Act June 12, 1917, c. 26, § 12, 40 Stat. 105, repealed Act Aug. 11, 1916, c. 332, § 2, 39 Stat. 514, which read as follows: "All moneys from premiums and from salvage shall be covered into the Treasury to the credit of the appropriation made for the payment of losses and be available for the purposes thereof." Said Act June 12, 1917, c. 26, § 12, 40 Stat. 105, also repealed Act March 3, 1917, c. 169, § 3, which read as follows: "All moneys received from premiums and from salvage shall be covered into the Treasury to the credit of the appropriation made for the payment of losses and be available for the purposes thereof."

§ 514cc. (Act Sept. 2, 1914, c. 293, § 3a, as added, Act June 12, 1917, c. 26; § 5.) Insurance of officers, and crews of American vessels.

Whenever it shall appear to the Secretary of the Treasury that the effecting of such insurance is desirable in the national interest in the case of vessels engaged in any trade, the owner of every American merchant vessel engaged in such trade shall insure the master, officers, and crew of such vessel against loss of life or personal injury from war risks as well as for compensation during detention by an enemy of the United States following capture.

Such insurance shall be effected either with the Bureau of War Risk Insurance or in insurance companies, and on terms satisfactory to the Secretary of the Treasury.

Such insurance shall provide, and the Bureau of War Risk Insurance is authorized to write policies so providing—

(a) In case of death, permanent disability which prevents the person injured from performing any and every kind of duty pertaining to his occupation, or the loss of both hands, both arms, both feet, both legs, or both eyes, or any two thereof, for the payment of an amount equivalent to one year's earnings, or to twelve times the monthly earnings of the insured, as fixed in the articles for the voyage (hereinafter referred to as the principal sum), but in no case shall such amount be more than $5,000 or less than $1,500;

(b) In case of any of the following losses, for the payment of

the percentage of the principal sum indicated in the following tables:

One hand, fifty per centum;
One arm, sixty-five per centum;
One foot, fifty per centum;
One leg, sixty-five per centum;
One eye, forty-five per centum;
Total destruction of hearing, fifty per centum;

That the Bureau of War Risk Insurance may include in its policy undertakings to pay specified percentages of the principal sum for other losses or disabilities; and

(c) In case of detention by an enemy of the United States, following capture, for the payment during the continuance of such detention of compensation at the same rate as the earnings of the insured immediately preceding such detention, to be determined in substantially the same manner as provided in subdivision (a) of this section.

The aggregate payments under this section in respect to any one person shall not exceed the amount of the principal sum.

Payments provided for in this section shall be made only to the master, officer, or member of the crew concerned, except that a payment for loss of life shall be made to the estate of the insured for distribution to his family free from liability of debt, and payment on account of detention by an enemy following capture shall be made to dependents of the person detained, if designated by him.

No claim under this section shall be valid unless made by the master, officer, or member of the crew concerned, or his estate, or a person designated under this section, within two years after the date on which the President suspends the operations of this Act in so far as it authorizes insurance by the United States. (40 Stat. 103.)

This section was added by Act June 12, 1917, c. 26, § 5, 40 Stat. 103, cited above.

§ 514ccc. (Act Sept. 2, 1914, c. 293, § 3b, as added, Act June 12, 1917, c. 26, § 6.) Same; insurance by Bureau; premiums.

In the event of failure of the owner of any vessel to effect insurance of the master, officers, and crew of such vessel prior to sailing, in accordance with section three a of this Act, the Secretary of the Treasury is hereby authorized to effect such insurance with the Bureau of War Risk Insurance at the expense of the owner of such vessel, and the latter shall be liable for such expense and, in addition, to a penalty of not exceeding $1,000. The amount of such premium, with interest and of the penalty and of all costs, shall be a lien on the vessel. (40 Stat. 104.)

This section was added by Act June 12, 1917, c. 26, § 6, 40 Stat. 104, cited above.

§ 514e. (Act Sept. 2, 1914, c. 293, § 5, as amended, Act June 12, 1917, c. 26, § 7, and Act July 11, 1918, c. 145, § 2.) Advisory Board; adjusters.

The Secretary of the Treasury is authorized to establish an advisory board, to consist of three members skilled in the practices of war-risk insurance, for the purpose of assisting the Bureau of War Risk Insurance in fixing rates of premium and in adjustment of claims for losses, and generally in carrying out the purposes of this Act; the compensation of the members of said board to be determined by the Secretary of the Treasury, but not to exceed $20 a day each while actually employed. He is likewise authorized to appoint two persons skilled in the practice of accident insurance for the purpose of assisting the Bureau of War Risk Insurance in

the adjustment of claims for death, personal injury, or detention; the compensation of persons so appointed to be determined by the Secretary of the Treasury, but not to exceed $20 a day each while actually employed. In the event of disagreement as to the claim for losses, or amount thereof, between the said bureau and the parties to such contract of insurance, an action on the claim may be brought against the United States in the district court of the United States, sitting in admiralty, in the district in which the claimant or his agents may reside. The Secretary of the Treasury is, in his judgment, authorized to compromise the claim either before or after the institution of an action therein. (38 Stat. 711, 40 Stat. 104, 898.)

This section was amended by Act June 12, 1917, c. 26, § 7, 40 Stat. 105, cited above, by reducing the per diem of the members of the advisory board from 25 to 20 dollars per day, and by adding the sentence, which commences with the words, "He is likewise authorized." The amendment of July 11, 1918, consisted in the addition of the last sentence.

§ 514ee. (Act Sept. 2, 1914, c. 293, § 5a, as added, Act June 12, 1917, c. 26, § 8.) Services of claim agents or attorneys.

No claim agent or attorney shall be entitled to receive any compensation whatever for services in the collection of claims against the Bureau of War Risk Insurance for death, personal injury, or detention, except when proceedings are taken in accordance with section five in a district court of the United States, in which case the judge shall, as a part of his determination and order, settle and determine the amount of compensation not to exceed ten per centum of amount recovered, to be paid by the claimant on behalf of whom such proceedings are instituted to his legal adviser or advisers, and it shall be unlawful for any lawyer or other person acting in that behalf to ask for, contract for, or receive any larger sum than the amount so fixed. (40 Stat. 104.)

This section was added by Act June 12, 1917, c. 26, § 8, 40 Stat. 104, cited above.

§ 514g. (Act Sept. 2, 1914, c. 293, § 7, as amended, Act March 3, 1917, c. 169, § 2, and Act June 12, 1917, c. 26, § 9.) Appropriation for payment of losses.

For the purpose of paying losses and return premiums accruing under the provisions of this Act there is hereby appropriated out of any money in the Treasury of the United States not otherwise appropriated, the sum of $50,000,000. (38 Stat. 712. 39 Stat. 1131. 40 Stat. 105.)

This section was amended by Act March 3, 1917, c. 169, § 2, 39 Stat. 1131, cited above, by increasing the appropriation from $5,000,000 to $15,000,000. It was further amended by Act June 12, 1917, c. 26, § 9, 40 Stat. 105, also cited above, by increasing the appropriation to $50,000,000. Said first amendatory provision, Act March 3, 1917, c. 169, § 2, 39 Stat. 1131, was repealed by Act June 12, 1917, c. 26, § 12, 40 Stat. 105.

§ 514h. (Act Sept. 2, 1914, c. 293, § 8, as amended, Act June 12, 1917, c. 26, § 10.) Appropriation for expenses.

There is hereby appropriated, for the purpose of defraying the expenses of the establishment and maintenance of the Bureau of War Risk Insurance, including the payment of salaries herein authorized and other personal services, and for the purchase of necessary books of reference, periodicals, etc., that may be paid for in advance out of any money in the Treasury of the United States not otherwise appropriated, the sum of $250,000. (38 Stat. 712. 40 Stat. 105.)

This section was amended by Act June 12, 1917, c. 26, § 10, 40 Stat. 105, cited above, by increasing the appropriation from $100,000 to $250,000, by striking out the words "in the District of Columbia," after the words "and other personal services," and by adding, after the words "and other personal

services" the words "and for the purchase of necessary books of reference. periodicals, etc., that may be paid for in advance," so as to make the section read as set forth here.

§ 514i. (Act Sept. 2, 1914, c. 293, § 9, as amended, Act June 12, 1917, c. 26, § 11, and Act July 11, 1918, c. 145, § 3.) Suspension of operation of act.

The President is authorized whenever in his judgment the necessity of further war insurance by the United States shall have ceased to exist to suspend the operation of this Act, in so far as the Division of Marine and Seamen's Insurance is concerned, which suspension shall be made in any event within six months after the end of the war, but shall not affect any insurance outstanding at the time or any claims pending adjustment. For the purpose of the final adjustment of any such outstanding insurance or claims, the Division of Marine and Seamen's Insurance may, in the discretion of the President, be continued in existence for a period not exceeding three years after such suspension.

These words "end of the war" as used herein shall be deemed to mean the date of proclamation of exchange of ratification of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act. (38 Stat. 712. 40 Stat. 105, 898.)

This section, as originally enacted, provided for the suspension of the operation of the act at any time within two years after its passage, and provided for the continuance in existence of the Bureau of War Risk Insurance for a further period of not exceeding one year. Act Aug. 11, 1916, c. 332, § 1, 39 Stat. 514, provided that said Act Sept. 2, 1914, c. 293, § 9, 38 Stat. 712, should be amended so as to require the suspension of the operations of the act within three years from the date said act was approved. Said act Aug. 11, 1916, c. 332, § 1, 39 Stat. 514, was amended by Act March 3, 1917, c. 169, § 1, so as to read as follows: "That section nine of an Act establishing a Bureau of War-Risk Insurance, approved September second, nineteen hundred and fourteen, as amended by the Act of August eleventh, nineteen hundred and sixteen, be, and is hereby, amended so as to require the suspension of the operations of the Act within four years from the date said Act of September second, nineteen hundred and fourteen, was approved." Act June 12, 1917, c. 26, § 11, 40 Stat. 105, cited above, amended this section so as to make it read as follows: "The President is authorized whenever in his judgment the necessity of further war insurance by the United States shall have ceased to exist to suspend the operation of the Act, in so far as it authorizes insurance by the United States against loss or damage by risks of war, which suspension shall be made, in any event, within four years after the passage of this Act, but shall not affect any insurance outstanding at the time or any claims pending adjustment. For the purpose of the final adjustment of any such outstanding insurance or claims, the Bureau of War Risk Insurance may, in the discretion of the President, be continued in existence a further period not exceeding three years." Both of the first two amendatory provisions, Act Aug. 11, 1916, c. 332, § 1, 39 Stat. 514, and Act March 3, 1917, c. 169, § 1, were repealed by Act June 12, 1917, c. 26, § 12, 40 Stat. 105.

§ 514ii. (Act Aug. 11, 1916, c. 332, § 1.) Suspension of act.

This section was repealed by Act June 12, 1917, c. 26, § 12, 40 Stat. 105.

§ 514k. (Act Sept. 2, 1914, c. 293, § 12, as added, Act Oct. 6, 1917, c. 105, § 2.) Application of §§ 2–7.

Sections two to seven, inclusive, and section nine, shall be construed to refer only to the Division of Marine and Seamen's Insurance. (40 Stat. 398.)

This section, and the forty-five sections next following were added by Act Oct. 6, 1917, c. 105, § 2, 40 Stat. 398.

§ 514kk. (Act Sept. 2, 1914, c. 293, § 13, as added, Act Oct. 6, 1917, c. 105, § 2, and amended Act May 20, 1918, c. 77, § 1.) Powers and duties of Director; compensation of claim agents; unlawful charges.

The director, subject to the general direction of the Secretary of the Treasury, shall administer, execute, and enforce the provi-

sions of this Act, and for that purpose have full power and authority to make rules and regulations not inconsistent with the provisions of this Act, necessary or appropriate to carry out its purposes, and shall decide all questions arising under the Act, except as otherwise provided in section five. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall or may be made by the director, subject to the general direction of the Secretary of the Treasury. The director shall adopt reasonable and proper rules to govern the procedure of the divisions and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits of allowance, allotment, compensation, or insurance provided for in this Act, the forms of application of those claiming to be entitled to such benefits, the methods of making investigations and medical examinations, and the manner and form of adjudications and awards: Provided, however, That payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers shall not exceed $3 in any one case: And provided further, That no claim agent or attorney shall be recognized in the presentation or adjudication of claims under articles two, three, and four, except that in the event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder an action on the claim may be brought against the United States in the district court of the United States in and for the district in which such beneficiaries or any one of them resides, and that whenever judgment shall be rendered in an action brought pursuant to this provision the court, as part of its judgment, shall determine and allow such reasonable attorney's fees, not to exceed five per centum of the amount recovered, to be paid by the claimant in behalf of whom such proceedings were instituted to his attorney, said fee to be paid out of the payments to be made to the beneficiary under the judgment rendered at a rate not exceeding one-tenth of each of such payments until paid.

Any person who shall, directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, and for each and every offense shall be punishable by a fine of not more than $500 or by imprisonment at hard labor for not more than two years, or by both such fine and imprisonment. (40 Stat. 399, 555.)

§ 514kkk. (Act Sept. 2, 1914, c. 293, § 14, as added, Act Oct. 6, 1917, c. 105, § 2.) Deputies, assistants, actuaries; advisory board.

The bureau and its divisions shall have such deputies, assistants, actuaries, clerks, and other employees as may be from time to time provided by Congress. The bureau shall, by arrangement with the Secretary of War and the Secretary of the Navy, respectively, make use of the services of surgeons in the Army and Navy. The Secretary of the Treasury is authorized to establish an advisory board consisting of three members skilled in the practice of insurance against death or disability for the purpose of assisting the Division of Military and Naval Insurance in fixing premium rates and in the adjustment of claims for losses under the contracts of insurance provided for in article four and in adjusting claims for compensation under article three; compensation for the persons so appointed to be determined by the Secretary of the Treasury, but not to exceed $20 a day each while actually employed. (40 Stat. 399.)

§ 514kkkk. (Act Sept. 2, 1914, c. 293, § 15, as added, Act Oct. 6, 1917, c. 105, § 2.) Subpœnas; information and reports of officials.

For the purposes of this Act, the director, commissioners, and deputy commissioners shall have power to issue subpœnas for and compel the attendance of witnesses within a radius of one hundred miles, to require the production of books, papers, documents, and other evidence, to administer oaths and to examine witnesses upon any matter within the jurisdiction of the bureau. The director may obtain such information and such reports from officials and employees of the departments of the Government of the United States and of the States as may be agreed upon by the heads of the respective departments. In case of disobedience to a subpœna, the bureau may invoke the aid of any district court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court, within the jurisdiction of which the inquiry is carried on, may, in case of contumacy or refusal to obey a subpœna issued to any officer, agent, or employee of any corporation or other person, issue an order requiring such corporation or other person to appear before the bureau, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Any person so required to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. (40 Stat. 399.)

§ 514*l*. (Act Sept. 2, 1914, c. 293, § 16, as added, Act Oct. 6, 1917, c. 105, § 2.) Annual estimate of appropriations.

The director shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the work of the bureau. (40 Stat. 400.)

§ 514*ll*. (Act Sept. 2, 1914, c. 293, § 17, as added, Act Oct. 6, 1917, c. 105, § 2.) Appropriation for expenses; civil service rules.

For the purpose of carrying out the provisions of this Act there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of $100,000, for the payment of all expenses incident to the work authorized under this Act, including salaries of the director and commissioners and of such deputies, assistants, accountants, experts, clerks, and other employees in the District of Columbia or elsewhere, as the Secretary of the Treasury may deem necessary, traveling expenses, rent and equipment of offices, typewriters and exchange of same, purchase of law books and books of reference, printing and binding to be done at the Government Printing Office, and all other necessary expenses. With the exception of the director, the commissioners, and such special experts as the Secretary of the Treasury may from time to time find necessary for the conduct of the work of the bureau, all employees of the bureau shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law. Such fees, allowances, and salaries shall be the same as are paid for similar services in other departments of the Government. (40 Stat. 400.)

§ 514*lll*. (Act Sept. 2, 1914, c. 293, § 18, as added, Act Oct. 6, 1917, c. 105, § 2.) Military and naval family allowance appropriation.

There is hereby appropriated from any money in the Treasury not otherwise appropriated, the sum of $141,000,000, to be known as the military and naval family allowance appropriation, for the

payment of the family allowances provided by Article II. Payments out of this appropriation shall be made upon and in accordance with awards by the Commissioner of the Division of Military and Naval Insurance. (40 Stat. 400.)

§ 514*lll*. (Act Sept. 2, 1914, c. 293, § 19, as added, Act Oct. 6, 1917, c. 105, § 2.) Military and naval compensation appropriation.

There is hereby appropriated, from any money in the Treasury not otherwise appropriated, the sum of $12,150,000, to be known as the military and naval compensation appropriation, for the payment of the compensation, funeral expenses, services, and supplies provided by Article III. Payments out of this appropriation shall be made upon and in accordance with awards by the director. (40 Stat. 400.)

§ 514m. (Act Sept. 2, 1914, c. 293, § 20, as added, Act Oct. 6, 1917, c. 105, § 2.) Military and naval insurance appropriation.

There is hereby appropriated, from any money in the Treasury not otherwise appropriated, the sum of $23,000,000, to be known as the military and naval insurance appropriation. All premiums that may be collected for the insurance provided by the provisions of Article IV shall be deposited and covered into the Treasury to the credit of this appropriation.

Such sum, including all premium payments, is hereby made available for the payment of the liabilities of the United States incurred under contracts of insurance made under the provisions of Article IV. Payments from this appropriation shall be made upon and in accordance with awards by the director. (40 Stat. 400.)

§ 514mm. (Act Sept. 2, 1914, c. 293, § 21, as added, Act Oct. 6, 1917, c. 105, § 2.) Military and naval pay deposit fund.

There shall be set aside as a separate fund in the Treasury, to be known as the military and naval pay deposit fund, all sums held out of pay as provided by section two hundred and three of this Act. Such fund, including all additions, is hereby made available for the payment of the sums so held and deposited, with interest, as provided in section two hundred and three, and the amount necessary to pay interest is hereby appropriated. (40 Stat. 400.)

Section 203, mentioned above, is set forth as § 514*ooo*, post.

§ 514mmm. (Act Sept. 2, 1914, c. 293, § 22, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 1.) Evidence of marriage of claimants; definitions.

For the purpose of this amendatory Act the marriage of the claimant to the person on account of whom the claim is made shall be shown—

(1) By a duly verified copy of a public or church record; or

(2) By the affidavit of the clergyman or magistrate who officiated; or

(3) By the testimony of two or more eyewitnesses to the ceremony; or

(4) By a duly verified copy of the church record of baptism of the children; or

(5) By the testimony of two or more witnesses who know that the parties lived together as husband and wife, and were recognized as such, and who shall state how long, within their knowledge, such relation continued: Provided, That marriages, except such as are mentioned in section forty-seven hundred and five of the Revised Statutes, shall be proven in compensation or insurance cases to be legal marriages according to the law of the place where the parties resided at the time of marriage or at the time when the right to compensation or insurance accrued; and the open and notorious illicit cohabitation of a widow who is a claimant shall op-

erate to terminate her right to compensation or insurance from the commencement of such cohabitation: Provided further, That for the purpose of the administration of Article II of this Act marriage shall be conclusively presumed, in the absence of proof, that there is a legal spouse living, if the man and woman have lived together in the openly acknowledged relation of husband and wife during the two years immediately preceding the date of the declaration of war, or the date of enlistment or of entrance into or employment in active service in the military or naval forces of the United States if subsequent to such declaration.

In Articles II, III, and IV of this Act unless the context otherwise requires—

(1) The term "child" includes—

(a) A legitimate child.

(b) A child legally adopted more than six months before the enactment of this amendatory Act or before enlistment or entrance into or employment in active service in the military or naval forces of the United States, whichever of these dates is the later.

(c) A stepchild, if a member of the man's household.

(d) An illegitimate child, but, as to the father, only, if acknowledged by instrument in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child's support, and if such child, if born after December thirty-first, nineteen hundred and seventeen, shall have been born in the United States, or in its insular possessions.

(2) The term "grandchild" means a child as above defined of a child as above defined.

(3) Except as used in section four hundred and one and in section four hundred and two the terms "child" and "grandchild" are limited to unmarried persons either (a) under eighteen years of age, or (b) of any age, if insane, idiotic, or otherwise permanently helpless.

(4) The term "parent" includes a father, mother, grandfather, grandmother, father through adoption, mother through adoption, stepfather, and stepmother, either of the person in the service or of the spouse.

(5) The terms "brother" and "sister" include brothers and sisters of the half blood as well as those of the whole blood, stepbrothers and stepsisters, and brothers and sisters through adoption.

(6) The term "commissioned officer" includes a warrant officer, but includes only an officer in active service in the military or naval forces of the United States.

(7) The terms "man" and "enlisted man" mean a person, whether male or female, and whether enlisted, enrolled, or drafted into active service in the military or naval forces of the United States, and include noncommissioned and petty officers, and members of training camps authorized by law.

(8) The term "enlistment" includes voluntary enlistment, draft, and enrollment in active service in the military or naval forces of the United States.

(9) The term "commissioner" means the Commissioner of Military and Naval Insurance.

(10) The term "injury" includes disease.

(11) The term "pay" means the pay for service in the United States according to grade and length of service, excluding all allowances.

(12) The term "military or naval forces" means the Army, the Navy, the Marine Corps, the Coast Guard, the Naval Reserves, the National Naval Volunteers, and any other branch of the United States

service while serving pursuant to law with the Army or the Navy. (40 Stat. 400, 609.)

The amendment of this section consists in the changes in the second subdivision, paragraph (4), of the section, as set forth above. Said paragraph originally read as follows: "The term 'parent' includes a father, mother, grandfather, grandmother, stepfather, and stepmother, either of the person in the service or of the spouse."

R. S. § 4705, mentioned above, is set forth in 1916 U. S. Comp. St. as § 8988.

§ 514mmmm. (Act Sept. 2, 1914, c. 293, § 23, as added, Act Oct. 6, 1917, c. 105, § 2.) Payments to minors.

When, by the terms of this amendatory Act, any payment is to be made to a minor, other than a person in the military or naval forces of the United States, or to a person mentally incompetent, such payment shall be made to the person who is constituted guardian or curator by the laws of the State or residence of claimant, or is otherwise legally vested with responsibility or care of the claimant. (40 Stat. 402.)

§ 514n. (Act Sept. 2, 1914, c. 293, § 24, as added, Act Oct. 6, 1917, c. 105, § 2.) Information, by Bureau to persons in military or naval service.

The Bureau of War Risk Insurance, so far as practicable, shall upon request furnish information to and act for persons in the military or naval service, with respect to any contracts of insurance whether with the Government or otherwise, as may be prescribed by regulations. Said bureau may upon request procure from and keep a record of the amount and kind of insurance held by every commissioned and appointive officer and of every enlisted man in the military or naval service of the United States, including the name and principal place of business of the company, society, or organization in which such insurance is held, the date of the policy, amount of premium, name and relationship of the beneficiary, and such other data as may be deemed of service in protecting the interests of the insured and beneficiaries. (40 Stat. 402.)

§ 514nn. (Act Sept. 2, 1914, c. 293, § 25, as added, Act Oct. 6, 1917, c. 105, § 2.) False statements in claims.

Whoever in any claim for family allowance, compensation, or insurance, or in any document required by this Act or by regulation made under this Act, makes any statement of a material fact knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both. (40 Stat. 402.)

§ 514nnn. (Act Sept. 2, 1914, c. 293, § 26, as added, Act Oct. 6, 1917, c. 105, § 2.) Fraudulent acceptance of payments.

If any person entitled to payment of family allowance or compensation under this Act, whose right to such payment under this Act ceases upon the happening of any contingency, thereafter fraudulently accepts any such payment, he shall be punished by a fine of not more than $2,000, or by imprisonment for not more than one year, or both. (40 Stat. 402.)

§ 514nnn⅛. (Act Sept. 2, 1914, c. 293, § 27, as added, Act June 25, 1918, c. 104, § 2). Fraudulent obtaining or receiving of payments.

Whoever shall obtain or receive any money, check, allotment, family allowance, compensation, or insurance under Articles II, III, or IV of this Act, without being entitled thereto, with intent to defraud the United States or any person in the military or naval forces of the United States, shall be punished by a fine of not more than $2,000, or by imprisonment for not more than one year, or both. (40 Stat. 609.)

§ 514nnn¼. (Act Sept. 2, 1914, c. 293, § 28, as added, Act June 25, 1918, c. 104, § 2.) Allotments, allowances, compensation, and insurance not assignable and exempt from claims and taxation.

The allotments and family allowances, compensation, and insurance payable under Articles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Articles II, III, or IV; and shall be exempt from all taxation: Provided, That such allotments and family allowances, compensation, and insurance shall be subject to any claims which the United States may have, under Articles II, III, and IV, against the person on whose account the allotments and family allowances, compensation, or insurance is payable. (40 Stat. 609.)

§ 514nnn½. (Act Sept. 2, 1914, c. 293, § 29, as added, Act June 25, 1918, c. 104, § 2.) Effect of discharge from service.

The discharge or dismissal of any person from the military or naval forces on the ground that he is an enemy alien, conscientious objector, or a deserter, or as guilty of mutiny, treason, spying, or any offense involving moral turpitude, or willful and persistent misconduct shall terminate any insurance granted on the life of such person under the provisions of Article IV, and shall bar all rights to any compensation under Article III or any insurance under Article IV. (40 Stat. 609.)

§ 514nnn¾. (Act Sept. 2, 1914, c. 293, § 30, as added, Act June 25, 1918, c. 104, § 2.) Citation of act.

This Act may be cited as the war-risk insurance Act. (40 Stat. 610.)

ARTICLE II. ALLOTMENTS AND FAMILY ALLOWANCES

§ 514nnnn. (Act Sept. 2, 1914, c. 293, § 200, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 3.) Application of article.

The provisions of this article shall apply to all enlisted men in the military or naval forces of the United States, except the Philippine Scouts, the insular force of the Navy, and the Samoan native guard and band of the Navy. (40 Stat. 402, 610.)

The amendment of this section consists in the addition of the exception, as set forth above.

§ 514*o*. (Act Sept. 2, 1914, c. 293, § 201, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 4.) Allotments; compulsory and voluntary.

Allotment of pay shall, subject to the conditions, limitations, and exceptions hereinafter specified, be compulsory as to wife, a former wife divorced who has not remarried and to whom alimony has been decreed, and a child, and voluntary as to any other person; but on the written consent of the wife or former wife divorced, supported by evidence satisfactory to the bureau of her ability to support herself and the children in her custody, the allotment for her and for such children may be waived; and on the enlisted man's application or otherwise for good cause shown, exemption from the allotment may be granted upon such conditions as may be prescribed by regulations.

The monthly compulsory allotment shall be $15. For a wife living separate and apart from her husband under court order or written agreement, or for a former wife divorced, the monthly compulsory allotment shall not exceed the amount specified in the court order, decree, or written agreement to be paid to her, and for an illegitimate child, to whose support the father has been judicially

ordered or decreed to contribute, it shall not exceed the amount fixed in the order or decree.

If there is a compulsory allotment for a wife or child, then a former wife divorced who has not remarried and to whom alimony has been decreed, shall not be entitled to a compulsory allotment, but shall be entitled to a family allowance as hereinafter provided. (40 Stat. 402, 610.)

The amendment of this section consists in the changes in the second and third paragraphs of the section, as set forth above. Said paragraph originally read as follows: "The monthly compulsory allotment shall be in an amount equal to the family allowance hereinafter specified except that it shall not be more than one-half the pay, or less than $15; but for a wife living separate and apart under court order or written agreement or for a former wife divorced, it shall not exceed the amount specified in the court order, decree, or written agreement to be paid to her. For an illegitimate child, to whose support the father has been judicially ordered or decreed to contribute, it shall not exceed the amount fixed in the order or decree. If there be an allotment for a wife or child, a former wife divorced and who has not remarried shall be entitled to a compulsory allotment only out of the difference, if any, between the allotment for the wife or child or both and one-half of the pay."

§ 514oo. (Act Sept. 2, 1914, c. 293, § 202, as added, Act Oct. 6, 1917, c. 105, § 2.) Voluntary allotments.

The enlisted man may allot any proportion or proportions or any fixed amount or amounts of his monthly pay or of the proportion thereof remaining after the compulsory allotment, for such purposes and for the benefit of such person or persons as he may direct, subject, however, to such conditions and limitations as may be prescribed under regulations to be made by the Secretary of War and the Secretary of the Navy, respectively. (40 Stat. 403.)

§ 514oo(1). (Act Feb. 28, 1919, c. 82.) Voluntary allotments; continuance of payments of.

In all of those cases in which an authority of allotment by an enlisted man directing the payment of an indicated amount to a designated beneficiary is on file in the Bureau of War Risk Insurance, and payments pursuant to this authority had been made by said bureau prior to July first, nineteen hundred and eighteen, but which payments were discontinued as of that date, the War and Navy Departments are directed to resume the payments of allotments in these cases, pursuant to the authority on file as aforesaid, pending the receipt of a new authority, or of a written rescission of the old authority from the enlisted men. In those cases in which pending the receipt of the new authority, the military authorities, beginning with July first, nineteen hundred and eighteen, have reserved from month to month out of the soldier's monthly accruing pay, the amount directed to be paid by the original authority of allotment, the War and Navy Departments, upon resuming the payment of allotments in such cases, under the authority of this Act, shall pay all arrearages out of these respective reservations. (40 Stat. 1212.)

This section is an act entitled "An act to authorize the payment of allotments out of the pay of enlisted men in certain cases in which these payments have been discontinued," cited above.

§ 514ooo. (Act Sept. 2, 1914, c. 293, § 203, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 5.) Deposit of unallotted pay to credit of enlisted men.

In case one-half of an enlisted man's monthly pay is not allotted, regulations to be made by the Secretary of War and the Secretary of the Navy, respectively, may require, under circumstances and conditions as may be prescribed in such regulations, that any proportion of such one-half pay as is not allotted shall be deposited to his credit, to be held during such period of his service as may be prescribed. Such deposit shall bear interest at the same rate as United

States bonds bear for the same period, and, when payable, shall be paid principal and interest to the enlisted man, if living, otherwise to any beneficiary or beneficiaries he may have designated, or if there be no such beneficiary, then to the person or persons who, under the laws of the State of his residence, would be entitled to his personal property in case of intestacy. (40 Stat. 403, 610.)

The amendment of June 25, 1918, consists in changing the rate of interest from four per cent. to the rate as stated above.

§ 514*0000*. (Act Sept. 2, 1914, c. 293, § 204, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 6.) Family allowances; amount; payment.

A family allowance of not exceeding $50 per month shall be granted and paid by the United States upon written application to the bureau by such enlisted man or by or on behalf of any prospective beneficiary, in accordance with and subject to the conditions, limitations, and exceptions hereinafter specified.

The family allowance shall be paid from the time of enlistment to death in or one month after discharge from the service, but not for more than one month after the termination of the present war emergency. No family allowance shall be made for any period preceding November first, nineteen hundred and seventeen. The payment shall be subject to such regulations as may be prescribed relative to cases of desertion and imprisonment and of missing men.

Subject to the conditions, limitations, and exceptions hereinabove and hereinafter specified, the family allowance payable per month shall be as follows:

Class A. In the case of a man to his wife (including a former wife divorced) and to his child or children—

(a) If there is a wife but no child, $15;

(b) If there is a wife and one child, $25;

(c) If there is a wife and two children, $32.50, with $5 per month additional for each additional child;

(d) If there is no wife, but one child, $5;

(e) If there is no wife, but two children, $12.50;

(f) If there is no wife, but three children, $20;

(g) If there is no wife, but four children, $30, with $5 per month additional for each additional child.

(h) If there is a former wife divorced who has not remarried and to whom alimony has been decreed, $15.

Class B. In the case of a man or woman to a grandchild, a parent, brother, or sister—

(a) If there is one parent, $10;

(b) If there are two parents, $20;

(c) If there is a grandchild, brother, sister, or additional parent, $5 for each.

In the case of a woman, the family allowances for a husband and children shall be in the same amounts, respectively, as are payable, in the case of a man, to a wife and children, provided she makes a voluntary allotment of $15 as a basis therefor, and provided, further, that dependency exists as required in section two hundred and six. (40 Stat. 403, 610.)

The amendment of this section consists in the changes in the third and fourth paragraphs of the section as set forth above. Said paragraphs originally read as follows:

"Class A. In the case of a man, to his wife (including a former wife divorced) and to his child or children:

"(a) If there be a wife but no child, $15.

"(b) If there be a wife and one child, $25.

"(c) If there be a wife and two children, $32.50, with $5 per month additional for each additional child.

"(d) If there be no wife, but one child, $5.
"(e) If there be no wife, but two children, $12.50.
"(f) If there be no wife, but three children, $20.
"(g) If there be no wife, but four children, $30, with $5 per month additional for each additional child.
"Class B. In the case of a man or woman, to a grandchild, a parent, brother or sister:
"(a) If there be one parent, $10.
"(b) If there be two parents, $20.
"(c) For each grandchild, brother, sister, and additional parent, $5. In the case of a woman, to a child or children:
"(d) If there be one child, $5.
"(e) If there be two children, $12.50.
"(f) If there be three children, $20.
"(g) If there be four children, $30, with $5 per month additional for each additional child."

§ 514p. (Act Sept. 2, 1914, c. 293, § 205, as added, Act Oct. 6, 1917, c. 105, § 2.) Same; compulsory allotment prerequisite, when.

Family allowances for members of Class A shall be paid only if and while a compulsory allotment is made to a member or members of such class. The monthly family allowance to a former wife divorced shall be payable only out of the difference, if any, between the monthly family allowance to the other members of Class A and the sum of $50, and only then if alimony shall have been decreed to her. For a wife living separate and apart under court order or written agreement or to a former wife divorced the monthly allowance, together with the allotment, if any, shall not exceed the amount specified in the court order, decree, or written agreement to be paid to her. For an illegitimate child, to whose support the father has been judicially ordered or decreed to contribute, it shall not exceed the amount fixed in the order or decree. (40 Stat. 404.)

§ 514pp. (Act Sept. 2, 1914, c. 293, § 206, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 7.) Same; conditions prerequisite to payment to Class B.

Family allowances to members of class B shall be paid only if and while the members are dependent in whole or in part on the enlisted man, and then only if and while the enlisted man makes a monthly allotment of his pay for such members in the following amounts:

(a) If an enlisted man is not making a compulsory allotment for class A the allotment for class B required as a condition to the family allowance shall be $15;

(b) If an enlisted man is making a compulsory allotment for class A the additional allotment for class B required as a condition to the family allowance shall be $5, or if a woman is making an allotment of $15 for a dependent husband or child the additional allotment for the other members of class B required as a condition to the family allowance shall be $5. (40 Stat. 404, 611.)

Act Oct. 6, 1917, amended hereby, read as follows:
"Family allowances to members of Class B shall be granted only if and while the member is dependent in whole or in part on the enlisted man, and then only if and while the enlisted man makes a monthly allotment of his pay for such member or members equal to the amount of the monthly family allowance as hereinabove specified, except that—
"(a) The maximum monthly allotment so required to be made to members of Class B shall be one-half of his pay.
"(b) If he is making no allotment to a member of Class A, the minimum monthly allotment so designated to be made to members of Class B shall be $15 per month.
"(c) If he is making the compulsory allotment to a member of Class A, the minimum monthly allotment so designated to be made to members of Class B shall be one-seventh of his pay, but not less than $5 per month.
"On the enlisted man's application, or otherwise for good cause shown, ex-

emption from this additional allotment under Class B, as a condition to the allowance may be granted, upon such conditions as may be prescribed by regulations."

§ 514ppp. (Act Sept. 2, 1914, c. 293, § 207, as added, Act Oct. 6, 1917, c. 105, § 2.) Same; limitations on amounts payable to Class B.

The amount of the family allowance to members of Class B shall be subject to each of the following limitations:

(a) If an allowance is paid to one or more beneficiaries of Class A, the total allowance to be paid to the beneficiaries of Class B shall not exceed the difference between the allowance paid to the beneficiaries of Class A and the sum of $50.

(b) The total monthly allowance to beneficiaries of Class B added to the enlisted man's monthly allotment to them shall not exceed the average sum habitually contributed by him to their support monthly during the period of dependency but not exceeding a year immediately preceding his enlistment or the enactment of this amendatory Act. (40 Stat. 404.)

§ 514pppp. (Act Sept. 2, 1914, c. 293, § 208, as added, Act Oct. 6, 1917, c. 105, § 2.) Apportionment of allotments and family allowance between Classes A and B.

As between the members of Class A and as between the members of Class B, the amount of the allotment and family allowance shall be apportioned as may be prescribed by regulations. (40 Stat. 404.)

§ 514q. (Act Sept. 2, 1914, c. 293, § 209, as added, Act Oct. 6, 1917, c. 105, § 2.) Payments of allotments to Treasury Department.

The War and Navy Departments, respectively, shall pay over to the Treasury Department monthly the entire amount of such allotments for distribution to the beneficiaries, and the allotments and family allowances shall be paid by the bureau to or for the beneficiaries. (40 Stat. 404.)

§ 514qq. (Act Sept. 2, 1914, c. 293, § 210, as added, Act Oct. 6, 1917, c. 105, § 2, and amended, Act June 25, 1918, c. 104, § 8, and Act Feb. 25, 1919, c. 36.) Investigations as to allowances and allotments.

Upon receipt of any application for family allowance the commissioner shall make all proper investigations and shall make an award, on the basis of which award the amount of the allotments to be made by the man shall be certified to the War Department or Navy Department, as may be proper. Whenever the commissioner shall have reason to believe that an allowance has been improperly made or that the conditions have changed, he shall investigate or reinvestigate and may modify the award. The amount of each monthly allotment and allowance shall be determined according to the conditions then existing: Provided, however, That whenever the commissioner shall by further investigation or reinvestigation modify the existing award, no reimbursement from the person receiving an allowance shall be required for allotments and allowances already paid nor shall any deductions be made from allotments and allowances to be paid in the future for any change in award made in previous allotments and allowances, except where it is conclusively shown that the person receiving the allowance does not bear the relationship to the enlisted man which is required by the Act and except in cases of manifest fraud. (40 Stat. 404, 611, 1160.)

This section, as added to Act Sept. 2, 1914, c. 293, by Act Oct. 6, 1917, c. 105, § 2, 40 Stat. 404, was amended by Act Feb. 25, 1919, c. 36, 40 Stat. 1160, cited above, by adding thereto the proviso, as set forth above.

Act Oct. 6, 1917, is identical in language with the act as it now reads down

to and including the words "conditions then existing." The act of June 25, 1918, introduced no change, except that its concluding words were as follows: "Conditions existing on the first day of the month."

§ 514qq¼. (Act Nov. 4, 1918, c. 201, § 1.) Pay status of missing enlisted men.

For the purpose of the payment of allotments made by the enlisted men or the payment of family allowances under Article II of the Act of October 6, 1917, as amended, an enlisted man reported as missing in action shall be considered as occupying a pay status until his actual status has been determined by proper official authority of the department in which the man served or is serving: Provided, That payments authorized hereunder shall not continue for more than one year. (40 Stat. 1024.)

This was a provision of the "First Deficiency Appropriation Act, 1919," cited above.

§ 514qq½. (Act June 25, 1918, c. 104, § 9.) Time of taking effect of certain sections.

Sections four, six, seven, and eight of this Act shall take effect on the first day of July, nineteen hundred and eighteen. (40 Stat. 611.)

The sections referred to are §§ 514*o*, 514*oooo*, 514pp, 514qq.

ARTICLE III. COMPENSATION FOR DEATH OR DISABILITY

§ 514qqq. (Act Sept. 2, 1914, c. 293, § 300, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 10.) To whom payable.

For death or disability resulting from personal injury suffered or disease contracted in the line of duty, by any commissioned officer or enlisted man or by any member of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) when employed in the active service under the War Department or Navy Department, the United States shall pay compensation as hereinafter provided; but no compensation shall be paid if the injury or disease has been caused by his own willful misconduct: Provided, That for the purposes of this section said officer, enlisted man, or other member shall be held and taken to have been in sound condition when examined, accepted, and enrolled for service: Provided further, That this section, as amended, shall be deemed to become effective as of October sixth, nineteen hundred and seventeen. (40 Stat. 405, 611.)

The amendment by Act June 25, 1918, consists in adding the two provisos above set forth.

§ 514qqqq. (Act Sept. 2, 1914, c. 293, § 301, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 11.) Death; amounts; apportionment.

If death results from injury—

If the deceased leaves a widow or child, or if he leaves a mother or father either or both dependent upon him for support, the monthly compensation shall be the following amounts:

(a) If there is a widow but no child, $25;

(b) If there is a widow and one child, $35;

(c) If there is a widow and two children, $42.50, with $5 for each additional child up to two;

(d) If there is no widow, but one child, $20;

(e) If there is no widow, but two children, $30;

(f) If there is no widow, but three children, $40, with $5 for each additional child up to two;

(g) If there is a dependent mother (or dependent father), $20, or both, $30. The amount payable under this subdivision shall not

exceed the difference between the total amount payable to the widow and children and the sum of $75. This compensation shall be payable for the death of but one child, and no compensation for the death of a child shall be payable if the dependent mother is in receipt of compensation under the provisions of this article for the death of her husband. Such compensation shall be payable whether the dependency of the father or mother or both arises before or after the death of the person, but no compensation shall be payable if the dependency arises more than five years after the death of the person.

If the death occurs before discharge or resignation from service, the United States shall pay for burial expenses and the return of the body to his home a sum not to exceed $100, as may be fixed by regulations.

The payment of compensation to a widow shall continue until her death or remarriage.

The payment of compensation to or for a child shall continue until such child reaches the age of eighteen years or marries, or if such child be incapable, because of insanity, idiocy, or being otherwise permanently helpless, then during such incapacity.

Whenever the compensation payable to or for the benefit of any person under the provisions of this section is terminated by the happening of the contingency upon which it is limited, the compensation thereafter for the remaining beneficiary or beneficiaries, if any, shall be the amount which would have been payable to them if they had been the sole original beneficiaries.

As between the widow and the children not in her custody, and as between children, the amount of the compensation shall be apportioned as may be prescribed by regulation.

The term "widow" as used in this section shall not include one who shall have married the deceased later than ten years after the time of injury, and shall include a widower, whenever his condition is such that, if the deceased person were living, he would have been dependent upon her for support. (40 Stat. 405, 611.)

The Act of Oct. 6, 1917, c. 105, § 2, amended hereby, read as follows:

"If death results from injury—

"If the deceased leaves a widow or child, or if he leaves a widowed mother dependent upon him for support, the monthly compensation shall be the following amounts:

"(a) For a widow alone, $25.

"(b) For a widow and one child, $35.

"(c) For a widow and two children, $47.50, with $5 for each additional child up to two.

"(d) If there be no widow, then for one child, $20.

"(e) For two children, $30.

"(f) For three children, $40, with $5 for each additional child up to two.

"(g) For a widowed mother, $20. The amount payable under this subdivision shall not be greater than a sum which, when added to the total amount payable to the widow and children, does not exceed $75. This compensation shall be payable for the death of but one child, and no compensation for the death of a child shall be payable if such widowed mother is in receipt of compensation under the provisions of this article for the death of her husband. Such compensation shall be payable whether her widowhood arises before or after the death of the person and whenever her condition is such that if the person were living the widowed mother would have been dependent upon him for support.

"If the death occur before discharge or resignation from service, the United States shall pay for burial expenses and the return of body to his home a sum not to exceed $100, as may be fixed by regulations.

"The payment of compensation to a widow or widowed mother shall continue until her death or remarriage.

"The payment of compensation to or for a child shall continue until such child reaches the age of eighteen years or marries, or if such child be incapable, because of insanity, idiocy, or being otherwise permanently helpless, then during such incapacity.

"Whenever the compensation payable to or for the benefit of any person under the provisions of this section is terminated by the happening of the contingency upon which it is limited, the compensation thereafter for the remaining beneficiary or beneficiaries, if any, shall be the amount which would have been payable to them if they had been the sole original beneficiaries.

"As between the widow and the children not in her custody, and as between children, the amount of the compensation shall be apportioned as may be prescribed by regulations. The word "widow" as used in this section shall not include one who shall have married the deceased later than ten years after the time of injury."

§ 514qqqq½. (Act June 25, 1918, c. 104, § 15.) Time of taking effect of amendment to preceding section.

Where section three hundred and one of said Act is amended by striking out the provisions that a mother is entitled to compensation only when she is widowed and substitute provisions are included to the effect that compensation is payable to a dependent mother or dependent father, such substitute provisions shall be deemed to be in effect as of October sixth, nineteen hundred and seventeen. (40 Stat. 613.)

Section 301 referred to is § 514qqqq.

§ 514r. (Act Sept. 2, 1914, c. 293, § 302, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, §§ 12, 13, 14.) Disability; amounts.

(1) If and while the disability is total, the monthly compensation shall be the following amounts:

(a) If the disabled person has neither wife nor child living, $30;

(b) If he has a wife but no child living, $45;

(c) If he has a wife and one child living, $55;

(d) If he has a wife and two children living, $65;

(e) If he has a wife and three or more children living, $75;

(f) If he has no wife but one child living, $40, with $10 for each additional child up to two;

(g) If he has a mother or father, either or both dependent on him for support, then in addition to the above amounts, $10 for each;

(h) If he is totally disabled and in addition so helpless as to be in constant need of a nurse or attendant, such additional sum shall be paid, but not exceeding $20 per month, as the director may deem reasonable: Provided, however, That for the loss of both feet or both hands or both eyes, or for becoming totally blind or becoming helpless and permanently bedridden from causes occurring in the line of duty in the service of the United States, the rate of compensation shall be $100 per month: Provided further, That where the rate of compensation is $100 per month, no allowance shall be made for a nurse or attendant.

(2) If and while the disability is partial, the monthly compensation shall be a percentage of the compensation that would be payable for his total disability, equal to the degree of the reduction in earning capacity resulting from the disability, but no compensation shall be payable for a reduction in earning capacity rated at less than ten per centum.

A schedule of ratings of reductions in earning capacity from specific injuries or combinations of injuries of a permanent nature shall be adopted and applied by the bureau. Ratings may be as high as one hundred per centum. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations and not upon the impairment in earning capacity in each individual case, so that there shall be no reduction in the rate of compensation for individual success in overcoming the handicap of a permanent in-

jury. The bureau shall from time to time readjust this schedule of ratings in accordance with actual experience.

(3) In addition to the compensation above provided, the injured person shall be furnished by the United States such reasonable governmental medical, surgical, and hospital services and with such supplies, including artificial limbs, trusses, and similar appliances, as the director may determine to be useful and reasonably necessary: Provided, That nothing in this Act shall be construed to affect the necessary military control over any member of the military or naval establishments before he shall have been discharged from the military or naval service.

(4) The amount of each monthly payment shall be determined according to the family conditions existing on the first day of the month.

(5) Where the disabled person and his wife are not living together, or where the children are not in the custody of the disabled person, the amount of the compensation shall be apportioned as may be prescribed by regulations.

(6) The term "wife" as used in this section shall include "husband" if the husband is dependent upon the wife for support. (40 Stat. 406, 612, 613.)

The amendment of this section consists in the changes in subdivisions 1 and 4 of the section, and in the addition of subdivisions five and six to the section, as set forth above. Said subdivisions 1 and 4 originally read as follows:

"(1) If and while the disability is total, the monthly compensation shall be the following amounts:

"(a) If he has neither wife nor child living, $30.

"(b) If he has a wife but no child living, $45.

"(c) If he has a wife and one child living, $55.

"(d) If he has a wife and two children living, $65.

"(e) If he has a wife and three or more children living, $75.

"(f) If he has no wife but one child living, $40, with $10 for each additional child up to two.

"(g) If he has a widowed mother dependent on him for support, then, in addition to the above amounts, $10.

To an injured person who is totally disabled and in addition so helpless as to be in constant need of a nurse or attendant, such additional sum shall be paid, but not exceeding $20 per month, as the director may deem reasonable: Provided, however, That for the loss of both feet or both hands or both eyes, or for becoming totally blind or helplessly and permanently bedridden from causes occurring in the line of duty in the service of the United States, the rate of compensation shall be $100 per month: Provided further, That no allowance shall be made for nurse or attendant."

"(4) The amount of each monthly payment shall be determined according to the family conditions then existing."

§ 514rr. (Act Sept. 2, 1914, c. 293, § 303, as added, Act Oct. 6, 1917, c. 105, § 2.) Same; disability; examination of persons receiving.

Every person applying for or in receipt of compensation for disability under the provisions of this article shall, as frequently and at such times and places as may be reasonably required, submit himself to examination by a medical officer of the United States or by a duly qualified physician designated or approved by the director. He may have a duly qualified physician designated and paid by him present to participate in such examination. For all examinations he shall, in the discretion of the director, be paid his reasonable traveling and other expenses and also loss of wages incurred in order to submit to such examination. If he refuses to submit himself for, or in any way obstructs, any examination, his right to claim compensation under this article shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and no compensation shall be payable for the intervening period.

Every person in receipt of compensation for disability shall sub-

mit to any reasonable medical or surgical treatment furnished by the bureau whenever requested by the bureau; and the consequences of unreasonable refusal to submit to any such treatment shall not be deemed to result from the injury compensated for. (40 Stat. 406.)

§ 514rrr. [Repealed.]

This section (Act Sept. 2, 1914, c. 293, § 304, as added by Act Oct. 6, 1917, c. 105, § 2, 40 Stat. 407) relating to the re-education and vocational training of persons injured in the service, was repealed by Act June 27, 1918, c. 107, § 10, 40 Stat. 620. The repealed provision read as follows:

"In cases of dismemberment, of injuries to sight or hearing, and of other injuries commonly causing permanent disability, the injured person shall follow such course or courses of rehabilitation, reeducation, and vocational training as the United States may provide or procure to be provided. Should such course prevent the injured person from following a substantially gainful occupation while taking same, a form of enlistment may be required which shall bring the injured person into the military or naval service. Such enlistment shall entitle the person to full pay as during the last month of his active service, and his family to family allowances and allotment as hereinbefore provided, in lieu of all other compensation for the time being.

"In case of his willful failure properly to follow such course or so to enlist, payment of compensation shall be suspended until such willful failure ceases and no compensation shall be payable for the intervening period."

§ 514rrrr. (Act Sept. 2, 1914, c. 293, § 305, as added, Act Oct. 6, 1917; c. 105, § 2.) Review of awards.

Upon its own motion or upon application the bureau may at any time review an award, and, in accordance with the facts found upon such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, may award compensation. (40 Stat. 407.)

§ 514s. (Act Sept. 2, 1914, c. 293, § 306, as added, Act Oct. 6, 1917, c. 105, § 2.) Time of death or disability.

No compensation shall be payable for death or disability which does not occur prior to or within one year after discharge or resignation from the service, except that where, after a medical examination made pursuant to regulations, at the time of discharge or resignation from the service, or within such reasonable time thereafter, not exceeding one year, as may be allowed by regulations, a certificate has been obtained from the director to the effect that the injured person at the time of his discharge or resignation was suffering from injury likely to result in death or disability, compensation shall be payable for death or disability, whenever occurring, proximately resulting from such injury. (40 Stat. 407.)

§ 514ss. (Act Sept. 2, 1914, c. 293, § 307, as added, Act Oct. 6, 1917, c. 105, § 2.) Official record of death.

Compensation shall not be payable for death in the course of the service until the death be officially recorded in the department under which he may be serving. No compensation shall be payable for a period during which the man has been reported "missing" and a family allowance has been paid for him under the provisions of Article II. (40 Stat. 407.)

§ 514sss. (Act Sept. 2, 1914, c. 293, § 308, as added, Act Oct. 6, 1917, c. 105, § 2.) Death inflicted as lawful punishment; dismissal or dishonorable discharge.

No compensation shall be payable for death inflicted as a lawful punishment for a crime or military offense except when inflicted by the enemy. A dismissal or dishonorable or bad conduct discharge from the service shall bar and terminate all right to any compensation under the provisions of this article. (40 Stat. 407.)

§ 514ssss. (Act Sept. 2, 1914, c. 293, § 309, as added, Act Oct. 6, 1917, c. 105, § 2.) Time of filing claim.

No compensation shall be payable unless a claim therefor be filed, in case of disability, within five years after discharge or resignation from the service, or, in case of death during the service, within five years after such death is officially recorded in the department under which he may be serving: Provided, however, That where compensation is payable for death or disability occurring after discharge or resignation from the service, claim must be made within five years after such death or the beginning of such disability.

The time herein provided may be extended by the director not to exceed one year for good cause shown. If at the time that any right accrues to any person under the provisions of this article, such person is a minor, or is of unsound mind or physically unable to make a claim, the time herein provided shall not begin to run until such disability ceases. (40 Stat. 407.)

§ 514t. (Act Sept. 2, 1914, c. 293, § 310, as added, Act Oct. 6, 1917, c. 105, § 2.) Payment of compensation prior to filing claim.

No compensation shall be payable for any period more than two years prior to the date of claim therefor, nor shall increased compensation be awarded to revert back more than one year prior to the date of claim therefor. (40 Stat. 408.)

§ 514tt. [Repealed.]

This section (Act Sept. 2, 1914, c. 293, § 311, as added by Act Oct. 6, 1917, c. 105, § 2, 40 Stat. 408), relating to the exemption of compensation payable under the article, was repealed by Act June 25, 1918, c. 104, § 16, 40 Stat. 613. It read as follows: "Compensation under this article shall not be assignable and shall be exempt from attachment and execution and from all taxation."

§ 514ttt. (Act Sept. 2, 1914, c. 293, § 312, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 17.). Compensation to persons receiving service or retirement pay; pension laws.

Compensation under this article shall not be paid while the person is in receipt of service or retirement pay. The laws providing for gratuities or payments in the event of death in the service and existing pension laws shall not be applicable after the enactment of this amendment to any person in the active military or naval service on the sixth day of October, nineteen hundred and seventeen, or who thereafter entered the active military or naval service, or to their widows, children, or their dependents, except in so far as rights under any such law have heretofore accrued.

Compensation because of disability or death of members of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) shall be in lieu of any compensation for such disability or death under the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September seventh, nineteen hundred and sixteen. (40 Stat. 408, 613.)

Prior to the amendment by Act June 25, 1918, the first paragraph read as follows: "Compensation under this article shall not be paid while the person is in receipt of service or retirement pay. The laws providing for gratuities or payments in the event of death in the service and existing pension laws shall not be applicable after the enactment of this amendment to persons now in or hereafter entering the military or naval service, or to their widows, children, or their dependents, except in so far as rights under any such law shall have heretofore accrued." In other respects the amended and amendatory provisions are the same.

Act Sept. 7, 1916, mentioned above, is set forth as §§ 8932a–8932ww, post.

§ 514tttt. (Act Sept. 2, 1914, c. 293, § 313, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 18.) Assignment of right of action for injury causing death or disability.

(1) If an injury or death for which compensation is payable under this article is caused under circumstances creating a legal liability upon some person other than the United States or the enemy to pay damages therefor, the director, as a condition to payment of compensation by the United States, may require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person, or if it appears to be for the best interests of the beneficiary the director may require him to prosecute the said action in his own name, subject to regulations. The director may require such assignment or prosecution at any time after the injury or death, and the failure on the part of the beneficiary to so assign or to prosecute said cause of action in his own name within a reasonable time, to be fixed by the director, shall bar any right to compensation on account of the same injury or death. The cause of action so assigned to the United States may be prosecuted or compromised by the director, and any money realized or collected thereon, less the reasonable expenses of such realization or collection, shall be placed to the credit of the military and naval compensation appropriation. If the amount placed to the credit of such appropriation in such case is in excess of the amount of the award of compensation, if any, such excess shall be paid to the beneficiary after any compensation award for the same injury or death is made.

If a beneficiary or conditional beneficiary shall have recovered, as a result of a suit brought by him or on his behalf, or as a result of a settlement made by him or on his behalf, any money or other property in satisfaction of the liability of such other person, such money or other property so recovered shall be credited upon any compensation payable, or which may become payable, to such beneficiary, or conditional beneficiary by the United States on account of the same injury or death.

(2) If an injury or death for which compensation may be payable under this article is caused under circumstances creating a legal liability upon some person, other than the United States or the enemy, to pay damages therefor, then, in order to preserve the right of action, the director may require the conditional beneficiary at any time after the injury or death, to assign such right of action to the United States, or, if it appears to be for the best interests of such conditional beneficiary, to prosecute the said cause of action in his own name, subject to regulations. The failure on the part of the beneficiary to so assign or to prosecute the said cause of action in his own name within a reasonable time, to be fixed by the director, shall bar any right to compensation on account of the same injury or death. The cause of action so assigned may be prosecuted or compromised by the director, and any money realized or collected thereon, less the reasonable expenses of such realization or collection, shall be paid to such beneficiary, and be credited upon any future compensation which may become payable to such beneficiary by the United States on account of the same injury or death.

(3) The bureau shall make all necessary regulations for carrying out the purposes of this section. For the purposes of computation only under this section the total amount of compensation due any beneficiary shall be deemed to be equivalent to a lump sum equal to the present value of all future payments of compensation computed as of the date of the award of compensation, at four per centum,

true discount, compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to compensation shall be determined according to the American Experience Table of Mortality.

A conditional beneficiary is any person who may become entitled to compensation under this article on or after the death of the injured person.

Nothing in this section shall be construed to impose any administrative duties upon the War or Navy Departments. (40 Stat. 408, 613.)

The act, prior to its amendment by Act June 25, 1918, read as follows: "If an injury or death for which compensation is payable under this amendatory Act is caused under circumstances creating a legal liability upon some person other than the United States or the enemy to pay damages therefor, the director, as a condition to payment of compensation by the United States, shall require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person or any right which he may have to share in any money or other property received in satisfaction of such liability of such other person. The cause of action so assigned to the United States may be prosecuted or compromised by the director and any money realized thereon shall be placed to the credit of the compensation fund."

Section 314 of this act, as added by Act Oct. 6, 1917, c. 105, § 2, 40 Stat. 408, relates to the rate of pensions to widows of officers or enlisted men of the army, etc., who served in the Civil War, the War with Spain, or the Philippine Insurrection, and is set forth post, § 8981e.

ARTICLE IV. INSURANCE

§ 514u. (Act Sept. 2, 1914, c. 293, § 400, as added, Act Oct. 6, 1917, c. 105, § 2.) Amount.

In order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided. (40 Stat. 409.)

§ 514uu. (Act Sept. 2, 1914, c. 293, § 401, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 19.) Application for; time for making.

Such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation, except that those persons who are in the active war service at the time of the publication of the terms and conditions of such contract of insurance may apply at any time within one hundred and twenty days thereafter and while in such service. Any person in the active service on or after the sixth day of April, nineteen hundred and seventeen, who, while in such service and before the expiration of one hundred and twenty days from and after such publication, becomes or has become totally and permanently disabled, or dies, or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his widow from the time of his death and during her widowhood, or if there is no widow surviving him, then to his child or children, or

if there is no child surviving him, then to his mother, or if there is no mother surviving him, then to his father, if and while they survive him: Provided, however, That not more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid. The amount of the monthly installments shall be apportioned between children as may be provided by regulations. (40 Stat. 409, 614.)

Prior to the amendment by Act June 25, 1918, the latter part of the provision read as follows: "then $25 per month shall be paid to his wife from the time of his death and during her widowhood, or to his child or widowed mother if and while they survive him: Provided, however, That not more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid; and in that event the amount of the monthly installments shall be apportioned between them as may be provided by regulations." In other respects the amended and amendatory provisions are the same.

§ 514uu⅛. (Act June 25, 1918, c. 104, § 20.) Same; time of taking effect of amendment of preceding section.

Section nineteen of this Act amending section four hundred and one of the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September second, nineteen hundred and fourteen, as amended, shall be deemed to be in effect as of October sixth, nineteen hundred and seventeen: Provided, That nothing herein shall be construed to interfere with the payment of monthly installments, authorized to be made under the provisions of said section four hundred and one as originally enacted, for the months up to and including June, nineteen hundred and eighteen: Provided further, That all awards of automatic insurance under the provisions of said section four hundred and one as originally enacted shall be revised as of the first day of July, nineteen hundred and eighteen, in accordance with the provisions of said section four hundred and one as amended by section nineteen of this Act. (40 Stat. 615.)

The section 19 referred to is § 514uu.

§ 514uu½. (Res. Feb. 12, 1918, c. 17.) Same; extension of time for.

The time within which application for insurance may be made as set forth in section four hundred and one of the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September second, nineteen hundred and fourteen, as amended by the Act approved October sixth, nineteen hundred and seventeen, is hereby extended, with respect to every person in the active war service as to whom the time for making application would expire before the twelfth day of April, nineteen hundred and eighteen, so that every such person may make application for insurance up to and including the said twelfth day of April, nineteen hundred and eighteen: Provided, That nothing herein shall be construed to effect an extension of the automatic insurance provided for in the said section four hundred and one beyond the twelfth day of February, nineteen hundred and eighteen. (40 Stat. 438.)

This was a resolution entitled a "Joint Resolution granting to certain persons in the active war service an extension of time within which application for insurance may be made under section four hundred and one of the act entitled 'an act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September second, nineteen hundred and fourteen, as amended by the act approved October sixth, nineteen hundred and seventeen," cited above.

Section 401, mentioned above, is set forth as amended as § 514uu, ante.

§ 514uuu. (Act Sept. 2, 1914, c. 293, § 402, as added, Act Oct. 6, 1917, c. 105, § 2, and as amended, Act June 25, 1918, c. 104, § 21.) Terms and conditions of contracts; beneficiaries.

The director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall be payable only to a spouse, child, grandchild, parent, brother, or sister, and also during total and permanent disability to the injured person, or to any or all of them. The insurance shall be payable in two hundred and forty equal monthly installments. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months. Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the classes herein provided. If no beneficiary within the permitted class be designated by the insured, either in his lifetime or by his last will and testament, or if the designated beneficiary does not survive the insured, the insurance shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the State of the residence of the insured be entitled to his personal property in case of intestacy. If no such person survive the insured, then there shall be paid to the estate of the insured an amount equal to the reserve value, if any, of the insurance at the time of his death, calculated on the basis of the American Experience Table of Mortality and three and one-half per centum interest in full of all obligations under the contract of insurance. (40 Stat. 409, 615.)

The amended and amendatory acts are the same, except that the opening sentences in the former read as follows: "The director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall not be assignable, and shall not be subject to the claims of creditors of the insured or of the beneficiary. It shall be payable only to a spouse, child, grandchild, parent, brother or sister," etc.

§ 514uuu½. (Res. April 2, 1918, c. 41.) Designation of beneficiaries.

Insurance under the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September second, nineteen hundred and fourteen, as amended by the Act approved October sixth, nineteen hundred and seventeen, shall be granted by the Bureau of War Risk Insurance on application made by the person to be insured or, subject to such regulations as the bureau may prescribe, by any person within the permitted class as specified in section four hundred and two of said Act: Provided, That the person to be insured has been taken a prisoner of war before April twelfth, nineteen hundred and eighteen: And provided further, That no one but the insured may designate a beneficiary, and nothing in this resolution shall be deemed to change or affect the permitted class of beneficia-

ries or impose any obligation on the insured against his will. (40 Stat. 502.)

This was a "Joint resolution authorizing the granting of insurance under the act entitled 'An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September second, nineteen hundred and fourteen, as amended by the act approved October sixth, nineteen hundred and seventeen, on application by a person other than the person to be insured," cited above.

Section 402, mentioned above, is set forth, as amended, as § 514uuu, ante.

§ 514v. (Act Sept. 2, 1914, c. 293, § 403, as added, Act Oct. 6, 1917, c. 105, § 2.) Expense of administration and excess of cost; premium rates.

The United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum. (40 Stat. 410.)

§ 514vv. (Act Sept. 2, 1914, c. 293, § 404, as added, Act Oct. 6, 1917, c. 105, § 2.) Form of insurance; conversion.

During the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured or be otherwise made at his election. (40 Stat. 410.)

§ 514vvv. (Act Sept. 2, 1914, c. 293, § 405, as added, Act Oct. 6, 1917, c. 105, § 2, and amended Act May 20, 1918, c. 77, § 2.) [Stricken.]

This section was amended by Act May 20, 1918, c. 77, § 2, 40 Stat. 556, cited above, by striking out said section. It read as follows: "In the event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder, an action on the claim may be brought against the United States in the district court of the United States in and for the district in which such beneficiaries or any one of them resides. The court, as part of its judgment, shall determine and allow such reasonable attorney's fees, not to exceed ten per centum of the amount recovered, to be paid by the claimant on behalf of whom such proceedings are instituted to his attorney; and it shall be unlawful for the attorney or for any other person acting as claim agent or otherwise to ask for, contract for, or receive any other compensation because of such action. No other compensation or fee shall be charged or received by any person except such as may be authorized by the commissioner in regulations to be promulgated by him. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding $500, or be imprisoned at hard labor not exceeding two years, or both, in the discretion of the court."

§ 514w. (Res. Feb. 26, 1919, c. 53.) Credits to disbursing clerk for payments of insurance installments.

For such reasonable time as may be fixed by the Secretary of the Treasury, but not extending beyond the fiscal year ending June thirtieth, nineteen hundred and twenty, the accounting officers of the Treasury are hereby authorized and directed to allow credit in the accounts of the disbursing clerk of the Bureau of War Risk Insurance for all payments of insurance installments heretofore or hereafter made under the provisions of Article IV of the war risk

insurance Act in advance of the verification of the deduction on the pay rolls, or of the payment otherwise, of all premiums. (40 Stat. 1184.)

This section is a resolution entitled a "Joint resolution authorizing and directing the accounting officers of the Treasury to allow credit to the disbursing clerk of the Bureau of War Risk Insurance in certain cases," cited above.

TITLE VIII—THE DEPARTMENT OF JUSTICE

Sec.
515. Establishment of Department.
516. Solicitor-General.
517. Assistant Attorneys-General.
520. Assistant to the Attorney-General; salary.
521. Solicitors.
524. Solicitor of Department of Commerce.
525. Solicitor for Department of Labor.
525a. Attorneys; one in charge of condemnation proceedings in District of Columbia.
526. Subordinate officers.
533. Conduct and argument of cases.
534. Conduct of legal proceedings.
535. Performance of duty by officers of Department of Justice.
536. Officers to perform legal services for other Departments.
538. Counsel to aid district attorneys.
540. Counsel fees restricted.
541. Appointment and oath of special attorneys.
542. Interest of United States in pending suits.
543. Accounts of district attorneys.
556. Conduct of suits involving national banks.

§ 515. (R. S. § 346.) Establishment of Department.

Cited without definite application,
Barrett Co. v. Ewing (C. C. A.) 242 F. 506.

§ 516. (R. S. § 347.) Solicitor-General.

The salary of the Solicitor-General is now $10,000 per annum. See Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 517. (R. S. § 348.) Assistant Attorneys-General.

The legislative, executive, and judicial appropriation act for the fiscal year 1920, Act March 1, 1919, c. 86, § 1, 40 Stat. 1213, provides for six Assistant Attorneys General, at $7,500 each per annum.

Notes of Decisions

Appearance before grand jury.—Under Act June 30, 1906, Rev. St. §§ 161, 177, 360 (Comp. St. 1916, §§ 235, 259, 535), and this section, attorney, not resident of district wherein prosecutions were instituted, having been appointed special assistant, by letter signed by Assistant Attorney General, for Attorney General, held authorized to participate in grand jury proceedings, he being at least a de facto officer, so that, on motion to quash indictment, his right to appear before grand jury could not be questioned. May v. U. S., 236 F. 495, 149 C. C. A. 547.

Presumption as to authority.—Where an Assistant Attorney General signed a communication for and on behalf of the Attorney General, it must be presumed that he was acting lawfully and not usurping authority. May v. U. S., 236 F. 495, 149 C. C. A. 547.

§ 520. (Act Oct. 22, 1913, c. 32.) Assistant to the Attorney-General; salary.

The salary of the assistant to the Attorney General is fixed at $9,000 per annum by Act March 1, 1919, c. 86, § 1, 40 Stat. 1213. Said act also provides for the following attorneys: One at $4,500 per annum, one at $3,750 per annum, four at $3,500 each per annum, one at $3,250 per annum, fourteen at $3,000 each per annum, two at $2,500 each per annum; also for the following assistant attorneys: One at $3,500 per annum, two at $3,000 each per annum, two at $2,750 each per annum, five at $2,500 each per annum, one at $2,400 per annum, two at $2,000 each per annum; and for an assistant examiner of titles at $2,000 per annum.

§ 521. (R. S. § 349, as amended, Act June 19, 1878, c. 329, § 1.) Solicitors.

The legislative, executive, and judicial appropriation act for the fiscal year 1920, Act March 1, 1919, c. 86, § 1, 40 Stat. 1213, fixes the salaries of the Solicitor for the Department of the Interior, the Solicitor for the Post Office Department, Solicitor of Internal Revenue, Solicitor for the Department of State, Solicitor for the Department of Commerce, Solicitor of the Treasury, and Solicitor for the Department of Labor, at $5,000 each per annum. Said act also provides for Assistant Solicitors as follows: Treasury Department and Department of Commerce, at $3,000 each per annum.

§ 524. (Act March 18, 1904, c. 716, § 1.) Solicitor of Department of Commerce.

The current appropriation act (Act March 1, 1919, c. 86, § 1, 40 Stat. 1213) fixes the salary of the Solictor at $5,000 and Assistant at $3,000.

§ 525. (Act March 4, 1913, c. 141, § 7.) Solicitor for Department of Labor.

The current appropriation act (Act March 1, 1919, c. 86, § 1, 40 Stat. 1213) fixes the salary of the Solicitor at $5,000.

§ 525a. (Act March 1, 1919, c. 86, § 1.) Attorneys; one in charge of condemnation proceedings in District of Columbia.

Office of the Attorney General: * * Four attorneys, at $5,000 each, one of whom shall have charge of all condemnation proceedings in the District of Columbia and supervise the examination of titles and matters arising from such condemnation proceedings in which the United States shall be a party or have an interest, and no special attorney or counsel, or services of persons other than of those provided for herein, shall be employed for such purposes. * * (40 Stat. 1254.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 526. (R. S. § 351.) Subordinate officers.

For enumeration of subordinate officers and employés of the Department of Justice, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 533. (R. S. § 359.) Conduct and argument of cases.

Conduct of suits.—Where suit by the United States was argued on appeal by Assistant Attorney General, who filed certified copy of letter from Attorney General authorizing its institution, held that sanction of Attorney General sufficiently appeared. Causey v. U. S., 36 S. Ct. 365, 240 U. S. 399, 60 L. Ed. 711, affirming decree 203 F. 1022, 121 C. C. A. 663.

An admission by government counsel of the government's liability is not controlling on the court of claims. Hooper v. U. S., 53 Ct. Cl. 90.

Cited without definite application, Barrett Co. v. Ewing (C. C. A.) 242 F. 506.

§ 534. (Act June 30, 1906, c. 3935.) Conduct of legal proceedings.

In general.—Under this section and Rev. St. §§ 161, 177, 348, 360 (Comp. St. 1916, §§ 235, 259, 517, 535), attorney, not resident of district wherein prosecutions were instituted, having been appointed special assistant by letter signed by Assistant Attorney General, for Attorney General, held qualified to act; he being at least a de facto officer. But he should present duly certified copies of his appointment and oath of office to any court in which he is called upon to act, so that the same may be recorded. May v. U. S., 236 F. 495, 149 C. C. A. 547.

Conduct of grand jury proceedings.—Under this section and Rev. St. §§ 161, 177, 348, 360 (Comp. St. 1916, §§ 235, 259, 517, 535), attorney, not resident of district wherein prosecutions were instituted, having been appointed special assistant, by letter signed by Assistant Attorney General, for Attorney General, held authorized to participate in grand jury proceedings; he being at least a de facto officer, so that, on motion to quash indictment, his right to appear before grand jury could not be questioned. May v. U. S., 236 F. 495, 149 C. C. A. 547.

§ 535. (R. S. § 360.) Performance of duty by officers of Department of Justice.

See May v. U. S., 236 F. 495, 149 C. C. A. 547; notes under § 534.

§ 536. (R. S. § 361.) Officers to perform legal services for other Departments.

Cited without definite application, Barrett Co. v. Ewing (C. C. A.) 242 F. 506.

§ 538. (R. S. § 363.) Counsel to aid district attorneys.

Special counsel in Indian matters.—In view of this section, and § 540, special counsel in Indian matters, employed by Secretary of Interior, could not recover fees from the United States. Eslick v. U. S., 51 Ct. Cl. 266.

§ 540. (R. S. § 365.) Counsel fees restricted.

Special counsel in Indian matters.— In view of this section and § 538, special counsel in Indian matters, employed by Secretary of Interior, could not recover fees from the United States. Eslick v. U. S., 51 Ct. Cl. 266.

Cited without definite application, Barrett Co. v. Ewing (C. C. A.) 242 F. 506.

§ 541. (R. S. § 366.) Appointment and oath of special attorneys.

Cited without definite application, Barrett Co. v. Ewing (C. C. A.) 242 F. 506.

§ 542. (R. S. § 367.) Interest of United States in pending suits.

Cited without definite application, Barrett Co. v. Ewing (C. C. A.) 242 F. 506.

§ 543. (R. S. § 368.) Accounts of district attorneys.

Suit for benefit of private litigant.— In view of the condition in referee's bonds, and the fact that fees and compensation go to a referee as an individual, the United States cannot, despite Act July 1, 1916, c. 209, 39 Stat. 273, providing for investigation of the accounts of referees, etc., recover from referees in bankruptcy, for the benefit of private litigants, sums allowed and retained out of estates in excess of amounts provided for by the Bankruptcy Act. U. S. v. Brainerd (D. C.) 250 F. 1011.

§ 556. (R. S. § 380.) Conduct of suits involving national banks.

Cited without definite application, U. S. v. Weitzel, 38 S. Ct. 381, 62 L. Ed. 872.

TITLE IX—THE POST-OFFICE DEPARTMENT

Sec.
568. Assistant Postmasters-General.
572. Clerks and employés.
572a. Clerks and employés; readjustments in salaries; assignment to bureaus.
574. Agents to superintend Railway Mail Service.
576. Superintendent of Railway Mail Service.
577. Assistant general superintendent and chief clerk, Railway Mail Service.
578. Superintendent of Division of Finance.
579. Purchasing agent.
579a. District and central offices for distribution of supplies.
582. Duties of Postmaster-General.
582a. Rewards for detection of post-office burglars.
584a. Signing contracts for mail transportation.
587. Postal arrangements with foreign countries.
609a. Commission to investigate, reclassify, and readjust salaries of postmaster and postal service employés.

§ 568. (R. S. § 389.) Assistant Postmasters-General.

The salaries of the Assistant Postmasters-General are fixed at $5,000 each per annum, by Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 572. (R. S. § 393.) Clerks and employés.

For enumeration of subordinate officers and employés of the Post Office Department, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 572a. (Act March 1, 1919, c. 86, § 1.) Clerks and employés; readjustments in salaries; assignment to bureaus.

In making readjustments hereunder, the salary of any clerk in any class may be fixed by the Postmaster General at $100 below the salary fixed by law for such class and the unused portion of such salary shall be used to increase the salary of any clerk in any class entitled thereto by not less than $100 above the salary fixed by law for such class. The Postmaster General shall assign to the several bureaus, offices, and divisions of the Post Office Department such number of the employees herein authorized as may be necessary to perform the work required therein; and he shall submit a statement showing such assignments and the number employed at the various salaries in the annual Book of Estimates following the estimates for salaries in the Post Office Department. (40 Stat. 1252.)

This section consists of provisions in the legislative, executive, and judicial appropriation act for the fiscal year 1920, following appropriations for the officers and employés of the Post Office Department, cited above. These provisions have been repeated in prior appropriation acts.

The clerks, whose salaries may be readjusted under the provisions of this section, are those for whom appropriations are made as follows: "Clerks—one hundred and ten of class four, one hundred and sixty-six of class three, two hundred and fifty-nine of class two, two hundred and ninety-seven of class one, one hundred and thirty-eight at $1,000 each, twenty-six at $900 each;" etc.

§ 574. (R. S. § 4020, as amended, Act March 3, 1897, c. 385, § 1.) Agents to Superintend Railway Mail Service.

See note under § 576.

§ 576. (Act March 1, 1881, c. 96, § 1.) Superintendent of Railway Mail Service.

The current appropriation act (Act March 1, 1919, c. 86, § 1, 40 Stat. 1213) fixes the salary of the "general superintendent" of the railway mail service at $4,000. See notes under U. S. Comp. St. Ann. 1916, § 574.

§ 577. (Act April 16, 1890, c. 85.) Assistant general superintendent and chief clerk, Railway Mail Service.

The current appropriation act (Act March 1, 1919, c. 86, § 1, 40 Stat. 1213) fixes the salary of the general superintendent at $4,000, the assistant superintendent at $3,500, and the chief clerk at $2,000. As to general superintendent, see note under § 574, U. S. Comp. St. Ann. 1916.

§ 578. (Act March 1, 1919, c. 86, § 1.) Superintendent of Division of Finance.

Office Third Assistant Postmaster General: * * superintendents of divisions— * * finance (who shall give bond in such amount as the Postmaster General may determine for the faithful discharge of his duties) $2,250. * * (40 Stat. 1253.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 579. (Act April 28, 1904, c. 1759, § 3.) Purchasing agent.

Act Feb. 28, 1919, c. 69, § 4, 40 Stat. 1200 (the postal service appropriation act for the fiscal year 1920), contains the following provisions: "The Postmaster General and other responsible officials, in expending appropriations contained in this Act, so far as possible shall purchase material, supplies, and equipment, when needed and funds are available, from the various services of the Government of the United States possessing material, supplies, and equipment no longer required because of the cessation of war activities. It shall be the duty of the Postmaster General and other officials, before purchasing any of the articles described herein, to ascertain from the other services of the Government whether they have articles of the character described that are serviceable. And articles purchased from other services of the Government, if the same have not been used, shall be paid for at a reasonable price not to exceed actual cost, and if the same have been used, at a reasonable price based upon length of usage. The various services of the Government are authorized to sell such articles to the Postal Service under the conditions specified and the proceeds of such sales shall be covered into the Treasury as a miscellaneous receipt."

§ 579a. (Act March 3, 1917, c. 163, § 1.) District and central offices for distribution of supplies.

In order to promote economy in the distribution of supplies, and in auditing and accounting, the Postmaster General may designate districts and central offices in such districts through which supplies shall be distributed and accounts audited, but in no case shall the postmaster at the central station be given authority to abolish offices, to change officers or employees in offices included in such district. (39 Stat. 1110.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1918, cited above. Section 4 of the postal service appropriation act for the fiscal year 1918, Act March 3, 1917, c. 162, 39 Stat. 1068, contains a somewhat similar provision as follows: "In order to promote economy in the distribution of supplies, and in auditing and accounting, the Postmaster General may hereafter designate district and central offices in such districts through which supplies shall be distributed and accounts rendered." This provision may be regarded as superseded by this section.

§ 582. (R. S. § 396.) Duties of Postmaster-General.

4. Regulations of postal service.—The failure for a number of years of the Postmaster General to exercise an authority granted to him by law does not abrogate the power. Louisville & N. R. Co. v. U. S., 53 Ct. Cl. 238.

U. S. Postal Regulations (Ed. 1913) § 350, held to be a reasonable regulation and a complete defense to an action for conversion by a retiring postmaster against his successor, where the latter only retained possession of the former's equipment for a reasonable time. Jaramillo v. Lovelace, 155 P. 719, 21 N. M. 448.

12. Restraining enforcement of order.—Equity has jurisdiction to grant injunction against order of Postmaster General excluding publication from mails solely to prevent irreparable pecuniary damage. Masses Pub. Co. v. Patten, 245 F. 102, 157 C. C. A. 398.

§ 582a. (Act Feb. 28, 1919, c. 69, § 1.) Rewards for detection of post-office burglars.

Office of the Postmaster General: * * For payment of rewards for the detection, arrest, and conviction of post-office burglars, robbers, and highway mail robbers: Provided, That rewards may be paid, in the discretion of the Postmaster General, when an

offender of the class mentioned was killed in the act of committing the crime or in resisting lawful arrest. * * (40 Stat. 1190.)

This section is a provision of the postal service appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 584a. (Act March 3, 1917, c. 162, § 2.) Signing contracts for mail transportation.

Contracts made in the Post Office Department for the various classes of mail transportation may, upon order of the Postmaster General, be signed in the place and stead of the Postmaster General by the Assistant Postmaster General who is charged with the supervision of the mail transportation involved, and such officer shall attest his signature to such contracts by the seal of the Post Office Department. (39 Stat. 1068.)

This was section 2 of the postal service appropriation act for the fiscal year 1918, cited above. It supersedes provisions of Act March 3, 1877, c. 103, § 3, 19 Stat. 335. See U. S. Comp. St. 1916, § 584.

§ 587. (R. S. § 398.) Postal arrangements with foreign countries.

Postal convention as treaty or statute.—Postal conventions are not treaties, not being ratified by the Senate, and are not statutes. United States v. Four Packages of Cut Diamonds (D. C.) 247 F. 354.

Forfeiture for violation of Convention.—Under Tariff Act Oct. 3, 1913, c. 16, § 3, par. H, 38 Stat. 183, and Rev. St. § 3082 (Comp. St. 1916, § 5785), held, that merchandise imported into United States from Cuba by registered mail, in violation of Postal Convention, art. 11, dated June 16, 1903, between Cuba and United States, and article 16 of Universal Postal Convention dated May 26, 1906, was subject to forfeiture. U. S. v. Four Packages of Cut Diamonds (D. C.) 247 F. 354.

§ 609a. (Act Feb. 28, 1919, c. 69, § 3.) Commission to investigate, reclassify, and readjust salaries of postmasters and postal service employés.

A commission consisting of five members of the Committee on Post Offices and Post Roads of the United States Senate, to be appointed by the President of the Senate, and five members of the Committee on Post Offices and Post Roads of the House of Representatives, to be appointed by the Speaker of the House, is hereby authorized to investigate the salaries of postmasters and employees of the postal service with a view to the reclassification and readjustment of such salaries on an equitable basis. Vacancies occurring in the membership of the commission shall be filled in the same manner as the original appointments.

The commission is authorized to sit during the sessions or recess of Congress, to send for persons and papers, to administer oaths, to summon and compel the attendance of witnesses, and to employ such clerical and expert services and incur such expenses as may be necessary to carry out the purpose of this investigation.

The heads of the Post Office Department, postmasters, supervisory officials, and employees of the Postal Service shall furnish data and information, and make investigations upon request of the commission.

It shall be the duty of the commission to report by bill or otherwise, as soon as practicable, the results of its investigation and what reclassification and readjustment of compensation should be made. The expense of such investigation shall be paid from the unexpended balance of any appropriation for the Postal Service for the fiscal year ending June 30, 1919, or for the fiscal year ending June 30, 1920, and disbursed upon vouchers approved by the commission; which approval shall be conclusive upon the accounting officers of the Treasury Department. Funds necessary for the expenses of the commission shall become available upon the approval of this Act. (40 Stat. 1200.)

This section is § 3 of the postal service appropriation act for the fiscal year 1920, cited above.

Section 4 of Act Feb. 28, 1919, c. 69, 40 Stat. 1200, relates to expenditure of appropriations made under the act, and purchase of supplies. Its provisions are set forth as a note under § 579, ante.

TITLE X—THE DEPARTMENT OF THE NAVY

CHAPTER A—THE DEPARTMENT AND THE SECRETARY OF THE NAVY

Sec.
611. Assistant Secretary.
614. Clerks and employés.
616. Naval stores and equipment of vessels.
617. Custody of the books and records.
621d. Chief of Naval Operations; allowances.
648. Reports by Secretary of Navy.
652aa. Adjustment of claims for loss of private property in Europe.
652b. Adjustment of claims for damages to private property from operations of aircraft.
654. Contingent expenses.
655a. Rewards to civilians.
655b. Distribution of automobiles.

§ 611. (Act July 11, 1890, c. 667, § 1.) Assistant Secretary.

The salary of the Assistant Secretary of the Navy is fixed at $5,000 per annum, by Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 614. (R. S. § 416.) Clerks and employés.

For enumeration of the officers and employés of the Navy Department, with their rates of compensation, see Act March 1, 1919, ch. 86, § 1, 40 Stat. 1213. Said act also makes appropriation for temporary employés in the Department. Said act also contains the following proviso: "Provided, That the Secretary of the Navy shall submit to Congress on the first day of its next regular session a statement showing by bureaus or offices the number and designation of the persons employed hereunder and the annual rate of compensation paid to each: Provided further, That not more than thirty-five persons shall be employed hereunder at rates of compensation in excess of $2,000 per annum, of whom not more than ten shall be employed at a rate of compensation in excess of $2,400 per annum and not more than $4,000 per annum: Provided further, That detailed estimates shall be submitted by the Navy Department in the annual Book of Estimates for the fiscal year 1921 for necessary services of the character provided for in this paragraph."

Further provisions are made in said act for the services of draftsmen and other technical services in the following bureaus: Bureau of Steam Engineering; Bureau of Construction and Repair; Bureau of Ordnance; and Bureau of Yards and Docks. The expenditures for such services are required to be paid out of certain enumerated appropriations; and statements of the persons employed, their duties, and the compensation paid to each, are required to be made to Congress each year in the annual estimates.

§ 616. (R. S. § 417.) Naval stores and equipment of vessels.

Regulations for government of the Navy.—Under the regulations of the Navy Department, a "deserter" is one who is absent without leave and with a manifest intention not to return, while a "straggler" is one absent without leave, with the probability that he does not intend to desert, but, if his absence continues for 10 days, he becomes a deserter. Reed v. United States (C. C. A.) 252 F. 21.

§ 617. (R. S. § 418.) Custody of the books and records.

Reassignment of quarters.—Since this section, and Comp. St. 1916, §§ 301, 319, respectively, make the Secretary of State, Secretary of War, and Secretary of Navy, in express terms, custodians of property of respective departments, they, as mere custodians, cannot, without consent of Congress, reassign quarters in the State, War, and Navy Building. 30 Op. Atty. Gen. 70.

§ 621d. (Act July 1, 1918, c. 114.) Chief of Naval Operations; allowances.

Hereafter the Chief of Naval Operations shall receive the allowances which are now or may hereafter be prescribed by or in pursuance of law for the grade of general in the Army. (40 Stat. 716.)

This was a provision of the Naval service appropriation act for the fiscal year 1919, cited above.

§ 648. (R. S. § 429, as amended, Act June 22, 1910, c. 331.) Reports by Secretary of Navy.

The Secretaries of the Treasury, War, and Navy are required to transmit annually to Congress detailed statements of all expenditures under the urgent deficiencies act for the military and naval establishments on account of war expenses for the fiscal year 1917, by section 5 thereof, ante, § 334a.

§ 652aa. (Act July 1, 1918, c. 114.) Adjustment of claims for loss of private property in Europe.

Hereafter the Secretary of the Navy is authorized to consider, ascertain, adjust, determine, and pay the amounts due on all claims for damages to and loss of private property of inhabitants of any European country not an enemy or ally of an enemy when the amount of the claim does not exceed the sum of $1,000, occasioned and caused by men in the naval service during the period of the present war, all payments in settlement of such claims to be made out of "Pay, Miscellaneous." (40 Stat. 705.)

This was a provision of the naval service appropriation act for the fiscal year 1919, cited above.

§ 652b. (Act July 1, 1918, c. 114.) Adjustment of claims for damages to private property from operations of aircraft.

The Secretary of the Navy is hereby authorized to consider, ascertain, adjust, determine, and pay out of this appropriation the amounts due on claims for damages which have occurred or may occur to private property growing out of the operations of naval aircraft. (40 Stat. 706.)

This was a provision of the naval service appropriation act for the fiscal year 1919, cited above.

§ 654. (Act June 22, 1906, c. 3514, § 1.) Contingent expenses.

Provision repeated in current appropriation act (Act March 1, 1919, c. 86, § 1, 40 Stat. 1213).

§ 655a. (Act July 1, 1918, c. 114.) Rewards to civilians.

The Secretary of the Navy is hereby authorized, in his discretion and under such rules and regulations as he may prescribe, to pay cash rewards to civilian employees of the Navy Department or the Naval Establishment or other persons in civil life when due to a suggestion or series of suggestions by them there results an improvement or economy in manufacturing process or plant or naval material: Provided, That such sums as may be awarded to employees or other persons in civil life in accordance with this Act shall be paid them out of current naval appropriations in addition to their usual compensation: Provided further, That no employee or other person in civil life shall be paid a reward under this Act until he has properly executed an agreement to the effect that the use by the United States of the suggestion or series of suggestions made by him shall not form the basis of a further claim of any nature from the United States by him, his heirs, or assigns. (40 Stat. 718.)

This was a provision of the naval service appropriation act for the fiscal year 1919, cited above.

§ 655b. (Act July 1, 1918, c. 114.) Distribution of automobiles.

The Secretary of the Navy is authorized to distribute the high-powered automobiles now owned and in use in the United States and its insular possessions to such places and service as they may be required. (40 Stat. 723.)

This was a provision of the naval service appropriation act for the fiscal year 1919, cited above.

CHAPTER B—THE HYDROGRAPHIC OFFICE

§ 657a. (Act July 1, 1918, c. 114.) Detail of naval officers to.

The Secretary of the Navy is authorized to detail such naval officers as may be necessary to the Hydrographic Office. (40 Stat. 708.)

This was a provision of the naval service appropriation act for the fiscal year 1919, cited above. It supersedes prior provisions of a somewhat similar nature, viz. Act Aug. 29, 1916, c. 417, 39 Stat. 561, Act Mar. 4, 1917, c. 180, 39 Stat. 1172, and Act Apr. 25, 1917, c. 7, 40 Stat. 38.

TITLE XI—THE DEPARTMENT OF THE INTERIOR

Chap.		Sec.
1.	The Department	666
2.	The Secretary of the Interior	681
3.	The General Land-Office	690
4.	The Commissioner of Indian Affairs	713
5.	The Commissioner of Pensions	727
6.	The Patent-Office	736
9.	The Office of Education	766
9B.	The Bureau of Mines	783a

CHAPTER ONE—THE DEPARTMENT

Sec.
666. Assistant Secretary.
667a. Same; signing official papers, etc.
668. First Assistant Secretary.
668a. Chief clerk.
669. Clerks and employés.
672a. Board of appeals in office of Solicitor.
673. Financial clerk.

§ 666. (R. S. § 438.) Assistant Secretary.

The salary of the Assistant Secretary is fixed at $4,500 per annum, by Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 667a. (Res. March 28, 1918, c. 29.) Same; signing official papers, etc.

That the assistant to the Secretary of the Interior be, and hereby is, authorized to sign such official papers and documents as the Secretary may direct. (40 Stat. 499.)

This was a "Joint resolution authorizing the assistant to the Secretary of the Interior to sign official papers and documents," cited above.

§ 668. (Act March 3, 1885, c. 360.) First Assistant Secretary.

The salary of the First Assistant Secretary is fixed at $5,000 per annum, by Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 668a. (Act March 1, 1919, c. 86, § 1.) Chief clerk.

Office of the Secretary: * * Chief clerk, including $500 as superintendent of buildings, who shall be chief executive officer of the department and who may be designated by the Secretary to sign official papers and documents during the temporary absence of the Secretary and the Assistant Secretaries, $4,000. * * (40 Stat. 1246.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

§ 669. (R. S. § 440, as amended, Act Feb. 15, 1916, c. 22, § 3.) Clerks and employés.

For enumeration of the officers and employés of the Interior Department, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 672a. (Act March 1, 1919, c. 86, § 1.) Board of Appeals in office of Solicitor.

Office of Solicitor: Three members of a board of appeals, to be appointed by the Secretary of the Interior, at $4,000 each. * * (40 Stat. 1247.)

This section is a provision in the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 673. (Act June 19, 1878, c. 329, § 1.) Financial clerk.

See § 739a, post.

CHAPTER TWO—THE SECRETARY OF THE INTERIOR

§ 681. (R. S. § 441.) Duties.

3. Supervision of matters relating to public lands, in general.—Regulation requiring affidavit to soldier's homestead declaration giving him preferential right under Homestead Law, Rev. St. §§ 2304–2309 (Comp. St. 1916, §§ 4592–4594, 4602, 4603, 4605), could be adopted by the Land Department under this section and Rev. St. §§ 161, 453, 2478 (Comp. St. 1916, §§ 235, 699, 5120), notwithstanding reference to pre-emption cases in section 2309. U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926.

Departmental regulation that soldier's homestead declaratory statement may be executed before any officer authorized to administer oaths held not inconsistent with act providing for administering of oaths by certain United States official in district in which land is situated, or provision of Rev. St. § 2293 (Comp. St. 1916, § 4545). Id.

Cited without definite application, Northern Pac. Ry. Co. v. Wismer, 38 S. Ct. 240.

§ 689a. (Act March 2, 1917, c. 146, § 1.) Exchange of automobiles.

The Secretary of the Interior may hereafter exchange automobiles in part payment for new machines used for the same purpose as those proposed to be exchanged. (39 Stat. 973.)

This was a provision accompanying an appropriation for the purchase of motor-propelled passenger-carrying vehicles in the Indian appropriation act for the fiscal year 1918, cited above.

CHAPTER THREE—THE GENERAL LAND-OFFICE

§ 690. (R. S. § 446.) Commissioner.

For enumeration of the officers and employés of the General Land Office, with the rates of their compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

Rules and regulations.—See U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926; notes under § 681.

§ 698. (R. S. § 452.) Restriction upon officers, etc.

Officers, clerks, etc., within the prohibition.—Purchase by a Surveyor General for a state of school lands from the state held not rendered void by this section. Stutsman v. Olinda Land Co. (D. C.) 231 F. 525.

§ 699. (R. S. § 453, as amended, Act Feb. 18, 1875, c. 80, § 1.) Duties of Commissioner.

4. Land Department as special tribunal.—The Land Department of the United States is a special tribunal with judicial functions, and has exclusive jurisdiction over issues affecting title to public lands until patent is issued. Reed v. St. Paul, M. & M. Ry. Co. (D. C.) 234 F. 123.

12. Departmental rules and regulations—Force and effect of rules.—A ruling by the Commissioner of the General Land Office held not a construction of Act May 27, 1908, § 3, which renders the enrollment of an Indian conclusive as to the date of his birth against a purchaser of land from him. McDaniel v. Holland, 230 F. 945, 145 C. C. A. 139.

A ruling of the Commissioner of the General Land Office that the date of application for enrollment of a citizen of the Five Civilized Tribes should be held to be the anniversary of the birth is not a construction of Act Cong. May 27, 1908, § 3, relating to conclusiveness of enrollment as to age of Indian. Heffner v. Harmon (Okl.) 159 P. 650.

20. Cancellation of entry—Grounds for cancellation.—In suit to vacate patent on ground of fraud practiced on land department, government must sus-

tain burden of proof by evidence which produces conviction. U. S. v. Porter Fuel Co., 247 F. 769, 159 C. C. A. 627.

25. **Appeal and review—Matters reviewable.**—The United States Land Department's action in disposing of public domain will not be inquired into by courts, unless material error of law clearly appears or there has been fraud practiced upon or by the officer. Jones v. Fearnow (Okl.) 156 P. 309.

29. **Finality and conclusiveness of decisions.**—Decision of Land Department that contestant was owner of improvements within Cherokee Allotment Act July 1, 1902, § 11, held binding on the courts, unless it was without evidence to support it, or with error of law. Harnage v. Martin, 37 S. Ct. 148, 242 U. S. 386, 61 L. Ed. 382, affirming decree 136 P. 154, 40 Okl. 341.

The Land Department's adjudication of matters within its jurisdiction, such as its issuance of a patent to land, is, like those of other judicial tribunals, impervious to collateral attack, and voidable only by direct suit for that purpose on the ground of fraud or error of law. Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607.

In the absence of fraud, the findings and decisions of the officers of the land office in a contest cannot be collaterally attacked by one claiming through the predominating party in such contest. Ketchum Coal Co. v. Pleasant Valley Coal Co. (Utah) 168 P. 86.

32. —— **Questions of fact in general.**—In proceedings for the alienation of public lands, in the absence of fraud, imposition, or mistake, the action of the land department, upon matters of fact cognizable by it, is conclusive. Clear Lake Power & Improvement Co. v. Chriswell (Idaho) 173 P. 326; Clearwater County State Bank v. Ricke (Minn.) 163 N. W. 793, 137 Minn. 438.

To a bill seeking to enjoin trespasses on national forest reserve answer setting up a prior homestead entry and its disallowance by the Land Department and Secretary of Interior states no defense, the question being one of fact for the land office. U. S. v. Bush (D. C.) 233 F. 808.

Decisions of officers of Land Department upon questions of fact are conclusive upon third persons in absence of fraud; but if fraud is practiced upon them their rulings may be reviewed by the courts. Elliott v. Robbins (Cal. App.) 165 P. 1042.

Decisions of Land Department on questions of fact, in absence of showing by plaintiff, seeking to enforce trust as to land patented to defendant, that he has complied with rules of Department of Interior, are not subject to review by courts. Bond v. Walters (Cal. App.) 175 P. 909.

34. —— **Character and status of lands.**—The decision of the Land Department as to the character of public lands is not reviewable by the courts. Clear Lake Power & Improvement Co. v. Chriswell (Idaho) 173 P. 326.

36. —— **Questions of law.**—While decision of Land Department that entry was abandoned is conclusive as to facts, it may be inquired into by courts as question of law. Edwards v. Bodkin, 249 F. 562, 161 C. C. A. 488.

The question whether lands withdrawn from entry and settlement pending determination whether they should be included in a forest reservation and released thereafter were eliminated from the forest reserve is one of law as to which the courts are not controlled by departmental rulings. Walker v. Kingsbury (Cal. App.) 173 P. 95.

41. **Judicial interference with Land Department.**—See Lane v. United States ex rel. Mickadiet, 36 S. Ct. 599, 241 U. S. 201, 60 L. Ed. 956, reversing judgment United States of America ex rel. Mickadiet v. Lane, 43 App. D. C. 414.

The federal courts have no jurisdiction to quiet title and determine adverse claims to public land, title to which is in the United States, for the Land Department has exclusive jurisdiction over such matters. Reed v. St. Paul, M. & M. Ry. Co. (D. C.) 234 F. 123.

Mandamus to the Secretary of the Interior to compel him to issue a patent based on a fraudulent registration in the roll of members of the Chickasaw Nation of Indians held not to lie. Lane v. Duncan Townsite Co., 44 App. D. C. 63.

46. —— **Fraud.**—The District Court may only correct errors of the Department of the Interior in disposing of public land for fraud or a manifest misconstruction of the law, and cannot sit as a court of appeal. Edwards v. Bodkin (D. C.) 241 F. 931.

Within the domain of fact, in the absence of extrinsic fraud, the conclusions of the Department of the Interior respecting the disposal of public lands are not susceptible to collateral attack. Id.

Fraud invalidating departmental decisions respecting the disposal of public lands must be alleged with fullness and particularity showing that it necessarily affected the action of the departmental officers. Id.

Where decision by Land Department in a contest of conflicting claims is attacked for fraud in obtaining it, right to make such attack is governed by same principles as control in testing validity of ordinary judgments of courts. Elliott v. Robbins (Cal. App.) 165 P. 1042.

In action for possession of public land in which plaintiff claimed under a certificate of entry, case exhibited held to establish plaintiff's right to recover possession, although he gave perjured

testimony in proceeding in which his right to enter was sustained. Id.

49. **Court of Private Land Claims.**—Jurisdiction to establish, as a boundary between Mexican grants, a line reducing the area of one grant which had been confirmed and patented before Act March 3, 1891, creating a Court of Private Land Claims, was denied to that court by sections 8, 13. Board of Trustees of Sevilleta de la Joya Grant v. Board of Trustees of Belen Land Grant, 37 S. Ct. 215, 242 U. S. 595, 61 L. Ed. 514, affirming judgment 146 P. 959, 20 N. M. 145.

Consent of owners of Mexican grant, confirmed by Congress, will give no jurisdiction to Court of Private Land Claims, in contravention of Act March 3, 1891, §§ 8, 13. Id.

§ 705. (R. S. § 458.) Issue of patents.

1. **Nature of patent.**—As respects the government of the United States, the right to a patent once vested is equivalent to a patent issued. Thompson v. Thompson, 155 P. 1190, 79 Or. 513.

2. **Necessity of patent.**—Issuance of receiver's final receipt constitutes a conveyance of the equitable title, and until issuance of patent the government merely holds legal title as trustee for the holder of the receipt, although in case of fraud, it might still refuse to issue patent. Colm v. Francis, 159 P. 237. 30 Cal. App. 742.

The title to public land does not pass from the government until the issuance of a patent. Baker v. Berg (Minn.) 164 N. W. 588, certiorari denied Berg v. Baker, 38 S. Ct. 332, 62 L. Ed. 927.

A public land "patent" is the instrument which passes the legal title, and prior to its issuance the legal title remains with the government and is subject to investigation and determination by the Land Department. Bovey-Shute Lumber Co. v. Erickson (N. D.) 170 N. W. 628.

13. **Construction and operation.**—Notations on final homestead receipts as to the statute under which entry is made or the recitals in a patent have no controlling force upon the title of the grantee, as the law is read into such instruments. Entiat Delta Orchards Co. v. Unknown Heirs of Saska (Wash.) 168 P. 1130.

14. —— **Title conveyed.**—Where patent to government land is taken in the name of the husband on an entry made in his name, but paid for by the wife out of joint earnings, the land is his sole property, notwithstanding he was married at the time and the proceeds of a sale of the land, though made by the wife, also belongs to him. Kupfer v. Biehn (S. D.) 169 N. W. 514.

16. —— **Relation back.**—A patent relates back to the date of the patentee's entry. Pierce v. Chicago, M. & P. S. Ry. Co. (Mont.) 156 P. 127.

Where plaintiff secured cancellation of a prior entry and then filed his own entry, later securing a patent, his title cannot be construed as commencing before the entry. Id.

17. —— **Property and rights included.**—Where, under Homestead Law, land is patented as agricultural, such patent is adjudication of the Land Department that land is not then known to contain minerals in paying quantities, and of every other fact essential to validity of patent. U. S. v. Beaman, 242 F. 876, 155 C. C. A. 464.

23. —— **Recordation.**—Where land patents to assignee of military warrants are recorded at Washington, D. C., as provided by this section, they are notice to the county tax collector as to ownership, although not filed in the county. Bell v. George (Mo.) 204 S. W. 516.

24. —— **Patents as evidence.**—In a suit to abate a nuisance by maintaining an embankment on a public highway, a patent issued to defendant's predecessor in title, referring to the road as a highway was admissible as against the defendant. People v. Power (Cal. App.) 175 P. 803.

25. —— **Presumptions.**—A patent of United States is adjudication by Land Department, and raises presumption of right and regularity in all proceedings antedating it and of perfect title in grantee. U. S. v. Beaman, 242 F. 876, 155 C. C. A. 464.

28. —— **Conclusiveness.**—An occupant of land patented to a railroad, who relinquished his rights therein by homesteading other land, had no color of right to challenge the action of the Land Department in patenting the land to the railroad. U. S. v. New Orleans Pac. Ry. Co., 235 F. 833, 149 C. C. A. 145.

Patents issued by federal and state governments through land departments, under legislative acts, have the same force as if issued by the legislative body itself, and are conclusive in the absence of fraud or mistake. Caldwell v. Pierson (S. D.) 159 N. W. 124.

29. —— **Collateral attack.**—Patent to land, being decision of Land Department, is impervious to collateral attack and raises strong presumption that decision is right. U. S. v. Beaman, 242 F. 876, 155 C. C. A. 464.

A patent under the homestead laws is not a good defense in ejectment as against one claiming under a prior railroad grant, a patent being open to collateral attack where the land was already granted. People's Water Co. v. Perkins (Cal. App.) 168 P. 154.

31. **Equitable remedies — Right to maintain suit.**—An individual, maintaining a suit to have a patentee of land

declared a trustee thereof for him, may not complain on behalf of the United States that defendant was not entitled to a patent. Fisher v. Rule, 39 S. Ct. 122, 63 L. Ed. —.

Plaintiff, by application, never allowed to enter land as a homestead, acquired no right or interest in the land, entitling him to complain of issuance of patent to defendant; the application as originally made, after cancellation of defendant's entry on decision and direction of the Secretary of the Interior, not sufficiently showing plaintiff was a qualified applicant, and, before further showing was made all action under the Secretary's decision being by him suspended, pending a reconsideration thereof, on which the decision was recalled. Id.

To succeed in a suit to have a patentee of land declared trustee thereof for plaintiff, he must show a better right than patentee, such as should have been respected by the land department, and being respected, would have given him the patent; it not being enough that patentee should not have received it. Id.

Trust, if any, in favor of occupant of land in railroad grant confirmed by Act Feb. 8, 1887, § 2, 24 Stat. 388, held not enforceable by the government. U. S. v. New Orleans Pac. Ry. Co., 235 F. 833, 149 C. C. A. 145.

Though patent to land was secured through fraud and misrepresentation, it cannot be attacked by the government where, after institution of a suit against the patentee, the land was transferred to a purchaser for value in good faith, without notice of the suit. U. S. v. Calcasieu Timber Co., 236 F. 196, 149 C. C. A. 386.

32. —— **Trust in lands granted in general.**—In suit to enforce trust as to lands held by defendant under patent from United States, plaintiff's allegation of conclusion that defendant was not entitled to receive land was not sufficient. He must go further, and show he occupied such a status, having complied with rules of Department of Interior, as entitled him to control title. Bond v. Walters (Cal. App.) 175 P. 909.

Plaintiff, seeking to enforce a trust as true owner of land held by another under patent, must show by his complaint that he is entitled to the relief sought, that he occupies a status entitling him to control legal title, and that officers who awarded land to defendant, to whom patent was issued, were imposed upon by fraudulent practices of defendant. Id.

Courts of equity will entertain proceedings to decree that persons who have received patents to land hold them in trust for the true owner. Id.

In suits to enforce trusts as to land held by defendant under patent from United States, complaints held insufficient, as failing to allege that plaintiffs, in their contests with defendant before land department, introduced any evidence they had complied with regulations of Department of Interior entitling them to lands but for adverse claim of defendant, and as failing to claim defendant practiced any fraud on government. Id.

33. —— **Mistake or misapplication of law.**—Whether officers of United States land department correctly applied the law must be determined upon the facts there found or established. Clearwater, County State Bank v. Ricke, 163 N. W. 793, 137 Minn. 438.

Where it is clear that officers of the United States land department have misapplied the law, a court of equity may give appropriate relief. Id.

35. —— **Fraud or imposition.**—The question whether fraudulent misrepresentations, by which the entryman obtained patent to homestead, were material, is a question for the court, not the jury. U. S. v. Jones (D. C.) 232 F. 218.

The question of the damages recoverable for fraud of a homestead entryman will not be determined on demurrer to an answer relating wholly to the measure of damages. Id.

Fraud in an application for commutation by an entryman not entitled to commute under Rev. St. § 2301 (Comp. St. 1916, § 4589), was not fraud as to a material matter. Id.

That an entryman effected his purpose by fraud in final proof, not entitling him to the land, does not estop him from denying the materiality of the misrepresentation. Id.

Misrepresentations in final proof, under which an entryman, through mistake of law, was allowed to deduct time of military service, under Rev. St. §§ 2304, 2305 (Comp. St. 1916, §§ 4592, 4593), and Act Jan. 26, 1901, 31 Stat. 740, which deduction was contrary to Act Aug. 15, 1894, 28 Stat. 305, was misrepresentation as to an immaterial fact. Id.

37½. —— **Laches.**—Right to enforce trust, if any, in favor of occupant of land patented to railroad company and confirmed to it by Act Feb. 8, 1887, 24 Stat. 388, held barred by inexcusable laches. U. S. v. New Orleans Pac. Ry. Co., 235 F. 841, 149 C. C. A. 153.

Claim of occupant that title passing by patent inured to his benefit and that land was held in trust held cognizable only in equity, and subject to defenses of staleness and laches. Id.

Laches held not to bar defendant's right to recover public lands asserted within ten years after issuance of patent, where defendant's rights were protected, until patent issued by judgment against plaintiff's predecessors. Wolbol v. Steinhoff (Wyo.) 168 P. 251, rehearing denied 170 P. 381.

41. **Cancellation of patents—Who may bring suit.**—The United States may maintain a suit to cancel a patent

to land erroneously issued, although the beneficial interest in the land has become vested in another. U. S. v. Great Northern Ry. Co. (C. C. A.) 254 F. 522.

44. —— **Grounds for cancellation.**—Where an entryman on public lands was entitled to a patent despite temporary absences, held, that his statement in his final proof that he had not been absent from the homestead did not, in view of circumstances, warrant cancellation of patent. U. S. v. Anderson (D. C.) 238 F. 648.

A patent to public land cannot be annulled for fraud unless the evidence is unequivocal, clear, and convincing. Id.

44½. —— **Laches.**—Laches held available as defense to suit to cancel grant of public land in interest of another claimant, though not available when government sues to enforce a public right or assert a public interest. U. S. v. Fletcher, 242 F. 818, 155 C. C. A. 406, affirming decree (D. C.) 231 F. 326.

Suit in the name of the government to cancel patent to land for benefit of another claimant held barred by laches, where for over 30 years no step in its prosecution was taken after its institution. Id.

45. —— **Parties and process.**—Entryman's grantee is entitled to notice of proceedings to cancel entry for fraud although he had actual notice thereof. Wolbol v. Steinhoff (Wyo.) 168 P. 251, rehearing denied 170 P. 381.

45½. —— **Pleading and proof.**—A bill to set aside a patent to public lands, averring that defendants claim some title, estate, and interest in the land by reason of a patent, is insufficient to give jurisdiction to a court of equity. Reed v. St. Paul, M. & M. Ry. Co. (D. C.) 234 F. 207.

A bill to set aside a patent to public lands, which averred settlement upon, improvement, and failure to post notices of claim, and also averred plaintiff's adverse possession for 10 years, and the subsequent issuance of a patent to defendant, is insufficient to state a cause of action. Id.

A bill to set aside a patent to public lands is open to demurrer, where it does not show that the patent was issued through fraud, mistake of fact, or erroneous construction of the law. Id.

Under the prayer of the bill for a general relief in a suit to avoid for fraud a patent for public lands, defendant having passed the land to a bona fide purchaser, money damages may be decreed. U. S. v. Frick (D. C.) 244 F. 574.

46. —— **Evidence and burden of proof.**—Where the United States has shown that patents to public lands were obtained fraudulently, a subsequent purchaser, claiming through the patentees, has the burden of proving affirmatively that he was a good-faith purchaser. Northern Colorado Coal Co. v. United States, 234 F. 34, 148 C. C. A. 50.

In a suit by the government for cancellation of patents to coal lands obtained by fraud, the defendant has the burden of establishing the defense that he was a good-faith purchaser without notice by affirmative evidence. Hill v. U. S., 234 F. 39, 148 C. C. A. 55, affirming judgment (D. C.) U. S. v. Hill, 217 F. 841.

Unless proof that a patent to public land was secured through fraud is clear and convincing, the patent should not be overthrown. U. S. v. Albright (D. C.) 234 F. 202.

In a suit to cancel a patent to public lands on the ground that the patentee was acting under a contract to subsequently convey to defendant, evidence held insufficient to establish any such agreement, or that the patentee's entry was not in good faith. Id.

It is presumed that all preceding steps required to obtain a patent to public lands have been observed; and, in view of the importance and necessity of the stability of titles, a patent should be set aside for fraud in proofs only where the fraud is clearly established. U. S. Mahaffey, 235 F. 704, 149 C. C. A. 124.

While government may avoid a patent by suit in equity for false and deceitful representations, burden is on it to establish fraud by evidence producing conviction. U. S. v. Beaman, 242 F. 876, 55 C. C. A. 464.

In action to set aside a patent issued by United States land department after litigation, plaintiff must allege and show what facts were established in litigation, so as to show that officers of land department misapplied the law. Clearwater County State Bank v. Ricke, 163 N. W. 793, 137 Minn. 438.

47. —— **Decree.**—Where a suit in equity to cancel a patent to land was dismissed on motion of the United States attorney without any hearing or decision on the merits, the judgment of dismissal was not res judicata as to the issues involved in an action at law for damages for fraud in procuring the patent. Bistline v. U. S. (C. C. A.) 229 F. 546.

CHAPTER FOUR—THE COMMISSIONER OF INDIAN AFFAIRS

§ 713. (R. S. § 462.) Commissioner.

For enumeration of officers and employés in the office of the Commissioner of Indian Affairs, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 716. (R. S. § 463.) Duties of Commissioner.

Nature and scope of commissioner's authority.—Commissioner of Five Civilzed Tribes, Commissioner of Indian Affairs and Secretary of Interior have duty of allotting lands in Indian Nation, and their action will not be reviewed unless they have committed error of law, have been imposed on by fraud, or are guilty of fraud. Higgins v. Waters (Okl.) 159 P. 1129.

Cited without definite application, Northern Pac. Ry. Co. v. Wismer, 38 S. Ct. 240, 62 L. Ed. 716.

CHAPTER FIVE—THE COMMISSIONER OF PENSIONS

§ 727. (R. S. § 470.) Commissioner.

For enumeration of officers and employés in the office of the Commissioner of Pensions, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

CHAPTER SIX—THE PATENT-OFFICE

Sec.
736. Officers and employés.
738. Chief clerk.
738a. Examiners.
739. Private Secretary to Commissioner.
739a. Financial clerk.
739b. Librarian.
739c. Chiefs of divisions.
745. Regulations.
758. Annual report of the Commissioner.

§ 736. (R. S. § 476, as amended, Act Feb. 15, 1916, c. 22, § 1.) Officers and employés.

For enumeration of officers and employés of the Patent Office, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 738. (Act March 1, 1919, c. 86, § 1.) Chief clerk.

Patent Office: * * Chief clerk (who shall be qualified to act as principal examiner), $3,000. * * (40 Stat. 1248.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 738a. (Act March 1, 1919, c. 86, § 1.) Examiners.

Patent Office: * * Five law examiners, at $2,750 each; examiner of classification, $3,600; five examiners in chief, at $3,500 each; two examiners of interferences, at $2,700 each; examiners of trade-marks and designs—one $2,700, first assistant $2,400, six assistants at $1,500 each; examiners—forty-five principals at $2,700 each, ninety first assistants at $2,400 each, ninety second assistants at $2,100 each, ninety third assistants at $1,800 each, ninety fourth assistants at $1,500 each. * * (40 Stat. 1248.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

§ 739. (Act March 1, 1919, c. 86, § 1.) Private Secretary to Commissioner.

Patent Office: * * Private secretary, to be selected and appointed by the commissioner, $1,800. * * (40 Stat. 1249.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in the prior appropriation acts.

§ 739a. (Act March 1, 1919, c. 86, § 1.) Financial clerk.

Patent Office: * * Financial clerk, who shall give bond in such amount as the Secretary of the Interior may determine, $2,250. * * (40 Stat. 1249.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 739b. (Act March 1, 1919, c. 86, § 1.) Librarian.

Patent Office: * * Librarian, who shall be qualified to act as an assistant examiner, $2,000. * * (40 Stat. 1249.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 739c. (Act March 1, 1919, c. 86, § 1.) Chiefs of divisions.

Patent Office: * * Eight chiefs of divisions, at $2,000 each; three assistant chiefs of divisions, at $1,800 each. * * (40 Stat. 1249.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 745. (R. S. § 483.) Regulations.

Force and effect of rules.—Rules established by the Commissioner of Patents, pursuant to this section, if not inconsistent with law, have the force of statute. Westinghouse Traction Brake Co. v. Christensen, 243 F. 901, 156 C. C. A. 413.

§ 758. (R. S. § 494.) Annual report of the Commissioner.

Printing report.—The annual report of the Commissioner of Patents required by this section is not within the operation of section 9 of the sundry civil appropriation act of August 1, 1914 (38 Stat. 680), relating to the time within which the annual reports and accompanying documents of the heads of executive departments and other branches of the public service shall be furnished to the Public Printer. 30 Op. Atty. Gen. 296.

CHAPTER NINE—THE OFFICE OF EDUCATION

§ 766. (R. S. § 517.) Commissioner of Education.

For enumeration of officers and employés of the Bureau of Education, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 768. (R. S. § 518.) Report of Commissioner.

Printing report.—The annual report of the Commissioner of Education required by this section is not within the operation of section 7 of the sundry civil appropriation act of August 1, 1914 (38 Stat. 680), which limits the time within which heads of executive departments or other branches of the public service shall furnish copies of their annual reports and accompanying documents to the Public Printer. 30 Op. Atty. Gen. 293.

CHAPTER NINE B—THE BUREAU OF MINES

§ 783a. (Act July 1, 1918, c. 113, § 1.) Details of employés for service in Washington.

Persons employed during the fiscal year nineteen hundred and nineteen in field work, outside of the District of Columbia, under the Bureau of Mines, may be detailed temporarily for service in the District of Columbia, for purposes of preparing results of their field work; all persons so detailed shall be paid in addition to their regular compensation only their actual traveling expenses or per diem in lieu of subsistence in going to and returning therefrom: Provided, That nothing herein shall prevent the payment to employees of the Bureau of Mines their necessary expenses or per diem, in lieu of subsistence while on temporary detail in the District of Columbia, for purposes only of consultation or investigations on behalf of the United States. All details made hereunder, and the purposes of each, during the preceding fiscal year, shall be reported in the annual estimates of appropriations to Congress at the beginning of each regular session thereof. (40 Stat. 672.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

§ 784a. (Act Feb. 25, 1919, c. 23, § 1.) Experiments with lignite coal and peat; appropriation.

The Secretary of the Interior is hereby authorized and directed to make experiments and investigations, through the Bureau of Mines, of lignite coals and peat, to determine the commercial and economic practicability of their utilization in producing fuel oil, gasoline substitutes, ammonia, tar, solid fuels, gas for power and other purposes; and there is hereby appropriated, out of the funds in the Treasury not otherwise appropriated, the sum of $100,000, or so much thereof as may be needed, to conduct such experiments and investigations, including personal services in the District of Columbia and elsewhere, and including supplies, equipment, expenses of traveling and subsistence, and for every other expense incident to this work. (40 Stat. 1154.)

This section, and the section next following, are an act entitled "An act authorizing the Secretary of the Interior to make investigations through the Bureau of Mines, of lignite coals and peat, to determine the practicability of their utilization as a fuel and in producing commercial products," cited above.

§ 784b. (Act Feb. 25, 1919, c. 23, § 2.) Same; disposition of property after investigation concluded.

The Secretary of the Interior is authorized and directed to sell or otherwise dispose of any property, plant or machinery purchased or acquired under the provisions of this Act, as soon as the experiments and investigations hereby authorized have been concluded, and report the results of such experiments and investigations to Congress. (40 Stat. 1154.)

See note to § 784a, ante.

§ 787c. (Act July 1, 1918, c. 113, § 1.) Headquarters of mine rescue cars.

For purchase or lease of necessary land, where and under such conditions as the Secretary of the Interior may direct, for the headquarters of mine rescue cars and construction of necessary railway sidings and housing for the same, or as the site of an experimental mine and a plant for studying explosives, * *: Provided, That the Secretary of the Interior is authorized to accept any suitable

land or lands, buildings, or improvements, that may be donated for said purpose and to enter into leases for periods not exceeding ten years, subject to annual appropriations by Congress. (40 Stat. 672.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

TITLE XII—THE DEPARTMENT OF AGRICULTURE

CHAPTER A—THE DEPARTMENT AND SECRETARY OF AGRICULTURE

Sec.
790a. Additional Assistant Secretaries.
791. Salaries.
793. Clerks and employés.
795. Bureaus; Soils; Forestry; Chemistry; Plant Industry.
795aa. Same; Markets.
803. Details of employés from or to office of Secretary.
814b. Purchase of vehicles and motor boats.
814bb. Exchange of motor vehicles.
820a. Seeds and plants; contracts for printed packets.
823. Laws affecting national forest lands.
825a. Monthly crop reports; time for printing and distribution.
827a. Mexican pink boll-worm.
828a. Quality and condition of farm products received at central markets; certificates issued by agents.
832b. Sale of potash.
832bb. Sale of products from agricultural experiment stations in Alaska, Hawaii, Porto Rico, Guam and the Virgin Islands.
832c. Loan, rental or sale of films.
839a. Reports; expenditures for agricultural experiment stations.
839b. Vegetable dehydration plants.
839c. Requisition of buildings for use of Department.

§ 790a. (Act Aug. 10, 1917, c. 52, § 5.) Additional Assistant Secretaries.

The President, by and with the advice and consent of the Senate, may appoint two additional Assistant Secretaries of Agriculture, who shall perform such duties as may be required by law or prescribed by the Secretary of Agriculture, and who shall each be paid a salary of $5,000 per annum. (40 Stat. 274.)

This was section 5 of an act entitled "An act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products," cited above.

§ 791. (Act Feb. 9, 1889, c. 122, § 3.) Salaries.

The agricultural appropriation act for the fiscal year 1919, Act Oct. 1, 1918, c. 178, 40 Stat. 973, contains the following appropriation for salaries: "Secretary of Agriculture, $12,000; Assistant Secretary of Agriculture, $5,000; Solicitor, $5,000; chief clerk, $3,000, and $500 additional as custodian of buildings; private secretary to the Secretary of Agriculture, $2,500; executive clerk, $2,250; executive clerk, $2,100; stenographer and executive clerk to the Secretary of Agriculture, $2,250; private secretary to the Assistant Secretary of Agriculture, $2,250; one appointment clerk, $2,000; one assistant in charge of information, $3,000; one officer in charge of supplies, $2,000; one assistant, $2,000; one inspector, $2,750; one inspector, $2,250; one law clerk, $3,250; two law clerks, at $3,000 each; two law clerks, at $2,750 each; four law clerks, at $2,500 each; eight law clerks, at $2,250 each; one law clerk, $2,200; five law clerks, at $2,000 each; three law clerks, at $1,800 each; four law clerks, at $1,600 each; one assistant editor, $2,000; four assistant editors, at $1,800 each; one assistant editor, $1,600; one expert on exhibits, $3,000; one assistant in exhibits, $2,000," etc.

§ 793. (R. S. § 522.) Clerks and employés.

See note to § 791, ante.

§ 795. (Act June 3, 1902, c. 985.) Bureaus; Soils; Forestry; Chemistry; Plant Industry.

The agricultural appropriation act for the fiscal year 1919, Act Oct. 1, 1918, c. 178, 40 Stat. 973, makes the following appropriations for the salaries of the officers, etc., of the various bureaus of the Department of Agriculture:

Bureau of Plant Industry—"One physiologist and pathologist, who shall be chief of bureau, $5,000; one assistant to the chief, $3,000; one executive assistant in seed distribution, $2,500; one officer in charge of publications, $2,250;

one landscape gardener, $1,800; one officer in charge of records, $2,250; one executive clerk, $2,000; two executive clerks, at $1,980 each; one seed inspector, $1,000; one seed warehouseman, $1,400; one seed warehouseman, $1,000; one seed warehouseman, $840," etc.

Bureau of Chemistry—"One chemist, who shall be chief of bureau, $5,000; one chief clerk, $2,500; three executive clerks, at $2,000 each; ten clerks, class four; thirteen clerks, class three; two clerks, at $1,440 each; nineteen clerks, class two; one clerk, $1,300; sixty-six clerks, class one; one clerk, $1,100; thirteen clerks, at $1,020 each; fifteen clerks, at $1,000 each; one clerk, $960; twelve clerks, at $900 each; two food and drug inspectors, at $2,500 each; two food and drug inspectors at $2,250 each; one food and drug inspector, $2,120; thirteen food and drug inspectors, at $2,000 each; thirteen food and drug inspectors, at $1,800 each; one food and drug inspector, $1,620; eleven food and drug inspectors, at $1,600 each; ten food and drug inspectors, at $1,400 each; one assistant, $1,600," etc.

Bureau of Soils—"One soil physicist, who shall be chief of bureau, $4,000; one chief clerk, $2,000; one executive assistant, $2,000; four clerks, class four: two clerks, class three; five clerks, class two; one clerk, $1,260; ten clerks, class one; seven clerks, at $1,000 each; one soil cartographer, $1,800; one chief draftsman, $1,600; one soil bibliographer or draftsman, $1,400; one photographer, $1,200; five draftsmen, at $1,200 each; one clerk-draftsman, $1,200; two draftsmen, at $1,000 each," etc.

Bureau of Entomology—"One entomologist, who shall be chief of bureau, $4,500; one chief clerk and executive assistant, $2,250; one administrative assistant, $2,250; one editor, $2,250," etc.

Bureau of Biological Survey—"One biologist, who shall be chief of bureau, $3,500; one chief clerk and executive assistant, $1,800; one administrative assistant, $2,250; one executive assistant, $1,800," etc.

Bureau of Crop Estimates—"One statistician, who shall be chief of bureau, $4,000; one chief clerk, $1,800," etc.

Bureau of Public Roads—"One director, who shall be a scientist and have charge of all scientific and technical work, $4,500; one editor, $2,500," etc.

Bureau of Markets—"One chief of bureau, $4,500; one chief clerk, $2,000; one administrative assistant, $2,500; one clerk in charge of supplies and accounts, $2,250; one administrative assistant, $1,980," etc.

Forest Service—"One forester, who shall be chief of bureau, $5,000; one chief of office of accounts and fiscal agent, $2,500; one inspector of records, $2,400; seven district fiscal agents, at $2,120 each; one forest supervisor, $2,800; one forest supervisor, $2,700; eight forest supervisors, at $2,400 each; twenty forest supervisors, at $2,200 each; forty-nine forest supervisors, at $2,000 each; sixty-six forest supervisors, at $1,800 each; five forest supervisors, at $1,600 each; one deputy forest supervisor, $1,800; four deputy forest supervisors, at $1,700 each; twenty-eight deputy forest supervisors, at $1,600 each; thirty-one deputy forest supervisors, at $1,500 each; eighteen deputy forest supervisors, at $1,400 each; eleven forest rangers, at $1,500 each; twenty-three forest rangers, at $1,400 each; seventy-eight forest rangers, at $1,300 each; two hundred and eighty-eight forest rangers, at $1,200 each; six hundred and thirty forest rangers, at $1,100 each; one hundred forest guards, at $1,100 each, for periods not exceeding six months in the aggregate; forty forest guards, at $1,100 each, for periods not exceeding three months in the aggregate," etc.

Division of Accounts and Disbursements—"One chief of division and disbursing clerk, $4,000; one supervising auditor, $2,250; one cashier and chief clerk, $2,250," etc.

Division of Publications—"One chief of division, $3,500; one assistant chief of division, $2,500; one chief clerk, $2,000; one assistant, $2,000; one assistant, $1,400; one assistant in charge of indexing, $2,000; one indexer, $1,400; one assistant in charge of illustrations, $2,100; two draftsmen or photographers, at $1,600 each; two draftsmen or photographers, at $1,500 each; three draftsmen or photographers, at $1,400 each; one draftsman or photographer, $1,300; ten draftsmen or photographers, at $1,200 each; one assistant photographer, $900; one lantern slide colorist, $840; one laboratory aid, $720; one assistant in charge of document section, $2,000; one assistant in document section, $1,800; one assistant in document section, $1,400," etc.

Library, Department of Agriculture—"One librarian, $2,000," etc.

States Relations Service—"One director, $4,500; one chief clerk, $2,000; one financial clerk, $2,000," etc.

Enforcement of Insecticide Act—"One executive officer, $2,750; one executive assistant, $2,000," etc.

Federal Horticultural Board—"One secretary of board, $2,280; one executive clerk, $2,000."

§ 795aa. (Act March 4, 1917, c. 179.) Same; markets.

Hereafter, in the performance of the duties required of the Department of Agriculture by the provisions of this Act relating to the Bureau of Markets, the Secretary of Agriculture shall have power to administer oaths, examine witnesses, and call for the production of books and papers. (39 Stat. 1163.)

This was a provision accompanying appropriations for the Bureau of Markets in the Department of Agriculture in the agricultural appropriation act for the fiscal year 1918, cited above.

The agricultural appropriation act for the fiscal year 1919, Act Oct. 1, 1918, c. 178, 40 Stat. 973, contains the following provision: "In the performance of the duties required of the Bureau of Markets in the administration or enforcement of provisions of Acts (United States cotton-futures Act, Thirty-ninth Statutes at large, page four hundred and seventy-six; United States grain standards Act, Thirty-ninth Statutes at Large, page four hundred and eighty-two; United States warehouse Act, Thirty-ninth Statutes at Large, page four hundred and eighty-six; standard container Act, Thirty-ninth Statutes at Large, page six hundred and seventy-three; and the Acts making annual appropriations for the Department of Agriculture) relating to the Department of Agriculture, the Secretary of Agriculture, or any representative authorized by him for the purpose, shall have power to administer oaths, examine witnesses, and call for the production of books and papers, during the fiscal year ending June thirtieth, nineteen hundred and nineteen."

§ 803. (Act March 4, 1907, c. 2907.) Details of employés from or to office of Secretary.

Details may be made from or to the office of the Secretary when necessary and the services of the person whom it is proposed to detail are not required in that office. (34 Stat. 1280.)

Republished here to correct an error in the section as originally published, which consisted in the omission of the words "or to" after the word "from" in the first line.

§ 814b. (Act Aug. 11, 1916, c. 313.) Purchase of vehicles and motor boats.

The agricultural appropriation act for the fiscal year 1919, Act Oct. 1, 1918, c. 178, 40 Stat. 973, contains the following provision: "That not to exceed $63,000 of the lump-sum appropriations herein made for the Department of Agriculture shall be available for the purchase, maintenance, repair, and operation of motor-propelled and horse-drawn passenger-carrying vehicles necessary in the conduct of the field work of the Department of Agriculture outside the District of Columbia: Provided, That not to exceed $13,000 of this amount shall be expended for the purchase of such vehicles, and that such vehicles shall be used only for official service outside the District of Columbia, but this shall not prevent the continued use for official service of motortrucks in the District of Columbia: Provided further, That the Secretary of Agriculture shall, on the first day of each regular session of Congress, make a report to Congress showing the amount expended under the provisions of this paragraph during the preceding fiscal year."

§ 814bb. (Act March 4, 1917, c. 179.) Exchange of motor vehicles.

Hereafter the Secretary of Agriculture may exchange motor-propelled and horse-drawn passenger-carrying vehicles in part payment for new motor-propelled or horse-drawn passenger-carrying vehicles authorized to be purchased by him, to be used for the same purposes as those proposed to be exchanged, and shall, on the first day of each regular session of Congress, make a report to Congress for the fiscal year last closed showing, as to each exchange hereunder, the make of the vehicle, the period of its use, the allowance therefor, and the vehicle, make thereof, and price, including exchange value, paid, or to be paid, for each vehicle procured through such exchange. (39 Stat. 1167.)

This was a provision of the agricultural appropriation act for the fiscal year 1918, cited above.

§ 820a. (Act Oct. 1, 1918, c. 178.) Seeds and plants; contracts for printed packets.

The Secretary of Agriculture, after due advertisement and on competitive bids, is authorized to award the contract for the supplying of printed packets and envelopes and the packeting, assembling, and mailing of the seeds, bulbs, shrubs, vines, cuttings, and plants, or any part thereof, for a period of not more than five years nor less than one year, if by such action he can best protect the interests of the United States. (40 Stat. 983.)

This was a provision of the agricultural appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

§ 823. (Act Feb. 1, 1905, c. 288, § 1.) Laws affecting national forest lands.

See 30 Op. Atty. Gen. 263.

Operation of act.—Right to use public lands in forest reservations as sites for electric power works was not given by Act Feb. 1, 1905, 33 Stat. 628 Utah Power & Light Co. v. U. S., 37 S. Ct. 387, 243 U. S. 389, 61 L. Ed. 791.

§ 825a. (Act March 4, 1917, c. 179.) Monthly crop reports; time for printing and distribution.

Hereafter the Monthly Crop Report shall be printed and distributed on or before the twelfth day of each month. (39 Stat. 1157.)

This was a provision of the agricultural appropriation act for the fiscal year 1918, cited above.

§ 827a. (Act Oct. 6, 1917, c. 79, § 1.) Mexican pink boll-worm.

On account of the menace to cotton culture in the United States arising from the existence of the pink bollworm in Mexico, the Secretary of Agriculture, in order to prevent the establishment and spread of such worm in Texas and other parts of the United States, is authorized to make surveys to determine its actual distribution in Mexico; to establish, in cooperation with the States concerned, a zone or zones free from cotton culture on or near the border of any State or States adjacent to Mexico; and to cooperate with the Mexican Government or local Mexican authorities in the extermination of local infestations near the border of the United States. * * (40 Stat. 374.)

This was a provision of the urgent deficiency appropriation act for the fiscal year 1918 and prior years, cited above.

The agricultural appropriation act for the fiscal year 1919, Act Oct. 1, 1918, c. 178, 40 Stat. 973, contains the following provisions:

"Eradication of pink bollworm: To enable the Secretary of Agriculture to meet the emergency caused by the existence of the pink bollworm of cotton in Mexico, and to prevent the establishment of such insect in the United States by the employment of all means necessary, including rent outside of the District of Columbia and the employment of persons and means in the city of Washington and elsewhere, as follows:

"To prevent the movement of cotton and cotton seed from Mexico into the United States, including the regulation of the entry into the United States of railway cars and other vehicles, and freight, express, baggage, or other materials from Mexico, and the inspection, cleaning, and disinfection thereof $50,000; any moneys received in payment of charges fixed by the Secretary of Agriculture on account of such cleaning and disinfection at plants constructed therefor out of any appropriation made on account of the pink bollworm of cotton to be covered into the Treasury as miscellaneous receipts.

"To conduct surveys and inspections in Texas or in any other State to detect any infestation and to conduct such control measures, including the establishment of cotton-free areas, in cooperation with the State of Texas or other States concerned, as may be necessary to stamp out such infestation, to establish in cooperation with the States concerned a zone or zones free from cotton culture on or near the border of any State or States adjacent to Mexico, and to cooperate with the Mexican Government or local Mexican authorities, or otherwise, by undertaking in Mexico such measures for the extermination of the pink bollworm of cotton as shall be determined to be practicable from surveys showing its distribution, $400,000: Provided, That no part of the

money herein appropriated shall be used to pay the cost or value of crops or other property injured or destroyed."

§ 828a. (Act Oct. 1, 1918, c. 178.) Quality and condition of farm products received at central markets; certificates issued by agents.

For enabling the Secretary of Agriculture to investigate and certify to shippers and other interested parties the quality and condition of fruits, vegetables, and other perishable farm products when received at such important central markets as the Secretary of Agriculture may from time to time designate, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered: Provided, That certificates issued by the authorized agents of the department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained. * * (40 Stat. 1002.)

This was a provision of the agricultural appropriation act for the fiscal year 1919, cited above.

§ 832b. (Act Aug. 11, 1916, c. 313.) Sale of potash.

The agricultural appropriation act for the fiscal year 1919, Act Oct. 1, 1918, c. 178, 40 Stat. 973, contains the following provision: "For the investigation and demonstration within the United States to determine the best method of obtaining potash on a commercial scale, $127,600: Provided, That the product obtained from such experimentation may be sold at a price to be determined by the Secretary of Agriculture, and the amount obtained from the sale thereof shall be covered into the Treasury as miscellaneous receipts."

§ 832bb. (Act Oct. 1, 1918, c. 178.) Sale of products from agricultural experiment stations in Alaska, Hawaii, Porto Rico, Guam and the Virgin Islands.

To enable the Secretary of Agriculture to establish and maintain agricultural experiment stations in Alaska, Hawaii, Porto Rico, the island of Guam, and the Virgin Islands of the United States, including the erection of buildings, the preparation, illustration, and distribution of reports and bulletins, and all other necessary expenses; * * and the Secretary of Agriculture is authorized to sell such products as are obtained on the land belonging to the agricultural experiment stations in Alaska, Hawaii, Porto Rico, the island of Guam, and the Virgin Islands of the United States. * * (40 Stat. 999.)

This was a provision of the agricultural appropriation act for the fiscal year 1919, cited above.

§ 832c. (Act Oct. 1, 1918, c. 178.) Loan, rental or sale of films.

The Secretary of Agriculture is authorized, under such rules and regulations and subject to such conditions as he may prescribe, to loan, rent, or sell copies of films: Provided, That in the sale or rental of films educational institutions or associations for agricultural education not organized for profit shall have preference; all moneys received from such rentals or sales to be covered into the Treasury of the United States as miscellaneous receipts. (40 Stat. 996.)

This was a provision accompanying appropriations for the Division of Publications of the Department of Agriculture, in the agricultural appropriation act for the fiscal year 1919, cited above. This provision has been repeated in prior agricultural appropriation acts.

§ 839a. (Act Oct. 1, 1918, c. 178.) Reports; expenditures for agricultural experiment stations.

The Secretary of Agriculture shall prescribe the form of the annual financial statement required under the above Acts, ascertain whether the expenditures are in accordance with their provisions, coordinate the work of the Department of Agriculture with that

of the State agricultural colleges and experiment stations in the lines authorized in said Acts, and make report thereon to Congress. (40 Stat. 999.)

This was a provision accompanying an appropriation for agricultural experiment stations, in the agricultural appropriation act for the fiscal year 1919, cited above. This provision has been repeated in prior agricultural appropriation acts. The acts referred to in this section are acts relating to agricultural extension work in the various agricultural colleges. See U. S. Comp. St. 1916, §§ 8870, 8877a–8877h, 8878–8889, 8891–8896.

§ 839b. (Act Oct. 1, 1918, c. 178.) Vegetable dehydration plants.

To enable the Secretary of Agriculture to cooperate with individuals, firms, or corporations, owning or operating plants for drying or dehydration of vegetables, fruits, and other perishable edible products to determine the best means and processes of dehydration and to disseminate information as to the value and suitability of such products for human food: * * Provided, That the Secretary of Agriculture is hereby authorized, if the President shall determine it to be necessary, to use all or any part of this appropriation for the establishment and operation of a plant or plants for the dehydration of vegetables, fruits, and other perishable edible products in any place or places in the United States for the purpose of supplying food for the Army and Navy, and the money received from the operation of any such plant or plants shall constitute a revolving fund until June thirtieth, nineteen hundred and nineteen. (40 Stat. 1007.)

This was a provision of the agricultural appropriation act for the fiscal year 1919, cited above.

§ 839c. (Act Nov. 21, 1918, c. 212, § 1.) Requisition of buildings for use of Department.

The Secretary of Agriculture is authorized, for the official purposes of the Department of Agriculture, and within the limits of the appropriations for rent made by this or any other Act making appropriations for the Department of Agriculture, to requisition the use of, and take possession of, any building or any space in any building, and the appurtenances thereof which are now or heretofore have been used for such purposes, in the District of Columbia, other than a dwelling house occupied as such or a building occupied by any other branch of the United States Government; and he shall ascertain and pay just compensation for such use. If the amount of compensation so ascertained be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of such amount, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation for such use in the manner provided by section twenty four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. (40 Stat. 1048.)

This was a provision of an act entitled "An Act to enable the Secretary of Agriculture to carry out, during the fiscal year ending June thirtieth, nineteen hundred and nineteen, the purposes of the Act entitled 'An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products,' and for other purposes," cited above.

The provisions of the Judicial Code, mentioned above, are set forth post, as §§ 1136 and 991(20), respectively.

CHAPTER B—THE WEATHER BUREAU

§ 841. (Act Oct. 1, 1890, c. 1266, § 3.) Chief; duties.

Records of bureau as evidence.—The records of the weather bureau at St. Louis that the greatest rainfall occurring in over 40 years occurred during a particular storm are inadmissible to prove conditions existing in Madison county. Handfelder v. East Side Levee & Sanitary District, 194 Ill. App. 262.

§ 842. (Act Oct. 1, 1890, c. 1266, § 4, as amended, Res. July 8, 1898, No. 57.) Same; appointment and compensation; employés provided for annually.

The agricultural appropriation act for the fiscal year 1919, Act Oct. 1, 1918, c. 178, 40 Stat. 973, contains the following appropriation for salaries of officers, etc., of the Weather Bureau: "One chief of bureau, $5,000; one assistant chief of bureau, $3,250; one chief clerk, $2,500; one chief of division of stations and accounts, $2,750; one chief of printing division, $2,500; three chiefs of division, at $2,000 each," etc.

§ 845a. (Act Oct. 1, 1918, c. 178.) Printing office.

General expenses, Weather Bureau: * *

For the maintenance of a printing office in the city of Washington for the printing of weather maps, bulletins, circulars, forms, and other publications, including the pay of additional employees, when necessary: * * Provided, That no printing shall be done by the Weather Bureau that, in the judgment of the Secretary of Agriculture, can be done at the Government Printing Office without impairing the service of said bureau. (40 Stat. 975.)

This was a provision of the agricultural appropriation act for the fiscal year 1919, cited above. It has been repeated in prior agricultural appropriation acts.

CHAPTER C—THE BUREAU OF ANIMAL INDUSTRY

§ 850. (Act May 29, 1884, c. 60, § 1.) Establishment of Bureau; Chief; clerk, and employés.

The agricultural appropriation act for the fiscal year 1919, Act Oct. 1, 1918, c. 178, 40 Stat. 973, contains the following appropriation for the officers, etc., of the Bureau of Animal Industry: "One chief of bureau, $5,000; one chief clerk, $2,500; one editor and compiler, $2,250; one executive assistant, $2,500; two executive clerks, at $2,000 each," etc.

TITLE XII A—THE DEPARTMENT OF COMMERCE

Chap.		Sec.
A.	The Department and the Secretary of Commerce	854
B.	The Bureau of Foreign and Domestic Commerce	873
D.	The Bureau of Navigation	891
E.	The Bureau of Light-Houses	896
F.	The Bureau of Fisheries	907a
G.	The Census Office	915
H.	The Bureau of Standards	925

CHAPTER A—THE DEPARTMENT AND THE SECRETARY OF COMMERCE

Sec.
854. Assistant Secretary; clerks and assistants.
854a. Commercial attachés.
858. Control of fur-seal, etc.
872a. Lease of Commerce Building.

§ 854. (Act Feb. 14, 1903, c. 552, § 2.) Assistant Secretary; clerks and assistants.

For enumeration of officers and employés of the Department of Commerce, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 854a. (Act March 1, 1919, c. 86, § 1.) Commercial attachés.

Commercial attachés: For commercial attachés, to be appointed by the Secretary of Commerce, after examination to be held under his direction to determine their competency, and to be accredited through the State Department, whose duties shall be to investigate and report upon such conditions in the manufacturing industries and trade of foreign countries as may be of interest to the United States; and for one clerk to each of said commercial attachés to be paid a salary not to exceed $1,500 each and for necessary traveling and subsistence expenses of officers, rent outside of the District of Columbia, purchase of reports, books of reference and periodicals, travel to and from the United States, exchange on official checks, and all other necessary expenses not included in the foregoing; such commercial attachés shall serve directly under the Secretary of Commerce and shall report directly to him. * * (40 Stat. 1256.)

This section is a part of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 858. (Act Feb. 14, 1903, c. 552, § 7.) Control of fur-seal, etc.

Lease of islands for purpose of propagation of fur-bearing animals.—In view of power of executive presidential order, transferring to the Department of Commerce and Labor authority to lease certain islands for propagation of foxes, held valid, though Act Feb. 14, 1903, § 7, 32 Stat. 828, did not confer such power on Department of Commerce and Labor. Whelpley v. Grosvold (C. C. A. Alaska) 249 F. 812.

§ 872a. (Act March 1, 1919, c. 86, § 1.) Lease of Commerce Building.

The Secretary of Commerce is authorized, in his discretion, to enter into a contract for the lease for a period not to exceed five years with an option for a period of five additional years, of the Commerce Building, now occupied by the Department of Commerce, at an annual rental not to exceed $65,500. (40 Stat. 1262.)

This section is a part of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

CHAPTER B—THE BUREAU OF FOREIGN AND DOMESTIC COMMERCE

§ 873. (Act Aug. 23, 1912, c. 350, § 1.) Consolidation and transfer of duties of Bureau of Manufactures and Bureau of Statistics.

For enumeration of officers and employés of the Bureau of Foreign and Domestic Commerce, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 879. (R. S. § 336, as amended, Act Jan. 25, 1919, c. 10.) Former Bureau of Statistics in Treasury Department; annual report.

The Chief of the Bureau of Statistics shall, under the direction of the Secretary of the Treasury, annually prepare a report on the statistics of commerce and navigation of the United States with foreign countries, to the close of the calendar year. Such accounts shall comprehend all goods, wares, and merchandise exported from the United States to other countries; all goods, wares, and merchandise imported into the United States from other countries, and all navigation employed in the foreign trade of the United States; which facts shall be stated according to the principles and in the manner hereby directed.

First. The kinds, quantities, and values of all articles exported, and the kinds, quantities, and values of all articles imported, shall be distinctly stated in such accounts, except in cases in which it may appear to the Secretary of the Treasury that separate statements of the species, quantities, or values of any particular articles would swell the annual statements without utility; and, in such cases, the kinds and total values of such articles shall be stated together, or in such classes as the Secretary of the Treasury may think fit.

Second. The exports shall be so stated as to show the exports to each foreign country, and their values; and the imports shall be so stated as to show the imports from each foreign country, and their values.

Third. The exports shall be so stated as to show, separately, the exports of articles of the production or manufacture of the United States, and their values; and the exports of articles of the production or manufacture of foreign countries, and their values.

Fourth. The navigation employed in the foreign trade of the United States shall be stated in such manner as to show the amount of the tonnage of all vessels departing from the United States for foreign countries; and, separately, the amount of such tonnage of vessels of the United States, and the amount of such tonnage of foreign vessels; and also the foreign nations to which such foreign tonnage belongs, and the amount of such tonnage belonging to each foreign nation; and in such manner as also to show the amount of the tonnage of all vessels departing for every particular foreign country with which the United States have any considerable commerce; and, separately, the amount of such tonnage of vessels of the United States, and the amount of such tonnage of foreign vessels; and in such manner as to show the amount of the tonnage of all vessels arriving in the United States from foreign countries; and, separately, the amount of such tonnage of vessels of the United States, and the amount of such tonnage of foreign vessels; and also the foreign nations to which such foreign tonnage belongs, and the amount of such tonnage belonging to each foreign nation; and in such manner as also to show the amount of the tonnage of all vessels arriving from every particular foreign country with which the United States have any considerable commerce; and, separate-

ly, the amount of such tonnage of vessels of the United States, and the amount of such tonnage of foreign vessels.

Fifth. Such accounts shall comprehend and include, in tabular form, the quantity by weight or measure, as well as the amount of value, of the several articles of foreign commerce, whether dutiable or otherwise; and also a similar and separate statement of the commerce of the United States with the British Provinces, under the late so-called reciprocity treaty with Great Britain. (40 Stat. 1055.)

This section was amended by Act Jan. 25, 1919, c. 10, cited above, by striking out the word "fiscal" before the word "year" at the end of the first sentence, and by inserting in lieu thereof the word "calendar," so as to make the section read as set forth above.

§ 888a. (Act March 1, 1919, c. 86, § 1.) Disposition of money received from sale of reproductions of statistical compilations.

All moneys hereafter received by the Bureau of Foreign and Domestic Commerce in payment of photographic and other mechanical reproduction of special statistical compilations from its records shall be covered into the Treasury as a miscellaneous receipt. (40 Stat. 1256.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

CHAPTER D—THE BUREAU OF NAVIGATION

The clerical force and office expenses of the Division of Naval Militia affairs are transferred to the Bureau of Navigation, by a provision of Act July 1, 1918, c. 114, post, § 3078a (30¼).

§ 891. (Act July 5, 1884, c. 221, § 2.) Commissioner; general duties.

For enumeration of officers and employés in the Bureau of Navigation, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

CHAPTER E—THE BUREAU OF LIGHTHOUSES

§ 896. (Act June 17, 1910, c. 301, § 4.) Establishment of Bureau, etc.

For enumeration of officers and employés in the Bureau of Lighthouses, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

CHAPTER F—THE BUREAU OF FISHERIES

§ 907a. (Act July 1, 1918, c. 113, § 1.) Vessels of Commission; commutation of rations of officers and crews.

Commutation of rations not to exceed 60 cents may be paid to officers and crews of vessels of the Bureau of Fisheries under regulations prescribed by the Secretary of Commerce. (40 Stat. 694.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of Act Sept. 8, 1916, c. 464, § 1, 39 Stat. 820.

§ 908a. (Act July 1, 1918, c. 113, § 1.) Expenditure of appropriations for propagation of food fishes.

Appropriations herein or hereafter made for propagation of food fishes shall not be expended for hatching or planting fish or eggs in any State in which, in the judgment of the Secretary of Commerce, there are not adequate laws for the protection of the fishes,

nor in any State in which the United States Commissioner of Fisheries and his duly authorized agents are not accorded full and free right to conduct fish-cultural operations, and all fishing and other operations necessary therefor, in such manner and at such times as is considered necessary and proper by the said commissioner or his agents. (40 Stat. 693.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

CHAPTER G—THE CENSUS OFFICE

Sec.
915. Officers and employés; additional.
916. Assistant Director; appointment clerk; disbursing clerk.
917. Compensation of officials during census period.
918. Additional clerks and employés during census period.
919. Same; examinations; selections.
920a. Suspension of other work during decennial census period.

§ 915. (Act March 3, 1919, c. 97, § 3.)[1] Officers and employés; additional.

During the decennial census period, and no longer, there may be employed in the Census Office, in addition to the force provided for by the legislative, executive, and judicial appropriation Act for the fiscal year immediately preceding the decennial census period, an assistant director, who shall be an experienced practical statistician; a chief statistician, who shall be a person of known and tried experience in statistical work; a disbursing clerk; an appointment clerk; a private secretary to the director; four stenographers; eight expert chiefs of division; and ten statistical experts. The assistant director shall be appointed by the President, by and with the advice and consent of the Senate. The chief statistician, the disbursing clerk, the appointment clerk, the chiefs of divisions, and the private secretary to the director shall be appointed without examination by the Secretary of Commerce upon the recommendation of the Director of the Census. The statistical experts and the stenographers shall be appointed in conformity with the civil service Act and rules: Provided, That whenever practicable women and honorably discharged soldiers and sailors shall be employed in the positions herein provided for. (40 Stat. 1292.)

This section is § 3 of an act entitled "An act to provide for the fourteenth and subsequent decennial censuses," cited above. Section 34 of said act repeals Act July 2, 1909, c. 2, § 3, 36 Stat. 2, which was similar in its provisions to this section.

§ 916. (Act March 3, 1919, c. 97, § 4.) Assistant Director; appointment clerk; disbursing clerk.

The assistant director shall perform such duties as may be prescribed by the Director of the Census. In the absence of the director, the assistant director shall serve as director, and in the absence of the director and assistant director, the chief clerk shall serve as director.

The appointment clerk shall perform the duties assigned him by the Director of the Census. The disbursing clerk of the Census Office shall, at the beginning of the decennial census period, give bond to the Secretary of the Treasury in the sum of $100,000, surety to be approved by the Solicitor of the Treasury, which bond shall be conditioned that the said officer shall render, quarter yearly, a true and faithful account to the proper accounting officers of the Treasury of all moneys and properties which shall be received by him by virtue of his office during the said decennial census period. Such bond shall be filed in the office of the Secretary of the Treas-

ury, to be by him put in suit upon any breach of the conditions thereof. (40 Stat. 1292.)

This section is § 4 of an act entitled "An act to provide for the fourteenth and subsequent decennial censuses," cited above. Section 34 of said act repeals Act July 2, 1909, c. 2, § 4, 36 Stat. 2, which was similar in its provisions to this section.

§ 917. (Act March 3, 1919, c. 97, § 5.) Compensation of officials during census period.

During the decennial census period the annual compensation of the officials of the Census Office shall be as follows: The Director of the Census, $7,500; the assistant director, $5,000; the chief clerk and three chief statisticians for the divisions of population, manufactures, and agriculture, respectively, $4,000 each; three other chief statisticians for the divisions of vital statistics and statistics of cities, and the chief statistician provided for in section three of this Act, $3,600 each; the geographer, $3,000; the disbursing clerk, $3,000; the appointment clerk, $2,750; the chiefs of division, $2,500 each; the private secretary to the director, $2,250; the statistical experts, $2,000 each; and the stenographers provided for in section three of this Act, $1,800 each. (40 Stat. 1292.)

This section is § 5 of an act entitled "An act to provide for the fourteenth and subsequent decennial censuses," cited above. Section 34 of said act repeals Act July 2, 1909, c. 2, § 5, 36 Stat. 2, which was similar in its provisions to this section.

§ 918. (Act March 3, 1919, c. 97, § 6.) Additional clerks and employés during census period.

In addition to the force hereinbefore provided for and to that authorized by the legislative, executive, and judicial appropriation Act for the fiscal year immediately preceding the decennial census period, there may be employed in the Census Office during the decennial census period, and no longer, as many clerks with salaries at the rates of $1,800, $1,680, $1,560, $1,440, $1,380, $1,320, $1,260, $1,200, $1,140, $1,080, $1,020, $960, and $900; one engineer at $1,200; and two photostat operators, at $1,200 each; as many skilled laborers, with salaries at the rate of not less than $720 nor more than $1,000 per annum; and as many messengers, assistant messengers, messenger boys, watchmen, unskilled laborers, and charwomen as may be found necessary for the proper and prompt performance of the duties herein required; these additional clerks and employees to be appointed by the Director of the Census: Provided, That the total number of such additional clerks with salaries at the rate of $1,440 or more per annum shall at no time exceed one hundred and fifty: Provided further, That employees engaged in the compilation or tabulation of statistics by the use of mechanical devices may be compensated on a piece-price basis to be fixed by the director. (40 Stat. 1292.)

This section is a part of § 6 of an act entitled "An act to provide for the fourteenth and subsequent decennial censuses," cited above. The remainder of said section 6 is set forth post, § 3214a. Section 34 of said act repeals Act July 2, 1909, c. 2, § 6, 36 Stat. 2, which was similar in its provisions to this section.

§ 919. (Act March 3, 1919, c. 97, § 7.) Same; examinations; selections.

The additional clerks and other employees provided for by section six shall be subject to such special test examinations as the Director of the Census may prescribe, subject to the approval of the United States Civil Service Commission, these examinations to be conducted by the United States Civil Service Commission, to be open to all applicants without regard to political party affiliations, and to be held at such places in each State as may be designated by the Civil Service Commission. Certifications shall be made by

the Civil Service Commission upon request of the Director of the Census from the eligible registers so established, in conformity with the law of apportionment as now provided for the classified service, and selections therefrom shall be made by the Director of the Census, in the order of rating: Provided, That the requirement as to conformity with the law of apportionment shall not apply to messenger boys, unskilled laborers, and charwomen: * * And provided further, That when the exigencies of the service require, the director may appoint for temporary employment not exceeding six months' duration from the aforesaid list of eligibles those who, by reason of residence or other conditions, are immediately available; and may also appoint for not exceeding six months' duration persons having had previous experience in operating mechanical appliances in census work whose efficiency records in operating such appliances are satisfactory to him, and may accept such records in lieu of the civil-service examination: And provided further, That employees in other branches of the departmental classified service who have had previous experience in census work may be transferred without examination to the Census Office to serve during the whole or a part of the decennial census period, and at the end of such service the employees so transferred shall be eligible to appointment to positions in any department held by them at date of transfer to the Census Office without examination, but no employee so transferred shall within one year after such transfer receive higher salary than he is receiving at the time of the transfer: And provided further, That during the decennial census period and no longer the Director of the Census may fill vacancies in the permanent force of the Census Office by the promotion or transfer of clerks or other employees employed on the temporary force authorized by section six of this Act: And provided further, That at the expiration of the decennial census period the term of service of all employees so transferred and of all other temporary officers and employees appointed under the provisions of this Act shall terminate, and such officers and employees shall not be eligible to appointment or transfer into the classified service of the Government by virtue of their examination or appointment under this Act: And provided further, That in the selection of the additional clerks and employees provided for by section six the Director of the Census is authorized to use, so far is practicable, the reemployment registers established by Executive order of November twenty-ninth, nineteen hundred and eighteen, so far as the same applies to permanent appointments by competition. (40 Stat. 1293.)

This section is a part of § 7 of an act entitled "An act to provide for the fourteenth and subsequent decennial censuses," cited above. The remainder of said section 7 is set forth post, § 3284. Section 34 of said act repeals Act July 2, 1909, c. 2, § 7, 36 Stat. 3, which was similar in its provisions to this section.

§ 920a. (Act March 1, 1919, c. 86, § 1.) Suspension of other work during decennial census period.

The Secretary of Commerce is authorized, in his discretion, to suspend during the decennial census period such work of the Census Office, other than the Fourteenth Census, as he may deem advisable. (40 Stat. 1256.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

CHAPTER H—THE BUREAU OF STANDARDS

§ 925. (Act March 3, 1901, c. 872, § 4.) Officers and employés.

For enumeration of officers and employés of the Bureau of Standards, with their rate of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

TITLE XII B—THE DEPARTMENT OF LABOR

Chap.		Sec.
A.	The Department and the Secretary of Labor	932
B.	The Bureau of Labor Statistics	944
C.	The Bureau of Immigration	955a
D.	The Bureau of Naturalization	961
E.	The Children's Bureau	965

CHAPTER A—THE DEPARTMENT AND THE SECRETARY OF LABOR

Sec.
932. Establishment, etc.
933. Assistant Secretary; other employés.
934. Transfer of offices to Department.
936. Custody of buildings, etc.
940. Powers of Secretary as mediator, etc.

§ 932. (Act March 4, 1913, c. 141, § 1.) Establishment, etc.

For enumeration of officers and employés of the Department of Labor, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 933. (Act March 4, 1913, c. 141, § 2.) Assistant Secretary; other employés.

Absence of appropriation.—Failure of Congress to make specific provision for salary of disbursing clerk in Department of Labor, authorized by this section, does not preclude his appointment, in view of Comp. St. 1916, § 258, stating salaries of disbursing clerks. 30 Op. Atty. Gen. 129.

§ 934. (Act March 4, 1913, c. 141, § 3.) Transfer of offices to Department.

Claims under Workmen's Compensation Act.—Under this section and section 944, final authority to determine claims arising under the Workmen's Compensation Act of May 30, 1908 (35 Stat. 556), as amended, rests in the Secretary of Labor, and not the Commissioner of Labor Statistics. 30 Op. Atty. Gen. 145.

§ 936. (Act March 4, 1913, c. 141, § 6.) Custody of buildings, etc.

Cited without definite application, 30 Op. Atty. Gen. 145.

§ 940. (Act March 4, 1913, c. 141, § 8.) Powers of Secretary as mediator, etc.

The legislative, executive, and judicial appropriation act for the fiscal year 1920, Act March 1, 1919, c. 86, § 1. 40 Stat., contains the following provision: "To enable the Secretary of Labor to exercise the authority vested in him by section 8 of the Act creating the Department of Labor, and to appoint commissioners of conciliation, for per diem in lieu of subsistence at not exceeding $4, traveling expenses, and not to exceed $12,000 for personal services in the District of Columbia, $175,000."

CHAPTER B—THE BUREAU OF LABOR STATISTICS

§ 944. (Act March 4, 1913, c. 141, § 3.) Designations of Bureau and of Commissioner of Labor Statistics; powers, etc.

Claims under Workmen's Compensation Act.—Under this section and section 934, final authority to determine claims arising under the Workmen's Compensation Act of May 30, 1908 (35 Stat. 556), as amended, rests in the Secretary of Labor, and not the Commissioner of Labor Statistics. 30 Op. Atty. Gen. 145.

§ 947. (Act June 13, 1888, c. 389, § 2.) Commissioner.

For enumeration of officers and employés in the Bureau of Labor Statistics, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

CHAPTER C—THE BUREAU OF IMMIGRATION

§ 955a. (Act March 1, 1919, c. 86, § 1.) Assistant Commissioner General.

Bureau of Immigration: * * Assistant Commissioner General, who shall also act as chief clerk and actuary, $3,500; private secretary, $1,800. * * (40 Stat. 1263.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 959. (Act Feb. 5, 1917, c. 29, § 23.) Administration of immigration laws; contracts; detail of officers.

The Commissioner General of Immigration shall perform all his duties under the direction of the Secretary of Labor. Under such direction he shall have charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction, and supervision of all officers, clerks, and employees appointed thereunder; he shall establish such rules and regulations, prescribe such forms of bond, reports, entries, and other papers, and shall issue from time to time such instructions not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this Act and for protecting the United States and aliens migrating thereto from fraud and loss, and shall have authority to enter into contract for the support and relief of such aliens as may fall into distress or need public aid, and to remove to their native country, at any time within three years after entry, at the expense of the appropriations for the enforcement of this Act, such as fall into distress or need public aid from causes arising subsequent to their entry and are desirous of being so removed; he shall prescribe rules for the entry and inspection of aliens coming to the United States from or through Canada and Mexico, so as not unnecessarily to delay, impede, or annoy persons in ordinary travel between the United States and said countries, and shall have power to enter into contracts with transportation lines for the said purpose. It shall be the duty of the Commissioner General of Immigration to detail officers of the Immigration Service from time to time as may be necessary, in his judgment, to secure information as to the number of aliens detained in the penal, reformatory, and charitable institutions (public and private) of the several States and Territories, the District of Columbia, and other territory of the United States, and to inform the officers of such institutions of the

provisions of law in relation to the deportation of aliens who have become public charges. He may, with the approval of the Secretary of Labor, whenever in his judgment such action may be necessary to accomplish the purposes of this Act, detail immigration officers for service in foreign countries; and, upon his request, approved by the Secretary of Labor, the Secretary of the Treasury may detail medical officers of the United States Public Health Service for the performance of duties in foreign countries in connection with the enforcement of this Act. (39 Stat. 892.)

This section and the section next following were sections 23 and 30 of the Immigration Act of 1917, entitled "An act to regulate the immigration of aliens to, and the residence of aliens in, the United States," cited above. Other sections of this act are set forth post, under Title XXIX, "Immigration," c. A.

Provisions similar to those of this section were made by Act Feb. 20, 1907, c. 1134, § 22, 34 Stat. 905, repealed by section 38 of this act, post, § 4289¼u.

Notes of Decisions

See Low Kwai v. Backus (C. C. A. 1916) 229 F. 481.

Rules and regulations.—Since such rules and regulations as the Commissioner General of Immigration was authorized to establish under section 22 of the Act of February 20, 1907, 34 Stat. 898, 903, must be consistent with the act itself, they could only have the force and effect of law when not in contravention of law. Nederlansch-Amerikaansche Stoomvart Maatschappij (Holland-America Line) v. United States, 53 Ct. Cl. 522.

§ 960. (Act Feb. 5, 1917, c. 29, § 30.) Division of Information; distribution of aliens; agents of States.

There shall be maintained a division of information in the Bureau of Immigration; and the Secretary of Labor shall provide such clerical and other assistance as may be necessary. It shall be the duty of said division to promote a beneficial distribution of aliens admitted into the United States among the several States and Territories desiring immigration. Correspondence shall be had with the proper officials of the States and Territories, and said division shall gather from all available sources useful information regarding the resources, products and physical characteristics of each State and Territory, and shall publish such information in different languages and distribute the publications among all admitted aliens at the immigrant stations of the United States and to such other persons as may desire the same. When any State or Territory appoints and maintains an agent or agents to represent it at any of the immigrant stations of the United States, such agents shall, under regulations prescribed by the Commissioner General of Immigration, subject to the approval of the Secretary of Labor, have access to aliens who have been admitted to the United States for the purpose of presenting, either orally or in writing, the special inducements offered by such State or Territory to aliens to settle therein. While on duty at any immigrant station such agents shall be subject to all the regulations prescribed by the Commissioner General of Immigration, who, with the approval of the Secretary of Labor, may, for violation of any such regulations, deny to the agent guilty of such violation any of the privileges herein granted. (39 Stat. 895.)

See note to § 959, ante.

Provisions similar to those of this section were made by Act Feb. 20, 1907, c. 1134, § 40, 34 Stat. 909, repealed by section 38 of this act, post, § 4829¼u.

§ 960a. (Act July 1, 1918, c. 113, § 1.) Motor vehicles.

The purchase, use, maintenance, and operation of horses and motor vehicles required in the enforcement of the immigration and Chinese exclusion laws outside of the District of Columbia may be contracted for and the cost thereof paid from the appropriation for

the enforcement of those laws, under such terms and conditions as the Secretary of Labor may prescribe. (40 Stat. 695.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

CHAPTER D—THE BUREAU OF NATURALIZATION

§ 961. (Act March 4, 1913, c. 141, § 3.) Establishment of Bureau, etc.

For enumeration of officers and employés in the Bureau of Naturalization, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

§ 963. (Act June 29, 1906, c. 3592, § 1.) Former Bureau, etc.

Filing certificate in naturalization proceedings.—Under the Naturalization Act filing by petitioner of certificate of Department of Labor, is a matter of substance, and cannot be dispensed with by the court. U. S. v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321, reversing decree 230 F. 950, 145 C. C. A. 144, Ann. Cas. 1917C, 41, which affirmed (D. C.) 217 F. 169.

Under the Naturalization Act, an immigrant, though he did not file with his declaration of intention a certificate of landing, but erroneously stated that he landed before the law went into effect, will not, seven years afterward, be denied citizenship on that ground; a certificate of landing being filed before application for final papers. In re Titone (D. C.) 233 F. 175.

Cited without definite application, In re Cook (D. C.) 239 F. 782; In re Famolaro (D. C.) 247 F. 596.

CHAPTER E—THE CHILDREN'S BUREAU

§ 965. (Act April 9, 1912, c. 73, § 2.) Chief of Bureau, etc.

For enumeration of officers and employés in the Children's Bureau, with their rates of compensation, see Act March 1, 1919, c. 86, § 1, 40 Stat. 1213.

TITLE XII C—THE JUDICIAL CODE*

Chap.		Sec.
1.	District Courts—Organization	968
2.	District Courts—Jurisdiction	991
3.	District Courts—Removal of Causes	1010
4.	District Courts—Miscellaneous Provisions	1023
5.	District Courts—Districts, and Provisions Applicable to Particular States	1051
6.	Circuit Courts of Appeals	1109
7.	The Court of Claims	1127
8.	The Court of Customs Appeals	1179a
10.	The Supreme Court	1207
11.	Provisions Common to More than one Court	1233
12.	Juries	1252
13.	General Provisions	1266
14.	Repealing Provisions	1274

CHAPTER ONE—DISTRICT COURTS—ORGANIZATION

Sec.
968. District courts established, etc.
968h. District judges; additional for western district of Texas.
968i. Same; additional for northern district of Texas.
968j. Same; vacancy in office for northern district of Texas.
969. District judges; salaries.
970. Clerks.
972a. Criers and bailiffs.
976. Courts always open, etc.
980. Designation of judge in case of disability.
981. Accumulation of business; designation of another judge.
984. Designation to aid another judge.
985. Circuit judge designated to hold district court.
988. Affidavit of personal bias or prejudice of judge.

§ 968. (Jud. Code, § 1, as amended, Act July 30, 1914, c. 216.) District courts established, etc.

Territorial jurisdiction of courts.—Under Judicial Code, §§ 69–115 (Comp. St. 1916, §§ 1051–1106), and in view of this section, the jurisdiction of the several District Courts is coextensive with the boundaries of the judicial district, and extends no further, save as Congress has expressly extended it. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

Cited without definite application, Guerini Stone Co. v. P. J. Carlin Const. Co., 36 S. Ct. 300, 60 L. Ed. 636; Southern Pacific Co. v. Jensen, 37 S. Ct. 524, 61 L. Ed. 1086, L. R. A. 1918C, 451, Ann. Cas. 1917E, 900.

§ 968h. (Act Feb. 26, 1917, c. 120.) District judges; additional for western district of Texas.

The President of the United States, by and with the advice and consent of the Senate, shall appoint an additional judge of the district court of the United States for the Western District of Texas, who shall possess the same powers, perform the same duties, and receive the same compensation and allowance as the present judge

*The following new acts, not expressly amending the Judicial Code or made a part thereof by Congressional action, are carried into the Code in this compilation in order that matters of a similar nature may be brought together:

Act Feb. 22, 1917, c. 113, 39 Stat. 929, post, § 991a.
Act Feb. 26, 1917, c. 120, 39 Stat. 938, post, § 968h.
Act Feb. 26, 1917, c. 122, § 1, 39 Stat. 939, post, § 1095a.
Act Feb. 26, 1917, c. 122, § 2, 39 Stat. 939, post, § 1095b.
Act July 1, 1918, c. 113, § 1, 40 Stat. 684, post, § 972a.
Act Feb. 25, 1919, c. 29, § 5, 40 Stat. 1157, post, § 1179a.
Act Feb. 26, 1919, c. 50, § 1, 40 Stat. 1183, post, § 968i.
Act Feb. 26, 1919, c. 50, § 2, 40 Stat. 1183, post, § 968j.
Res. Feb. 26, 1919, c. 54, 40 Stat. 1184, post, § 1083a.
Act March 1, 1919, c. 87, 40 Stat. 1270, post, § 1095bb.
Act March 1, 1919, c. 89, 40 Stat. 1271, post, § 1057a.

of said district, and whose official place of residence shall be maintained at El Paso until otherwise provided by law. (39 Stat. 938.)

This section was an act entitled "An act to provide for an additional judge in the State of Texas," cited above.

§ 968i. (Act Feb. 26, 1919, c. 50, § 1.) Same; additional for northern district of Texas.

That the President of the United States, by and with the advice and consent of the Senate, shall appoint an additional judge of the district court of the United States for the northern judicial district of the State of Texas, who shall possess the same powers, perform the same duties, and receive the same compensation and allowance as the present judge of said district. (40 Stat. 1183.)

This section, and the section next following, are an act entitled "An act providing for the appointment of an additional district judge for the northern judicial district of the state of Texas," cited above.

§ 968j. (Act Feb. 26, 1919, c. 50, § 2.) Same; vacancy in office for northern district of Texas.

Whenever a vacancy shall occur in the office of the district judge for the northern district of Texas senior in commission such vacancy shall not be filled, and thereafter there shall be but one district judge in said district. (40 Stat. 1183.)

See note to § 968i, ante.

§ 969. (Jud. Code, § 2, as amended, Act Feb. 25, 1919, c. 29, § 1.) District judges; salaries.

Each of the district judges, including the judges in Porto Rico, Hawaii, and Alaska exercising Federal jurisdiction, shall receive a salary of $7,500 a year, to be paid in monthly installments. (40 Stat. 1156.)

This section was amended by Act Feb. 25, 1919, c. 29, § 1, 40 Stat. 1156, cited above, by inserting, after the words "district judges," the words "including the judges in Porto Rico, Hawaii, and Alaska exercising Federal jurisdiction," and by increasing the annual salary from $6,000 to $7,500. Section 7 of said Act Feb. 25, 1919, c. 29, 40 Stat. 1156, provides that the act shall take effect and be in force on and after the first day of the month next following its approval.

Section 3 of said Act Feb. 25, 1919, c. 29, 40 Stat. 1157, provides that "the judges of the Supreme Court of the District of Columbia shall receive salaries the same as salaries provided by this act to be paid to judges of district courts of the United States, and such salaries shall be paid as now provided by law."

§ 970. (Jud. Code, § 3.) Clerks.

Cited without definite application,
U. S. v. Oliphant (C. C. A.) 230 F. 1.

§ 972a. (Act July 1, 1918, c. 113, § 1.) Criers and bailiffs.

All persons employed under section seven hundred and fifteen of the Revised Statutes shall be deemed to be in actual attendance when they attend upon the order of the courts: Provided further, That no such persons shall be employed during vacation. (40 Stat. 684.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. R. S. § 715, is section 5 of the Judicial Code (§ 972).

R. S. § 715, mentioned above, is set forth in 1916 U. S. Comp. St. as § 972.

§ 976. (Jud. Code, § 9.) Courts always open, etc.

6. Control over judgments or decrees in general.—An application for the modification of a judgment in a condemnation proceeding, giving the petitioner one year in which to pay the amount of the award, so as to extend such time, was addressed to the discretion of the court. City of Des Moines, Iowa, v. Des Moines Water Co. (C. C. A.) 230 F. 570.

In a proceeding by a city to condemn a waterworks plant and system, a judgment was entered fixing the value of the plant as of April 1, 1912, giving the city one year in which to pay the award, and reserving for future consideration questions as to the value of additions and extensions subsequent to April 1, 1912. It was necessary for the city to issue bonds, and during the year allow-

ed for payment it submitted the question of issuing such bonds to the voters at three different elections; but, though there was a majority in favor of their issuance at each election, a majority of all the votes cast at the last preceding municipal election was not cast in favor of the issuance of the bonds, as required by statute. Held that, even though the judgment was not final, the court did not abuse its discretion in refusing to modify the judgment by extending the time within which the city might make payment. Id.

Where defendant, whose first answer was not properly verified, was not a party to the disloyalty of plaintiff's counsel in refusing to enter default, and was guilty of no fraud in procuring a dismissal for want of prosecution, the dismissal will not be vacated. S. M. Hamilton Coal Co. v. Watts, 232 F. 832, 147 C. C. A. 26, reversing order (D. C.) Watts v. S. M. Hamilton Coal Co., 219 F. 1003.

As there are no terms in bankruptcy, an order of the District Court in a bankruptcy matter may be revoked months after made. In re Barker Piano Co., 233 F. 522, 147 C. C. A. 408.

A docket entry of dismissal, made pursuant to an order of the District Court intended to clear its docket of stale cases, held not a "final judgment," depriving the court of power to reinstate the cause, though the term had expired. U. S. v. Sixty-Five Cases of Glove Leather (D. C.) 254 F. 211.

Where, after a docket entry of dismissal was made under a general order, the United States attorney put the case on the calendar at two different terms, and it was postponed at the instance of defendant, or by agreement, held, that restoration of the case to the docket cannot be denied, on the theory that the United States was guilty of laches. Id.

7. Power of court over judgment or decree during term.—Judgments or orders held generally under the control of the court during the term, and subject to be set aside, vacated, modified, or annulled. Winslow v. Staab, 242 F. 426, 155 C. C. A. 202, affirming decree (D. C.) 233 F. 305.

8. Power of court over judgment or decree after term.—In a proceeding by a city to condemn a waterworks plant and system, a judgment fixing the value of the water plant as of April 1, 1912, giving the city one year in which to make payment thereof, and reserving for future settlement questions as to the value of additions and extensions made subsequent to April 1, 1912, was not an interlocutory but a "final judgment," which the court was powerless to modify, after the term at which it was rendered had expired, with respect to the time within which payment might be made by the city. City of Des Moines, Iowa, v. Des Moines Water Co. (C. C. A.) 230 F. 570.

After the expiration of the term at which it was rendered, an order dismissing a suit cannot be vacated, save for special circumstances, as clerical errors, or errors which could formerly have been reached by the writ coram nobis. S. M. Hamilton Coal Co. v. Watts, 232 F. 832, 147 C. C. A. 26, reversing order (D. C.) Watts v. S. M. Hamilton Coal Co., 219 F. 1003.

It is the general rule that after the term has expired all final judgments and decrees pass beyond the control of the court, unless steps were taken during the term to set aside, modify, or correct them. Winslow v. Staab, 242 F. 426, 155 C. C. A. 202, affirming decree (D. C.) 233 F. 305.

After the expiration of the term at which it was rendered, a judgment cannot be vacated by the federal courts on mere motion. Forty Fort Coal Co. v. Kirkendall (D. C.) 233 F. 704.

A District Court loses power over its own final judgments at the close of the term at which rendered, if such term is not continued for the purpose of the particular case. U. S. v. Sixty-Five Cases of Glove Leather (D. C.) 254 F. 211.

12. End of term.—A term of federal District Court, Southern District of Florida, which under this section and Judicial Code, §§ 10, 11, and 76 (Comp. St. 1916, §§ 977, 978, 1061), must always be open as a court of admiralty and equity, was not brought to an end, so far as criminal business was concerned, so as to prevent granting of new trial, by adjournment in accordance with court rule requiring, pending temporary absence of the judge, the clerk be present for transaction of business under orders of the judge. Abbott v. Brown, 36 S. Ct. 689, 241 U. S. 606, 60 L. Ed. 1199.

The federal District Court held open from the beginning of each session to its end for the return of writs on the criminal side though adjourned as a criminal court. U. S. v. Philadelphia & R. Ry. Co. (D. C.) 237 F. 292.

§ 980. (Jud. Code, § 13.) Designation of judge in case of disability.

Acts of designated judge.—A District Judge appointed by a Circuit Judge under Rev. St. § 596, post, § 984, to hold the Circuit Court for a district other than his own district, was authorized to determine a case tried at such term of the Circuit Court, though it did not appear that the appointment was made in response to a certificate of the clerk, as section 596 does not require the

clerk's certificate as a condition to the exercise of the power of appointment thereunder, as is required by this section and Rev. St. § 592 (Comp. St. 1916, § 981). In re National Telephone Mfg. Co. (C. C. A.) 230 F. 785.

§ 981. (Jud. Code, § 14.) Accumulation of business; designation of another judge.

Extent of authority of designated judge.—See In re National Telephone Mfg. Co. (C. C. A.) 230 F. 785; note under § 980.

§ 984. (Jud. Code, § 17.) Designation to aid another judge.

Contempt proceedings.—Where a newspaper is charged with contempt in publications concerning a judge sitting in a pending suit, though such judge has jurisdiction to dispose of the contempt proceedings, the contempt being of a direct character, if there be sufficient time, he may call in another judge. Toledo Newspaper Co. v. United States, 237 F. 986, 150 C. C. A. 636, affirming judgment (D. C.) U. S. v. Toledo Newspaper Co., 220 F. 458.

Extent of authority of designated judge.—See In re National Telephone Mfg. Co. (C. C. A.) 230 F. 785; note under § 980.

§ 985. (Jud. Code, § 18, as amended, Act Oct. 3, 1913, c. 18.) Circuit judge designated to hold district court.

Trial in district where offense was committed.—Assignment of judge of one federal district and circuit to duty in another, under this section as amended by Act Oct. 3, 1913, 38 Stat. 203, does not destroy the latter district and thus violate the rights under Const. U. S. Amend. 6, by subjecting one tried before him to trial in a district not established when the offense was committed. Lamar v. U. S., 36 S. Ct. 535, 241 U. S. 103, 60 L. Ed. 912, affirming judgment 227 F. 1019, 141 C. C. A. 668.

As usurpation of power of appointment.—Power of appointment and confirmation vested by federal Constitution in President and Senate is not usurped by assignment under this section as amended October 3, 1913, 38 Stat. 203, of a judge of one federal district and circuit to duty in another district and circuit. Lamar v. U. S., 36 S. Ct. 535, 241 U. S. 103, 60 L. Ed. 912, affirming judgment 227 F. 1019, 141 C. C. A. 668.

§ 988. (Jud. Code, § 21.) Affidavit of personal bias or prejudice of judge.

Disqualification.—Judge, owning stock in oil company against which suit was brought by the government as part of a scheme or plan of litigation, held disqualified to sit in a suit against another oil company, brought as part of the same scheme. In re Honolulu Consol. Oil Co., 243 F. 348, 156 C. C. A. 128.

Necessity of proceeding under statute.—A defendant, who complains that he cannot obtain a fair trial on account of prejudice or bias of the judge, must apply for a transfer in accordance with this section, and where no such application has been made, a defendant cannot introduce evidence of an otherwise collateral matter for the purpose of discrediting the judge and attempting to show his animus. Wierse v. U. S. (C. C. A.) 252 F. 435.

Time of filing.—Where District Judge was proceeding to dispose of petitioner's motion to fix an upset price below which mortgaged property should not be sold, held, that he could not be removed by an affidavit charging bias and prejudice. In re Equitable Trust Co. of New York, 232 F. 836, 147 C. C. A. 30.

Affidavit of disqualification of judge, required by this section, before term, unless good cause is shown, being tendered on the eve of second trial, six weeks after mandate of appellate court went down, was too late; the only excuse being that mandate was not filed in trial court till after term began. Shea v. United States (C. C. A.) 251 F. 433.

Striking out affidavit.—Though it would have been better practice to have permitted filing of affidavit of prejudice of judge, and then strike it, refusing to permit it to be filed was not prejudicial. Shea v. U. S. (C. C. A.) 251 F. 433.

CHAPTER TWO—DISTRICT COURTS—JURISDICTION

Sec.
991. Original jurisdiction.
Par. 1. United States are plaintiffs; civil suits at common law or in equity.
2. Crimes and offenses.
3. Admiralty causes, seizures, and prizes.
7. Suits under patent, copyright, and trade-mark laws.
8. Suits for violation of interstate commerce laws.
9. Penalties and forfeitures.
14. Suits to redress deprivation of civil rights.
16. Suits against national banking associations.
18. Suits against consuls and vice consuls.
20. Suits against United States.
24. Suits concerning allotments of land to Indians; decrees; appeal.
991a. Same; bills of interpleader by insurance companies.
992. Commerce Court abolished, etc.
993. Same; jurisdiction.
994. Venue of suits.
996. Jurisdiction of the court, how invoked.
997. Suits to enjoin, etc.
998. Interlocutory injunctions.
1004. Suits to be against United States.
1005. Attorney General to control all cases, etc.
1006. Complainants may appear, etc

§ 991. (Jud. Code, § 24.) Original jurisdiction.

(1) United States are plaintiffs; civil suits at common law or in equity.

Notes of Decisions

See Pickering Land & Timber Co. v. Wisby (D. C.) 242 F. 993.

I. CIVIL SUITS AT COMMON LAW OR EQUITY

1. Nature and extent of jurisdiction.—See Ivanoff v. Mechanical Rubber Co. (D. C.) 232 F. 173; Champion Spark Plug Co. v. Champion Ignition Co. (D. C.) 247 F. 200.

15. Administration and probate.—Federal court cannot take jurisdiction of a bill involving administration of an estate, on theory that administrators appointed by court of ordinary of Georgia were not officers of court because of fraud or irregularities in their appointment. Smith v. Jennings, 238 F. 48, 151 C. C. A. 124, reversing order (D. C.) Jennings v. Smith, 232 F. 921.

Probate proceedings are not within words "suit of civil nature, at law or in equity," in this section. Powell v. Watkins, 90 S. E. 207, 172 N. C. 244.

20. Injunction.—When diversity of citizenship appears, and property rights of street railroad company which were valuable were involved, in suit to obtain protection from striking employés, federal court has jurisdiction. Puget Sound Traction, Light & Power Co. v. Whitley (D. C.) 243 F. 945.

27. Trusts.—A draft or check was purchased in England and sent by the purchaser to a bank for plaintiff's account. It was presented for payment at the clearing house and credited to the payee, but subsequently returned on the ground that the drawee had received no instructions to pay it; whereupon the payee bank drew its check and in form repaid the amount to the drawee. Before payment, the drawer made an assignment for the benefit of creditors, and a petition in bankruptcy was filed against him in New York. A creditor attempted to attach the account in the drawee bank, and plaintiff sued the bank to declare a trust for plaintiff and named as defendants the drawee bank, the attaching creditor, the purchaser of the draft, the drawer, his assignee, the petitioning creditors in bankruptcy, and the receiver in bankruptcy. Held that, there being the requisite diversity of citizenship between plaintiff and the drawee bank, the court had jurisdiction, since, if equitable jurisdiction did not exist, jurisdiction at law existed on the theory that there was a claim in personam against the drawee for money had and received under a mistake of fact and under the new equity rules the claim would be disposed of whether at law or in equity. Eastman Kodak Co. v. National Park Bank (D. C.) 231 F. 320.

II. SUITS BY THE UNITED STATES OR ITS OFFICERS

28. United States as party.—Under this section, federal court held without jurisdiction of suit by government contractor against subcontractor; the government being a stranger to the relation between them, though made a party. National Surety Co. v. Washington Iron Works (D. C.) 243 F. 260.

III. LAND GRANTS FROM DIFFERENT STATES

34. Grounds of jurisdiction.—One claiming title to land under a grant from one state as to land situated therein may sue to recover it from citizens of another state claiming under a grant from that state, in the United States courts of the first state, and have the title finally adjudicated by that court. Ferguson v. Babcock Lumber & Land Co. (C. C. A.) 252 F. 705.

IV. AMOUNT IN CONTROVERSY

(A) Constructions and scope of provision

36. Purpose and effect of provision.—Where a suit to foreclose a mortgage accrued prior to January 1, 1912, and the amount in controversy was more than $2,000, but less than $3,000, a federal jurisdiction was preserved by Judicial Code, § 299 (Comp. St. 1916, § 1276). Barnes v. Cady, 232 F. 318, 146 C. C. A. 366, affirming order (D. C.) Cady v. Barnes, 208 F. 359.

Notwithstanding Judicial Code, § 299 (Comp. St. 1916, § 1276), change in jurisdictional amount contained in this section held to apply to suits for acts done or causes arising prior to the taking effect thereof. Sloane v. Kramer Bros. & Co. (D. C.) 230 F. 727.

Statutes changing jurisdiction of federal courts, or amount in controversy necessary to give jurisdiction, held to apply, unless restricted without regard to time remedial right or cause of action accrues. Id.

(B) Cases subject to pecuniary limitation

38. Actions between citizens of different states or aliens.—See Pinel v. Pinel, 36 S. Ct. 416, 60 L. Ed. 817.

Under this subdivision diversity of citizenship of the parties will not give the federal court jurisdiction, where the amount involved is less than $3,000. New York Cent. R. Co. v. Mutual Orange Distributors (C. C. A.) 251 F. 230.

(C) Cases not subject to pecuniary limitation

46½. Suit by federal court receiver.—A suit by receivers appointed by a federal court to recover the possession of standing timber claimed by them as part of their trust estate, which they were prevented from cutting by the owner of the land, and to recover damages, was within the jurisdiction of the court appointing them, irrespective of the citizenship of the parties or the amount involved. Kirkland v. Knox (C. C. A.) 230 F. 806.

(D) Matter in dispute and amount or value claimed or involved

53. Amount claimed or value in general.—Jurisdiction of federal court held dependent on amount claimed, unless it appears from face of complaint that plaintiff cannot recover jurisdictional amount, and that part of claim is colorable and fictitious, and inserted in bad faith. Le Roy v. Hartwick (D. C.) 229 F. 857.

57. —— Bonds.—In suit to foreclose mortgage securing railroad bonds, held, that federal district court had jurisdiction, although amount of interest on complainant's bonds did not equal $3,000, the principal exceeding $1,000,000, having become due because of default. Lowenthal v. Georgia Coast & P. R. Co. (D. C.) 233 F. 1010.

67. —— Quieting title and avoidance of conveyances.—Basis of relief against cloud on title held threatened attack on title and existence of apparent cloud, and it would seem that damages for trespass cannot be added to value of land to make jurisdictional amount. Sloane v. Kramer Bros. & Co. (D. C.) 230 F. 727.

Where land worth $7,500 was mortgaged for $2,500, suit by mortgagee who purchased at foreclosure sale to quiet title to nearly all of land on theory mortgagor had forfeited redemption rights by withholding part of land and to recover such land, amount involved was within jurisdiction of federal court, though land withheld was worth less than $3,000. Connecticut General Life Ins. Co. v. Welden (D. C.) 246 F. 265.

73. —— Torts.—Where partnership was insolvent and had only 10 days to run, no such sum could have been involved in action for its wrongful termination as is required to confer jurisdiction on federal court. Kebart v. Arkin, 232 F. 454, 146 C. C. A. 448.

As only compensatory damages are collectible, action on constable's bond in federal court for levy of wrongful execution will, under Judicial Code, § 37 (Comp. St. 1916, § 1019), be dismissed, where property levied on was of value much less than $3,000, the jurisdictional amount in District Court. Sclarenco v. Chicago Bonding Co. (D. C.) 236 F. 592.

74. Injunctions.—Where prayer of complaint was to enjoin defendant from exercising control over land forever, and not for time for which it was demised, value of land, and not rents reserved by lease, fixes amount in controversy. Port of Seattle v. Oregon & W. R. Co. (D. C.) 242 F. 986.

76. —— Infringement of trade-marks and trade-names and unfair competition.—The federal court had jurisdiction of a suit for unfair and fraudulent competition, where the value of the right to be protected by the injunction exceeded the jurisdictional amount, even though the damages recovered were less than such amount. Ury v. Mazer Cigar Mfg. Co. (C. C. A.) 253 F. 551.

77. —— **Injury to land.**—In suit for injuries to land by construction of a drainage ditch, federal court is without jurisdiction where the damage was less than $3,000 and if upon final hearing that fact appears, suit must be dismissed. Bronson v. Boards of Sup'rs of Emmet and Kossuth Counties, Iowa (D. C.) 237 F. 212.

85. —— **Taxes and assessments.**—Where bill showed jurisdictional amount in controversy in B. county, between one of complainants and all defendants, except tax collector of D. county, joinder of other parties complainant and said tax collector defendant ceases to be a jurisdictional question, and bill will not be dismissed for want of jurisdiction of federal court. Everglades Drainage League v. Napoleon B. Broward Drainage Dist. (D. C.) 253 F. 246.

87. —— **Unlawful interference with business**—Where the property which strikers were threatening to destroy exceeded $3,000 in value, the federal court had jurisdiction, though less than $3,000 worth of property had been already destroyed. Tri-City Central Trades Council v. American Steel Foundries, 238 F. 728, 151 C. C. A. 578.

88. **Effect of counterclaim and cross-bill.**—For purpose of determining jurisdiction of federal court, matter involved includes demands of both plaintiff and defendant, where defendant pleaded set-off. Central Commercial Co. v. Jones-Dusenbury Co. (C. C. A.) 251 F. 13.

Where plaintiff's pleading showed only $2,950 in controversy, cause held not removable, though defendant pleaded a small counterclaim. Harley v. Firemen's Fund Ins. Co. (D. C.) 245 F. 471.

(E) Aggregation or joinder of claims

92. **Common interest of several plaintiffs.**—A suit by two children to establish title to an undivided interest in their deceased father's real property based upon his mistaken omission to provide for them in his will does not involve the amount requisite to the jurisdiction of the federal District Court, where the interest of neither complainant taken separately equals such amount. Pinel v. Pinel, 36 S. Ct. 416, 240 U. S. 594, 60 L. Ed. 817.

93. **Distinct demands by several plaintiffs.**—Where several holders of life policies with tontine features united in bill against company, held that, as their titles were not common, their claims could not be aggregated for purpose of giving the federal District Court jurisdiction. Eberhard v. Northwestern Mut. Life Ins. Co., 241 F. 353, 154 C. C. A. 233.

Though suit by several policy holders be treated as class action, held, that their claims could not be aggregated for purpose of giving federal court jurisdiction, being based on separate titles. Id.

Where a number of persons sued complainant in the state court for fraud in the sale of corporate stock, the amounts of their several distinct claims cannot be aggregated, so as to give the federal court jurisdiction of a bill against them all to restrain multiplicity of suits. Robinson v. Wemmer (D. C.) 253 F. 790.

95. **Suit by one for himself and others similarly situated.**—A suit by a state, for the use of depositors in a state bank, citizens of such state, against a former bank commissioner, now a nonresident, and the nonresident surety on his bond, to recover the several losses of such depositors from the neglect of the commissioner, may not be removed to the federal court for diverse citizenship; none of the individual claims amounting to $3,000. Title Guaranty & Surety Co. of Scranton, Pa., v. State of Idaho, 36 S. Ct. 345, 240 U. S. 136, 60 L. Ed. 566, dismissing appeal State v. Title Guaranty & Surety Co. of Scranton, Pa., 152 P. 189, 27 Idaho, 752.

97. **Actions by assignees and indorsees.**—Where creditor, whose claim was less than $3,000, by assignment, which was absolute, acquired claims of other nonresidents, which in aggregate, with his own, exceeded $3,000, federal courts have jurisdiction of his suit; there being diversity of citizenship. Kentucky Wagon Mfg. Co. v. Jones & Hopkins Mfg. Co., 248 F. 272, 160 C. C. A. 350.

(F) Interest and costs

98. **Interest.**—In assumpsit for damages for failure to take and pay for rosin purchased, it was permissible to include in damages loss on resale of rosin and interest for purpose of fixing amount in controversy, so as to give federal court jurisdiction, although under statute interest as such cannot be included in estimating jurisdictional amount. Central Commercial Co. v. Jones-Dusenbury Co. (C. C. A.) 251 F. 13.

In an action for damages for fraudulent representations as to value of stock purchased by plaintiff, the jury might allow plaintiff an annual percentage, not as collateral interest, but as an element in giving her entire compensation for her loss, and such damages, although computed at a percentage rate, would not be that "interest" which the jurisdictional statute (Act March 3, 1887, § 1; Judicial Code, § 24 [Comp. St. 1916, § 991]) says must be excluded. Chesbrough v. Woodworth (C. C. A.) 251 F. 881.

Where life policy, which made no provision for payment of interest, entitled beneficiary to $3,000 federal District Court cannot despite diversity of citizenship of parties entertain juris-

diction under Judicial Code, § 24, of action by beneficiary, who demanded sum of $3,000, with interest. Voorhees v. Ætna Life Ins. Co. (D. C.) 250 F. 484.

Where plaintiff demanded recovery of a sum less than $3,000, with interest from the date of accrual, the federal court is without jurisdiction, though claim, with interest from the time of accrual, would exceed $3,000, for the demand for interest is a demand for interest as such, and not an interest calculation as a means of arriving at the amount of damages to be awarded on the principal demand. A. H. Marshall Co. v. Buick Motor Co. (D. C.) 251 F. 685.

100. Attorney's fees and costs.—An interest in a judgment to which plaintiff's counsel is entitled as a fee is a part of the judgment, for the purpose of determining the amount in controversy in a suit to set aside an assignment thereof. Lee Line Steamers v. Robinson, 232 F. 417, 146 C. C. A. 411.

Where a purchaser from a New Mexico county of state tax certificates sued to enjoin the treasurer from issuing redemption certificates, without payment of certain costs and penalties which had accrued up to the date of purchase, such costs, etc., which exceeded the amount necessary to give the federal court jurisdiction, under this section, were not "costs," as used in the provision declaring that such accessory demands cannot be counted in computing the jurisdictional amount. Glen Inv. Co. v. Romero (C. C. A.) 254 F. 239.

Where right to attorney's fees stipulated for in note sued on, dependent upon what law controlled, was in controversy, held, that the amount of the fee was to be included to make up the jurisdictional amount. Le Roy v. Hartwick (D. C.) 229 F. 857.

(G) *Determination of amount*

101. Objections to amount and disposition thereof.—Where suit in federal court for mandatory injunction involved public questions, court may on its own motion raise questions whether amount in controversy was within its jurisdictional limit, and whether complainant had an adequate remedy at law. Gaines v. Baltimore & C. S. S. Co. (D. C.) 234 F. 786.

Where the jurisdictional question is first raised upon the trial, if defendant then elects to plead it, the court should determine the facts governing it; and if it is decided against defendant, or if he waives his right to object, the court may proceed to try the merits. Kever v. Philadelphia & Reading Coal & Iron Co. (D. C.) 234 F. 814.

103. Amount claimed as test.—The damages claimed fix the amount in controversy for purpose of determining whether federal court has jurisdiction, and not the recovery. Central Commercial Co. v. Jones-Dusenbury Co. (C. C. A.) 251 F. 13.

Relative to jurisdiction of federal court, when damages recoverable on facts stated may be more or less than $3,000 as jury finds it, amount alleged and claimed is the amount in controversy; but when the law fixes damages on facts stated, that sum controls. Federal Wall Paper Co. v. Kempner (D. C.) 244 F. 240.

108. Effect of verdict or judgment for less than jurisdictional amount.—Where plaintiff in good faith believed he was entitled to recover from defendants a sum greater than $3,000, the federal courts have jurisdiction, notwithstanding plaintiff recovered a less sum or nothing at all. Garrett v. Mallard, 238 F. 335, 151 C. C. A. 351.

Where complaint alleged damages at a sum beyond $3,000, and it did not appear it was impossible for plaintiff to recover that amount and evidence did not show that damages had been fraudulently magnified, jurisdiction cannot be questioned because recovery was less than $3,000. Mullins Lumber Co. v. Williamson & Brown Land & Lumber Co., 246 F. 232, 158 C. C. A. 392.

Where the amount claimed in a complaint would give a federal court jurisdiction, the fact that upon the trial the amount recovered is less than the jurisdictional amount does not defeat the court's jurisdiction. Le Roy v. Hartwick (D. C.) 229 F. 857.

(H) *Allegations in pleadings*

109. Necessity of allegation of jurisdictional amount.—It is not absolutely necessary that a bill in equity in a federal court should contain an allegation that the amount in controversy exceeds $3,000, where that fact appears from other allegations. Lee Line Steamers v. Robinson, 232 F. 417, 146 C. C. A. 411.

Where policy holders failed to allege amount of their claims, though given an opportunity to set forth by amendment amount of their claims, held, that federal District Court was warranted in assuming that amounts involved were less than jurisdictional amount. Eberhard v. Northwestern Mut. Life Ins. Co., 241 F. 353, 154 C. C. A. 233.

The federal court is without jurisdiction of a suit based on diversity of citizenship, unless the allegation of damages is sufficient on its face to satisfy the jurisdictional requirement as to amount involved. Fuerst Bros. & Co. v. Polasky (C. C. A.) 249 F. 447.

110. Sufficiency of allegation.—In a suit by two heirs to establish an interest in land of a decedent, an allegation that one of the complainants was entitled to a one-eighth interest, and

the other to a two-eighths interest, "which said interests are of the value of $4,500 and upwards," does not amount to an averment that the interest of either complainant is of the value of more than $3,000 in order to confer jurisdiction on the federal District Court. Pinel v. Pinel, 36 S. Ct. 416, 240 U. S. 594, 60 L. Ed. 817.

Where, in action against attorneys for neglecting to defend, declaration did not show existence of defense, held, that it failed to show amount within court's jurisdiction, even though attorneys were liable for nominal damages. Maryland Casualty Co. v. Price, 231 F. 397, 145 C. C. A. 391, affirming judgment (D. C.) Same v. Price, Smith, Spilman & Clay, 224 F. 271.

In a suit to enjoin the taking of railroad station property for street purposes, an allegation in the bill that the value of the matter in controversy exceeds $3,000 is sufficient to give a federal court jurisdiction, where, if the theory of complainant as to the measure of damages for the taking of the property should be sustained, the damage would exceed that sum. Chicago, M. & St. P. Ry. Co. v. Incorporated Town of Lost Nation (D. C.) 237 F. 709.

Aside from $500 paid on contract of defendant to sell goods to plaintiff, complaint for refusal to deliver, and affidavit for plaintiff on motion to dismiss, held to show, as recoverable damages and amount in controversy, only the difference between contract price and value of goods as warranty, though complaint alleged damages in greater sum. Federal Wall Paper Co. v. Kempner (D. C.) 244 F. 240.

Relative to amount in controversy, and consequent jurisdiction of court, in action for damages for part of goods bought not being as warranted, and the balance not being delivered, held on motion to dismiss, that under the complaint $500 alleged paid on making of contract would not be considered included in $1.975 alleged paid for part delivered. Id.

In suit to restrain collection of drainage tax, complaint alleging generally that amount exceeds $3,000, and making Exhibit A, attached to bill, a part of the same, and praying reference, held to sufficiently show that amount in controversy was over $3,000, exclusive of interest and costs, so that federal court had jurisdiction. Everglades Drainage League v. Napoleon B. Broward Drainage Dist. (D. C.) 253 F. 246.

(I) Evidence and burden of proof

113. Evidence as to value.—The complaint and answer may be supplemented by affidavits as to the real value or amount in controversy on motion to dismiss on the ground that the amount is insufficient to give jurisdiction. Federal Wall Paper Co. Kempner (D. C.) 244 F. 240.

The papers, on motion to dismiss on the ground that the amount in controversy was insufficient to give jurisdiction, failing to show what sum plaintiff received on sale of goods on defendant's account, held it is fair to assume that it received what it alleges they were worth. Id.

114. Sufficiency.—A federal court of equity is not without jurisdiction to render a decree for an injunction against continuing trespasses, where threatened irreparable injury is alleged by the mere fact that no proof has been made of the specific amount of that injury. Moline Plow Co. v. Omaha Iron Store Co., 235 F. 519, 149 C. C. A. 65.

Amount in controversy, as regards jurisdiction of court, held limited to damages alleged and claimed in complaint, alleging no facts showing more, notwithstanding affidavit for plaintiff on motion to dismiss. Federal Wall Paper Co. v. Kempner (D. C.) 244 F. 240.

V. SUITS UNDER THE CONSTITUTION; FEDERAL LAWS OR TREATIES

(A) Federal question as jurisdictional ground

115. In general.—Where a suit involves a substantial controversy respecting a federal question, raised in good faith, the jurisdiction of a federal court does not depend on diversity of citizenship, nor on the validity of the claim asserted. Benedict v. City of New York, 247 F. 758, 159 C. C. A. 616, affirming decree (D. C.) 235 F. 258.

119. Settled legal propositions.—Assuming that bill to enforce price maintenance contract asserted rights under patent laws, a federal District Court had jurisdiction to determine whether suit arose under such laws, where question had not then been conclusively settled in negative. Boston Store of Chicago v. American Graphophone Co., 38 S. Ct. 257, 246 U. S. 8, 62 L. Ed. 551, Ann. Cas. 1918C, 447.

When federal law involved in suit has been settled by United States Supreme Court, it no longer furnishes basis for a claim that case arises under laws of United States. Postal Telegraph Cable Co. of Montana v. Nolan (D. C.) 240 F. 754.

129. Allegations in pleadings—Necessity of pleading federal question.—For federal court to have jurisdiction over suit under Judicial Code, § 24, subd. 1, cl. "a," as one arising under the Constitution and laws of the United States, that fact must appear in plaintiff's petition and cannot be shown by any other pleading. Bronson v. Boards of Sup'rs of Emmet and Kossuth Counties, Iowa (D. C.) 237 F. 212.

131. —— Anticipation of defenses.—A suit by a railroad company, which leased its line, to compel the lessee company to issue passes pursuant to the lease agreement, is not one over which the federal courts have jurisdiction under Act Aug. 13, 1888, c. 866, 25 Stat. 433, as a suit arising under the Constitution and laws of the United States, because the lessee's probable defense, based on the inhibition against the issuance of passes found in the acts to regulate commerce was anticipated and attacked on the ground that such defense was unavailing under the Constitution. Peterborough R. R. v. Boston & M. R. R. (C. C. A.) 239 F. 97.

Suit for damages for injuries to plaintiff's land by construction of drainage ditch under Iowa laws held not one arising under federal laws or Constitution, within Judicial Code, § 24, subd. 1, cl. "a," over which District Court had jurisdiction because of allegation law was invalid under the United States Constitution; averment merely anticipating defense. Bronson v. Boards of Sup'rs of Emmet and Kossuth Counties, Iowa (D. C.) 237 F. 212.

(B) Cases arising under the constitution

134. Constitutional question as ground for jurisdiction.—Federal District Court has jurisdiction to enjoin enforcement by state of provisions of Laws S. D. 1915, c. 275, prohibiting dealing in corporate stock without state sanction, which act is assailed as repugnant to federal Constitution. Caldwell v. Sioux Falls Stockyards Co., 37 S. Ct. 224, 242 U. S. 559, 61 L. Ed. 493.

Where complainant invoked rights under Constitution of the United States which were combated by defendant and federal District Court decided cause on constitutional grounds raised, jurisdiction was shown, though the parties were citizens of the same state. City of Mitchell v. Dakota Central Telephone Co., 38 S. Ct. 362, 246 U. S. 396, 62 L. Ed. 793.

Violation of plaintiff's rights under Const. U. S. Amend. 14, by St. Mass. 1911, c. 628, § 25, held not to give federal court jurisdiction, unless such violation is an essential part of the cause of action. Supreme Council of Royal Arcanum v. Hobart, 244 F. 385, 157 C. C. A. 11.

Federal court held without jurisdiction of certificate holder's suit for receiver of fraternal society, even though St. Mass. 1911, c. 628, § 25, prohibiting such suits, violated his rights under Const. U. S. Amend. 14. Id.

Even when a threatened act may be an impairment of a contract or a deprivation of property without due process of law still if the only means threatened to be used are resort to the courts or legal proceedings, a case is not stated within the jurisdiction of a federal court as involving a constitutional question. Columbus Ry., Power & Light Co. v. City of Columbus, Ohio (D. C.) 253 F. 499.

149. Proceeding without due process of law — Criminal proceedings. — One convicted of violating a state school law, after opportunity to present his defense, cannot maintain suit in a federal court to enjoin proceedings for subsequent violation, on theory that state decisions were erroneous and denied due process of law, in violation of Const. Amend. 14. Gillen v. Board of Public Education of City of Philadelphia (D. C.) 250 F. 649.

152. —— Eminent domain.—The federal District Court has jurisdiction without diversity of citizenship of a bill to prevent a municipality from appropriating complainant's water rights without compensation, the bill alleging that the city is insolvent and that its act will violate the contract and due process clauses of the federal Constitution. Cuyahoga-River Power Co. v. City of Akron, 36 S. Ct. 402, 240 U. S. 462, 60 L. Ed. 743, reversing decree (D. C.) 210 F. 524.

155. —— Local improvements.—Although bill to restrain collection of drainage tax, imposed pursuant to Laws Fla. 1917, c. 7430, § 7, did not specifically attack section 7, where it contained allegations that said section deprived complainants of their property, without due process of law, it raised a federal question, vesting federal court with jurisdiction, provided matter in controversy exceeded $3,000, exclusive of interest and costs. Everglades Drainage League v. Napoleon B. Broward Drainage Dist. (D. C.) 253 F. 246.

157. —— Occupation of street by carriers or electric companies.—The federal court has jurisdiction of a suit wherein it was asserted the conditions as to use of streets by franchiseless street railroad company were so unreasonable as to work a deprivation of property without due process, in violation of Const. U. S. Amend. 14. Henry L. Doherty & Co. v. Toledo Rys. & Light Co. (D. C.) 254 F. 597.

172. Denial of equal protection of the law—Taxation of property.—Federal District Court has jurisdiction, irrespective of citizenship, of bill to enjoin state officers from enforcing state and local taxes on intangible property of public service corporation which, if permitted, would violate Const. Amend. 14, as denying equal protection of laws. Greene v. Louisville & I. R. Co., 37 S. Ct. 673, 244 U. S. 499, 61 L. Ed. 1280, Ann. Cas. 1917E, 88.

(C) Cases arising under federal laws

192. Laws relating to public lands —Telegraph companies.—Suit by inter-

state telegraph company to restrain railroad's cotenants in fee of right of way from removing plaintiff's telegraph lines, erected on right of way with railroad's permission, is not controversy arising under Comp. St. 1916, § 10072. Postal Telegraph Cable Co. of Montana v. Nolan (D. C.) 240 F. 754.

207. Laws relating to commerce—Enforcement of interstate commerce acts.—While bill charging violation of Sherman and Clayton Acts presents federal question, justiciable under Judicial Code, § 24 (a), in District Court, regardless of citizenship of parties, yet under section 51 such suit cannot be brought by original process in any other district than that of which defendant is an inhabitant. Venner v. Pennsylvania Steel Co. of New Jersey (D. C.) 250 F. 292.

209. —— Killing or injuring of stock by carriers.—An action for injuries to an interstate shipment of live stock is governed by the various acts regulating commerce, and so is one arising under the Constitution or laws of the United States within Judicial Code, § 28 (Comp. St. 1916, § 1010), providing for removal of such causes, and section 24 (section 991), giving the District Courts jurisdiction of such causes; that is, the right arising to hear and determine the same. Hartford Fire Ins. Co. v. Kansas City, M. & O. Ry. Co. of Texas (D. C.) 251 F. 332.

211. —— Rates and charges.—Under this section and Interstate Commerce Act, District Court has jurisdiction of action by railroad company on claim based on provisions of tariff duly filed, published, and approved as required, regardless of consignee's defense that he was mere commission merchant, and that railroad company, having failed to present charge at time of arrival of shipment, was estoped thereafter to assert claim; property having been sold and proceeds remitted to owner. Louisville & N. R. Co. v. Rice, 38 S. Ct. 429, 247 U. S. 201, 62 L. Ed. 1071.

Under Interstate Commerce Act, § 9 (Comp. St. 1916, § 8573), District Court held to have jurisdiction of action by one carrier against another, which had been paid portion of freight charges to which it was not entitled under the tariffs filed. Mobile & O. R. Co. v. Washington & C. Ry. Co. (D. C.) 242 F. 531.

214. —— Telegraph companies.—Fact that destruction of telegraph line along right of way in which defendants were cotenants would interfere with interstate commerce does not give the federal court jurisdiction of a suit between citizens of the same state to restrain such destruction. Postal Telegraph Cable Co. of Montana v. Nolan (D. C.) 240 F. 754.

Under Act June 18, 1910, § 7 (Comp. St. 1916, § 8563), federal courts have jurisdiction relating to a telephone company's duties as an interstate agency. Stephens v. Ohio State Telephone Co. (D. C.) 240 F. 759.

215½. Laws relating to patents—Slander of title.—Suit by owner, manufacturer, and seller of a claimed patented pump alleging slander of title to his patent arises under the law of the state, rather than patent laws of the United States. American Well Works Co. v. Layne & Bowler Co., 36 S. Ct. 585, 241 U. S. 257, 60 L. Ed. 987.

218. —— Unfair competition.—Where, in an infringement suit, the patent is held valid and infringed, a claim for unfair competition arising out of the infringement may be considered in the accounting of profits and damages, although the parties are citizens of the same state. K-W Ignition Co. v. Temco Electric Motor Co., 243 F. 588, 156 C. C. A. 286.

In the absence of diversity of citizenship, a federal court is without jurisdiction of a suit for unfair competition, although joined with a cause of action for infringement of patent, where the alleged unfair competition arises from acts independent of the infringement. Mallinson v. Ryan (D. C.) 242 F. 951.

219. Laws relating to copyrights.—A suit by the owner of the copyright of a play to enjoin licensees from producing it as a photo-play, which right they claim under their license contract, is one for infringement of copyright, of which a federal court has jurisdiction, regardless of the citizenship of the parties. Harper Bros. v. Klaw (D. C.) 232 F. 609.

221. Revenue laws.—Suit against officers of the internal revenue department to set aside a sale of land to the government held one against the United States, of which the court was without jurisdiction. Gouge v. Hart (D. C.) 250 F. 802.

Plaintiff's case being founded on the application to the facts of the congressional exemption of Liberty Bonds from taxation, and such application being in dispute, the federal court has jurisdiction. Iowa Loan & Trust Co. v. Fairweather (D. C.) 252 F. 605.

223. Actions by or against United States corporations.—Act March 3, 1871, § 1, gave no exceptional federal jurisdiction of suits against railroad corporation created under it. Bankers' Trust Co. v. Texas & P. Ry. Co., 36 S. Ct. 569, 241 U. S. 295, 60 L. Ed. 1010.

Since enactment of Act Jan. 28, 1915, § 5, 38 Stat. 804, post, § 1233a, suit by or against railroad incorporated under act of Congress is one arising under the laws of the United States, unless there was reason therefor other than that the company was thus incorporated. Id.

A suit to foreclose mortgage of rail-

road incorporated under federal laws does not arise under laws of the United States so as to be within jurisdiction of federal court, since the enactment of Act Jan. 28, 1915, § 5, 38 Stat. 804, post, § 1233a. Id.

That corporation was operating sawmill in execution of contract with government held not to give District Court jurisdiction of suit to restrain intimidation and interference with its laborers. Pickering Land & Timber Co. v. Wisby (D. C.) 242 F. 993.

A company manufacturing munitions for the United States out of supplies furnished by the United States, which were shipped in interstate commerce, etc., is acting under the authority of the laws of the United States to as full an extent as though it had been incorporated under and in pursuance of national laws, and the federal courts have jurisdiction of a suit by such company to enjoin a labor union from illegally interfering with its prosecution of government work. Wagner Electric Mfg. Co. v. District Lodge, No. 9, International Ass'n of Machinists (D. C.) 252 F. 597.

229. Actions by or against national banks or receivers thereof—Suits by or against receivers.—A suit by the receiver of a national bank in the course of winding up its affairs held within the jurisdiction of a federal District Court, under Judicial Code, § 24, par. 16. Bates v. Dresser (D. C.) 229 F. 772.

232. Actions by or against receivers appointed by federal courts.—Objection to jurisdiction, because plaintiff and defendant were both citizens of Colorado, was untenable in suit by receiver appointed by federal court against resident of state of which receiver was resident. Glenwood Irr. Co. v. Vallery, 248 F. 483, 160 C. C. A. 493.

233. Actions by or against United States officers.—Under Judicial Code, §§ 24, 28 (Comp. St. 1916, § 1010), held, that suit begun in state court to enjoin postal inspector from delivering to third person property in possession of petitioner, who had been appointed postmaster, may by defendant be removed to federal court. Porter v. Coble, 246 F. 244, 158 C. C. A. 404.

A suit by the Director General of Railroads to enjoin sale of land owned by a railroad under execution issued on a judgment of a state court, on the theory that, having taken possession of the same, it was exempt from process under act of March 21, 1918, is a suit of a civil nature arising under the laws of the United States, etc., of which the federal District Court has jurisdiction, for it must be deemed that Act March 21, 1918, modified Jud. Code, § 265 (Comp. St. 1916, § 1242). United States Railroad Administration v. Burch (D. C.) 254 F. 140.

234. Actions on bonds of government contractors.—United States court has jurisdiction to dispose of suit on surety bond given United States government for performance of contract within South Carolina for erection of post office, under Act Cong. Aug. 13, 1894, 28 Stat. 278, as amended by Act Cong. Feb. 24, 1905, 33 Stat. 811. Equitable Surety Co. v. Illinois Surety Co. (S. C.) 94 S. E. 882.

238. Indians and Indian lands.—See Wellsville Oil Co. v. Miller, 37 S. Ct. 362, 243 U. S. 6, 61 L. Ed. 559, affirming judgment 150 P. 186, 48 Okl. 386.

Allegations in bill of lessee of an oil and gas mining lease from the heirs of an Indian homestead allottee for recovery of possession and for an injunction, alleging that a subsequent lease to defendant approved by Secretary of Interior was void under Act May 27, 1908, presented a cause of action within the jurisdiction of a federal District Court. Lancaster v. Kathleen Oil Co., 36 S. Ct. 711, 241 U. S. 551, 60 L. Ed. 1161.

238½. Lever act.—Though, in the absence of diversity of citizenship, the federal court has no jurisdiction to determine the controversy of price at which defendant agreed to furnish coal to plaintiff, a public service corporation, it will, leaving that question for courts of competent jurisdiction, enjoin defendant from disobeying the order of a state fuel administrator, under the Lever Act (post, § 3115¼aa), to continue furnishing plaintiff with coal till the act by its terms ceases to be in effect, by termination of the war, ascertained and proclaimed by the President. West Virginia Traction & Electric Co. v. Elm Grove Mining Co. (D. C.) 253 F. 772.

241. Pleading.—Allegations in suit by owners of placer mining claim to cancel record of location certificates as cloud on title must, when determining whether bill states cause of action under mining laws of United States, be regarded as essential parts of cause of action, either under general equity rule or under Rev. Codes Mont. §§ 6115, 6870, under which complaint in suits to remove cloud must show facts causing injury to plaintiff. Hopkins v. Walker, 37 S. Ct. 711, 244 U. S. 486, 61 L. Ed. 1270.

In an action to recover treble damages, under Sherman Anti-Trust Act, § 7 (Comp. St. 1916, § 8829), providing for such damages for violation of section 3 (Comp. St. 1916, § 8822), court is without jurisdiction, unless plaintiff alleges and proves that he was injured by unlawful combination in violation of act. Noyes v. Parsons, 245 F. 689, 158 C. C. A. 91.

Jurisdiction of federal court over ac-

tion for damages for violation of Sherman Anti-Trust Act (Comp. St. 1916, § 8820 et seq.) must appear by distinct averments according to rules of good pleading, and cannot be left to inference. Id.

A case does not arise under the laws of the United States, so as to give District Court jurisdiction, unless it is apparent from complaint that it involves substantial dispute respecting the validity, construction, or effect of some federal law, upon the determination of which result depends. Postal Telegraph Cable Co. of Montana v. Nolan (D. C.) 240 F. 754.

A petition seeking to recover for injuries to a shipment of cattle, alleging that the cattle were shipped from one state to another, though making no specific reference to any federal law, states an action arising thereunder, as the various acts regulating commerce govern. Hartford Fire Ins. Co. v. Kansas City, M. & O. Ry. Co. of Texas (D. C.) 251 F. 332.

VI. SUITS BETWEEN CITIZENS OF DIFFERENT STATES

(A) *Diversity of citizenship as jurisdictional ground*

248. In general.—See Benedict v. City of New York (C. C. A.) 247 F. 758.

Jurisdiction given to federal courts on account of diversity of citizenship of parties is intended merely to secure to nonresident, as against citizens of state, impartial trial, and does not create in favor of nonresident any rights of action which citizens of the state under like situation would not have. Paterlini v. Memorial Hospital Ass'n of Monongahela City, Pa., 247 F. 639, 160 C. C. A. 49, affirming judgment (D. C.) 241 F. 429, and certiorari denied 38 S. Ct. 334, 246 U. S. 665, 62 L. Ed. 929.

The federal District Court has jurisdiction of a suit involving $3,000 or more, where the parties are citizens of different states. Nevada-California Power Co. v. Hamilton (D. C.) 235 F. 317.

One ground of jurisdiction of federal courts is diversity of citizenship. Village Mills Co. v. Houston Oil Co. of Texas (Tex. Civ. App.) 186 S. W. 785.

249. Diversity of citizenship alone as sufficient to confer jurisdiction.—Where the state courts have not taken jurisdiction, a federal court sitting in equity may on ground of diversity of citizenship take jurisdiction of proceedings involving a decedent's estate only to preserve same and determine rights of creditors and others to share in the estate. Smith v. Jennings, 238 F. 48, 151 C. C. A. 124, reversing order Jennings v. Smith (D. C.) 232 F. 921.

Notwithstanding diversity of citizenship of parties, federal court held without jurisdiction to entertain habeas corpus to enable petitioner to secure custody of child, to whose custody petitioner was entitled under adoption proceedings in another state. Ex parte Bell (D. C.) 240 F. 758.

Where federal jurisdiction is invoked, founded only on the fact that the action is between citizens of different states and the suit is brought in the district of the plaintiff's residence, objection thereto on the ground that the suit should have been brought in the district of the defendant's residence presents a question of venue, rather than of jurisdiction; and if in such case the requisite diversity of citizenship appears the objection is not well taken. Judicial Code, §§ 24, 51 (Comp. St. 1916, §§ 991[1], 1033). Tate v. Baugh (D. C.) 252 F. 317.

250. Existence of diversity of citizenship as prerequisite to jurisdiction.—Where parties plaintiff and defendant in suit by trustee of bankrupt to set aside alleged fraudulent transfer were residents of same state, and transfer was made more than year before filing of petition, federal court had no jurisdiction, either by reason of diversity of citizenship or under Bankruptcy Act, §§ 60b, 67 (Comp. St. 1916, §§ 9644, 9651), providing for the setting aside of preferential transfers made within four months of filing of petition. Hall v. Glenn (D. C.) 247 F. 997.

Where nonresident heirs of West Virginia decedent, all residents of same state sued in federal District Court for West Virginia to annul his marriage with defendant, a resident of the state, and for partition of his real estate, court cannot entertain jurisdiction of proceedings, unless such heirs disclaim any right to assail his marriage, and acknowledge defendant's interest in estate of decedent, for, if her marital rights were destroyed, there would be no diversity of citizenship. Hastings v. Douglass (D. C.) 249 F. 378.

251. Necessity of diversity of citizenship between all parties, plaintiff and defendant.—In an infringement suit, the court held without jurisdiction to adjudicate a counterclaim for unfair competition set up by a defendant, who was a citizen of the same state as complainant. United States Expansion Bolt Co. v. H. G. Kroncke Hardware Co., 234 F. 868, 148 C. C. A. 466, modifying decree (D. C.) 225 F. 383.

Where, in a suit in the federal court, based on diversity of citizenship, defendants impleaded a municipal corporation of the state of which plaintiff was a citizen, and plaintiff was allowed to file an amendment to the declaration, asserting that the several defendants were joint tort-feasors, the amendment ousted the federal court's jurisdiction, and it therefore had no

power to enter judgment on the merits, either for plaintiff or any one of the defendants. Devost v. Twin State Gas & Electric Co. (C. C. A.) 250 F. 349.

In a suit to enjoin a railroad company from trespassing upon land which it had formerly occupied as a right of way, federal jurisdiction depending on diversity of citizenship, a lessee of the land to whom the company had granted the right to remove culm is an indispensable party defendant; hence, having been made a party by amendment, the suit must be dismissed, such lessee's citizenship being the same as that of complainants. Patterson v. Delaware & Hudson Co. (C. C. A.) 251 F. 255.

Where the citizenship of one of the necessary defendants was the same as that of the plaintiff, the federal District Court is without jurisdiction, on the ground of diversity of citizenship. Id.

Suit is not maintainable in federal court on ground of diversity of citizenship; defendants and one of plaintiffs being citizens of the same state. Rogers v. Chickamauga Trust Co. (C. C. A.) 253 F. 541.

Where some of the joint plaintiffs where citizens of the same state as were defendants, the federal court has no jurisdiction on the ground of diversity of citizenship. Hastings v. Hoog (D. C.) 234 F. 103.

253. —— Ancillary proceedings.—Suit to cancel, as procured by fraud, a release of judgment, and to subject an equity in land to payment of the judgment, is ancillary and supplemental to the suit in which the judgment was recovered, and so, without regard to the citizenship of the parties, may be maintained in a federal court where the judgment was recovered. Ross v. Miller (C. C. A.) 252 F. 697.

The fact that residents of the same state as cross-complainant were made parties to a cross-bill filed in suit for accounting and redemption from mortgage by a trustee in bankruptcy in the federal court on the ground of diversity of citizenship does not oust the court of jurisdiction. Brown v. Crawford (D. C.) 252 F. 248.

In a proceeding ancillary to the main suit, as to suit to foreclose a mortgage, it is not requisite to jurisdiction that there be a diversity of citizenship as to parties. Id.

254. Necessity of citizenship or residence in state where suit is brought.—Under Judicial Code, §§ 24, 28 (Comp. St. 1916, § 1010), a United States citizen, not a citizen of any state, cannot remove an action brought against him by a citizen of the state. Hough v. Société Electrique Westinghouse de Russie (D. C.) 231 F. 341.

255. Necessity of citizenship or residence in district where suit is brought.—Under Judicial Code, § 28 (Comp. St. 1916, § 1010), providing for removal, section 51 (Comp. St. 1916, § 1033), and this section, relating to the jurisdiction and venue of suits, a suit begun in the state court may be removed, where there is diversity of citizenship between the parties, though all of the plaintiffs were not residents of the district to which it was removed. James v. Amarillo City Light & Water Co. (D. C.) 251 F. 337.

Under this section, giving District Courts jurisdiction of civil suits between citizens of different states, etc., and section 51, providing that, where jurisdiction is founded on diversity of citizenship, suit shall only be brought in the district of the residence of plaintiff or defendant, a District Court has jurisdiction of a suit between citizens of different states on removal from a state court, although all of the plaintiffs were not citizens of such district. Id.

Where all parties to an action for a tort committed in South Carolina are nonresidents of the state, the case is triable in the state, and not subject to removal. Powell v. Southern Ry. Co. (S. C.) 96 S. E. 292.

256. Citizenship of parties within purview of statute.—A minor, having no parents, grandparents, or statutory guardian, may establish a domicile anywhere for the purpose of federal jurisdiction. Bjornquist v. Boston & A. R. Co. (C. C. A.) 250 F. 929.

Domicile is the test of citizenship for the purpose of the jurisdiction of the courts of the United States. Id.

If defendant is an unincorporated society, the citizenship of its members determines the jurisdiction of the federal court. Wise v. Brotherhood of Locomotive Firemen and Enginemen (C. C. A.) 252 F. 961.

A domicile of choice, once acquired, is not lost until a new domicile has been acquired. Pannill v. Roanoke Times Co. (D. C.) 252 F. 910.

"Domicile" and "citizenship" are not always synonymous, though where domicile means home, and describes the state in which a citizen of the United States has his home, and to which he intends to return if absent, it is usually, if not always, equivalent to state citizenship; but when no new domicile has been acquired, and domicile exists only by legal fiction, and describes the former home state of a citizen of the United States to which he never intends to return, they are not synonymous. Id.

257. —— States.—Action against state bank commissioner and his surety, though not an action against a state, held not maintainable in federal court, because the parties were all citizens of one state. Martin v. Lankford, 38 S. Ct. 205, 245 U. S. 547, 62 L. Ed. 464.

The federal court may take jurisdic-

tion of a suit on the ground of diversity of citizenship, where it was alleged, notwithstanding plaintiff had removed from Virginia, the state of defendant's residence, only a short time before beginning suit, where he testified that he intended to become a citizen of Maryland, the state to which he removed; his citizenship being a question of intention. Garrett v. Mallard (C. C. A.) 238 F. 335.

Where plaintiff at the time of the commencement of his action was domiciled in a state different from that of defendant, he is a citizen of that state for the purpose of suing in the federal courts. Delaware, L. & W. R. Co. v. Petrowsky (C. C. A.) 250 F. 554.

The term "citizen," as used in the Judiciary Act with reference to the jurisdiction of the federal courts, means the same thing as domicile, denoting a citizen of the United States residing permanently in a particular state. Id.

A state is not a "citizen," and a federal court does not acquire jurisdiction by removal of a suit by a state on the ground of diversity of citizenship. Chicago, R. I. & P. Ry. Co. v. State of Nebraska (C. C. A.) 251 F. 279; Nevada-California Power Co. v. Hamilton (D. C.) 235 F. 317.

A citizen of the United States residing abroad who has abandoned his domicile is not a citizen of any state under the Fourteenth Amendment, and therefore cannot sue in the federal courts on the ground of diversity of citizenship. Stein v. Fleischmann Co. (D. C.) 237 F. 679.

The theoretical domicile, which is equivalent to state citizenship, is always one which exists animo revertendi, and such a domicile, clinging to a homeless wanderer, who never intends to return, is not equivalent to citizenship, in the sense in which the word "citizen" is used in the Judiciary Act. The grant of jurisdiction is not of controversies between citizens of the United States domiciled in different states, but of controversies between citizens of different states. Pannill v. Roanoke Times Co. (D. C.) 252 F. 910.

260. —— Corporations.—Railroad incorporated by act of Congress to carry on business in different states is not a citizen of any particular state for purpose of giving federal court jurisdiction of suit against it for diversity of citizenship. Bankers Trust Co. v. Texas & P. Ry. Co., 36 S. Ct. 569, 241 U. S. 295, 60 L. Ed. 1010.

The citizenship of a corporation, for purpose of jurisdiction of federal courts, is in state of its creation. Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162; Yanuszauckas v. Mallory S. S. Co. (C. C. A.) 232 F. 132, 146 C. C. A. 324; Everett Ry., Light & Power Co. v. United States (D. C.) 236 F. 806.

The federal District Court for New Hampshire is without jurisdiction on the ground of diversity of citizenship over an action by New Hampshire corporation against a railroad company incorporated, not only in Massachusetts, but also in New Hampshire. Peterborough R. R. v. Boston & M. R. R., 239 F. 97, 152 C. C. A. 147.

A joint-stock association is not a citizen, and its status in federal courts must be judged by citizenship of its members. Spencer v. Patey, 243 F. 555, 156 C. C. A. 253.

A joint-stock association cannot be a "citizen" within the meaning of the statutes regulating jurisdiction of the federal courts. Village Mills Co. v. Houston Oil Co. of Texas (Tex. Civ. App.) 186 S. W. 785.

Declaration of trust of joint-stock association held to give trustees thereof such power to sue and defend suits without joining stockholders that in suit in United States court in which trustees were parties their diverse citizenship properly alleged gave the court jurisdiction. Id.

262. Change of citizenship pending suit.—The jurisdiction of a federal court, once acquired on the ground of citizenship, continues, regardless of any change in citizenship. Stultz v. Cousins, 242 F. 794, 155 C. C. A. 382.

266. Character of actions within operation of statute.—A suit by receivers appointed by a federal court to recover the possession of standing timber claimed by them as part of their trust estate, which they were prevented from cutting by the owner of the land, and to recover damages, was within the jurisdiction of the court appointing them, irrespective of the citizenship of the parties or the amount involved. Kirkland v. Knox (C. C. A.) 230 F. 806.

A plenary suit against purchaser from bankrupt, who did not comply with Rem. & Bal. Code Wash. § 5296, relating to bulk sales, brought by trustee under Bankr. Act July 1, 1898, § 70e, as amended by Act Feb. 5, 1903, § 16 (Comp. St. 1916, § 9654), may in view of section 23, subds. "a" and "b," and sections 60b and 67e (Comp. St. 1916, §§ 9607, 9644, 9651), be removed by nonresident purchaser to federal court on ground of diversity of citizenship. Ewing v. S. L. Leszynsky & Co. (D. C.) 236 F. 811.

Where amount involved is above jurisdictional amount, federal courts can take jurisdiction invoked on account of diversity of citizenship to enjoin enforcement of unconstitutional state statute. Hebe Co. v. Calvert (D. C.) 246 F. 711.

(B) Joinder, dismissal, and rearrangement of parties

269. Joinder of citizens and aliens, or citizens of different states.—Under

this section the District Court has jurisdiction of a suit wherein a citizen of one state was plaintiff and a citizen of another and a subject of a foreign power were defendants. Ryan v. Ohmer (D. C.) 233 F. 165.

270. Failure to join necessary parties.—Where complainant, with consent of its creditors, continued in force previous assignments of oil leases to defendant as nonresident under an agreement that a bank, as trustee, should disburse receipts, the creditors and the bank are indispensable parties to a suit to recover possession of the property, etc., and, being residents of the same state as complainant, there can be no diversity of citizenship which would give the federal court jurisdiction. Harris & Stevens Corporation v. Tarr & McComb (C. C. A.) 251 F. 570.

273. Improper or collusive making or joinder of parties.—By making persons who are necessary parties plaintiff defendants, jurisdiction is not conferred upon a federal court, where, if they had been made plaintiffs, there would not have been the necessary diversity of citizenship. Lindauer v. Compania Palomas de Terrenos y Ganados, Sociedad Anonimo, 247 F. 428, 159 C. C. A. 482, certiorari denied Compania Palomas de Terrenos y Ganados v. Lindauer, 38 S. Ct. 345, 246 U. S. 670, 62 L. Ed. 931.

Judicial Code, § 37 (Comp. St. 1916, § 1019), does not deprive a federal court of jurisdiction over a suit against an interstate telephone company to compel it to furnish service, though the parties are friendly antagonists and the company was willing to have the controversy submitted to the federal court. Stephens v. Ohio State Telephone Co. (D. C.) 240 F. 759.

Though complainant had control of stock of Ohio corporation, which manufactured articles for it, held, that suit by complainant, a New Jersey corporation, against Ohio corporation and a union, brought in federal court, could not be dismissed under Judicial Code, § 37 (Comp. St. 1916, § 1019), on ground that making complainant party was collusive.—Niles-Bement-Pond Co. v. Iron Molders' Union, Local No. 68 (D. C.) 246 F. 851.

274. Dismissal of parties whose presence would oust jurisdiction.—State court's involuntary dismissal of action against foreign corporation as to resident defendants joined therewith, did not authorize removal of action as to the nonresident defendant, on ground of diverse citizenship.—Landers v. Tracy, 188 S. W. 763, 171 Ky. 657.

275. Rearrangement of parties.—A corporation, which was an indispensable party, made a defendant, but which joined in the prayer of the bill, will be aligned by federal court as a complainant for jurisdictional purposes. Lindauer v. Compania Palomas de Terrenos y Ganados, Sociedad Anonimo, 247 F. 428, 159 C. C. A. 482, certiorari denied Compania Palomas de Terrenos y Ganados v. Lindauer, 38 S. Ct. 345, 246 U. S. 670, 62 L. Ed. 931.

278. —— Corporations.—In a suit by a minority stockholder in an Oregon corporation, who was a citizen of Oregon, for an accounting by nonresidents of Oregon respecting funds of the corporation misappropriated by them, the corporation could not be aligned on the side of plaintiff in determining the right of removal. Baillie v. Backus (D. C.) 230 F. 711.

In a stockholder's suit, where it is shown that the officers or others in control of the corporation are opposed to the object sought by complainants, the corporation will be aligned with defendants, for jurisdictional purposes. Whitaker v. Whitaker Iron Co. (D. C.) 238 F. 980.

280. —— Estates of decedents.—In suit by heirs of husband and wife, other than S., to set aside joint will, judgment in favor of trustees thereunder, and wife's residuary bequest to S., and for partition, court held to have erred in aligning S. with plaintiffs in determining question of diversity of citizenship. Sutton v. English, 38 S. Ct. 254, 246 U. S. 199, 62 L. Ed. 664.

282. —— Mortgages and trust deeds.—In a suit by a mortgagee against the mortgagor and its employés to enjoin the latter from violating their contract of employment, the mortgagor held alignable as a complainant for jurisdictional purposes. Mahon v. Guaranty Trust & Safe Deposit Co., 239 F. 266, 152 C. C. A. 254.

In determining whether the federal court has jurisdiction on the ground of diversity of citizenship, the court will align the parties according to their interest, so the trustee of a mortgage given to secure bonds will be treated as a plaintiff, if an indispensable party, and, though it was a citizen of the same state as the bondholder who began suit, the federal court has jurisdiction; the mortgagor being a citizen of a different state. Brown v. Denver Omnibus & Cab Co. (C. C. A.) 254 F. 560.

Where a bondholder, suing to foreclose a mortgage given to secure bonds, named the trustee, which had refused to act, a party defendant, held, that the omission of any prayer for judgment against the trustee warranted the federal court in treating the trustee as plaintiff, in determining whether there was requisite diversity of citizenship. Id.

(C) Particular parties within statute

299. Necessary and unnecessary parties.—The joinder of defendants, who are citizens of the same state as com-

plainants, will not oust a federal court of jurisdiction, where they are not indispensable parties, and a decree may be entered between the other parties without affecting their rights. Weiland v. Pioneer Irr. Co., 238 F. 519, 151 C. C. A. 455.

Where there was requisite diversity of citizenship between plaintiff and the principal defendant, that another party defendant was a citizen of the same state as plaintiff will not deprive the federal court of jurisdiction, unless such person was an indispensable party. Brown v. Denver Omnibus & Cab Co. (C. C. A.) 254 F. 560.

In determining the removability of a cause indispensable parties only are to be considered. Webb v. Southern Ry. Co. (D. C.) 235 F. 578.

Citizen of same state as plaintiff, intervening as defendant, and subsequently asking to be stricken, held not an indispensable party, and federal court had jurisdiction. Jennings v. Smith (D. C.) 242 F. 561.

That defendant lessors, residents of Kentucky, made rival lease to a Delaware corporation, held not to deprive District Court for Kentucky of jurisdiction of suit by plaintiff, also a Delaware corporation, against lessors alone. Beatty Oil & Gas Co. v. Blanton (D. C.) 245 F. 979.

300. —— Actions for torts.—Insurers who paid policies covering part of property destroyed by fire held not indispensable parties to an action by the owner to recover for the loss from one whose negligence is alleged to have caused the fire, for the purpose of determining the removability of the cause. Webb v. Southern Ry. Co. (D. C.) 235 F. 578.

313. —— Foreclosure suits.—Where a mortgage on land within the district was given by mortgagors who were residents of another district to secure the debt of a third person residing within the district, the latter was not an indispensable party to a suit to foreclose; and hence his residence within the district where complainant also resided was not fatal to the court's jurisdiction. Barnes v. Cady, 232 F. 318, 146 C. C. A. 366, affirming order (D. C.) Cady v. Barnes, 208 F. 359.

Where the trustee named in securing bonds refused to act, the trustee is not an indispensable party defendant to a suit by a holder of bonds to foreclose the mortgage; hence, though the trustee and the bondholder were citizens of the same state, yet, as there was diversity of citizenship between the mortgagor and the bondholder, suit to foreclose might be brought in the federal court. Brown v. Denver Omnibus & Cab Co. (C. C. A.) 254 F. 560.

326. Persons in representative or fiduciary capacity as parties.—A controversy between citizens of different states held not involved in a suit by nonresident bondholders' committee against a trustee, refusing to sue the guarantor of defaulted mortgage bonds, to satisfy deficiency judgment against guarantor in foreclosure suit; the defendants all being domestic corporations. Hamer v. New York Rys. Co., 37 S. Ct. 511, 244 U. S. 266, 61 L. Ed. 1125.

The jurisdiction of the federal courts upon diversity of citizenship depends upon the personal citizenship of the parties of record, and not upon the citizenship of the parties whom they represent. Memphis St. Ry. Co. v. Bobo, 232 F. 708, 146 C. C. A. 634.

The jurisdiction of federal court over an action for death maintainable by widow alone depends on place of residence and citizenship of the widow. Kever v. Philadelphia & Reading Coal & Iron Co. (D. C.) 234 F. 814.

Under Acts W. Va. 1915, c. 73, federal court for West Virginia is without jurisdiction of suit by nonresident heirs of West Virginia decedent, assailing his marriage with resident of that state, for, if they be treated as nonresidents, they do not fall within terms of statute, and if they be treated as representatives of decedent there would be no diversity of citizenship. Hastings v. Douglass (D. C.) 249 F. 378.

328. —— Administrators and executors.—Requisite diversity of citizenship to sustain federal jurisdiction exists where citizen of Arkansas, as administrator under appointment in Tennessee, sues corporation for wrongful death, in view of decision of Supreme Court of Tennessee as to effect of Acts Tenn. 1903, c. 501. Memphis St. Ry. Co. v. Moore, 37 S. Ct. 273, 243 U. S. 299, 61 L. Ed. 733, affirming judgment Same v. Bobo, 232 F. 708, 146 C. C. A. 634.

There being no statute in West Virginia authorizing foreign administrators to sue, an administrator appointed in Pennsylvania cannot sue a resident of West Virginia in a federal court sitting in West Virginia by reason of diverse citizenship, as, independent of statute, an administrator's powers do not extend beyond the limit of the state of his appointment, and his control over the estate of his decedent is limited to such property as is in the state of his appointment. Klug v. Martinsburg Power Co. (D. C.) 229 F. 861.

It is the citizenship of the administrator suing, and not the place of his appointment, which gives a federal court jurisdiction. Gould v. Suburban Gas & Electric Light Co. (D. C.) 243 F. 930.

329. —— Guardians, next friends, and curators.—Curator of decedent's estate, having no greater right than an administrator, cannot by virtue of his appointment in one state sue in another state, even in federal court therefor, its jurisdiction being invoked only on account of diversity of citizenship, unless the laws of the other state permit; but he may in the other state sue in his

own name on a right accruing to him directly by contract or by judgment in action as curator. Old Dominion Trust Co. v. First Nat. Bank of Oxford, N. C. (D. C.) 252 F. 613.

331. —— **Trustees.**—In a suit by bondholder for the appointment of a receiver after the trustee's refusal to act, the trustee is aligned in interest with plaintiff. Georgia Coast & P. R. Co. v. Lowenthal, 238 F. 795, 151 C. C. A. 645, affirming decree (D. C.) Lowenthal v. Georgia Coast & P. R. Co., 233 F. 1016.

332. **Interveners and substituted parties.**—Where a citizen of Ohio, the executor of a deceased partner, filed in the federal court a bill against the surviving partners, residents of Illinois, to wind up the partnership affairs, which alleged the existence of partnership assets, and creditors intervened, held that, though the alleged assets proved worthless, the court had jurisdiction to enter decrees in favor of the claimants against the surviving partners and the executor as such, regardless of the citizenship of the claimants. Lackner v. McKechney (C. C. A.) 252 F. 403.

(D) Pleadings, record, objections and waiver

334. **Necessity of allegations or showing by record.**—Where no issue of diversity of citizenship was made by the pleadings, evidence as to time spent by plaintiff in state other than that of which she testified she was a resident was properly excluded. Smith v. Smith, 247 F. 461, 159 C. C. A. 515.

335. **Sufficiency of allegations or record.**—Where complainant, who resided in California, averred that he was a citizen of that state, the federal court of New York, sitting in that district in which defendant resided, had jurisdiction of the suit on the ground of diversity of citizenship. Hanson v. Hanson, 234 F. 853, 148 C. C. A. 451.

Where a verified bill alleged diversity of citizenship and that amount involved as to each plaintiff exceeded $3,000, federal district court must, no counter affidavit having been offered, be deemed to have jurisdiction. Lutz v. City of New Orleans (D. C.) 235 F. 978, order affirmed Lutze v. Same, 237 F. 1018, 150 C. C. A. 654.

336. —— **Particular allegations.**—Petition alleging diversity of citizenship, and that bullion was forcibly taken from plaintiff's possession in Mexico, and was held by one of the defendants, who would deliver it to the others unless enjoined, without any reference being made to a state of war prevailing in Mexico, held sufficient to confer jurisdiction on a federal District Court. Ricaud v. American Metal Co., 38 S. Ct. 312, 246 U. S. 304, 62 L. Ed. 733.

337. —— **Associations and copartnerships.**—As a joint-stock association is not a citizen, and its status in the federal courts must be judged by the citizenship of its members, a complaint alleging that plaintiff was a citizen and resident of New Jersey, and that defendant was a joint-stock association with its principal place of business in New York, does not allege facts requisite to give the federal courts jurisdiction for the ground of diversity of citizenship. Spencer v. Patey (C. C. A.) 243 F. 555.

338. —— **Corporations.**—Complaint alleging that plaintiff was citizen of New Jersey, and that defendant was joint-stock association with principal place of business in New York, held not sufficient to give federal courts jurisdiction on ground of diversity of citizenship. Spencer v. Patey, 243 F. 555, 156 C. C. A. 253.

339. —— **Effect of admissions in pleadings.**—Allegation of plea that plaintiff was citizen of New Jersey held an admission thereof by defendant, in the absence of plea or evidence to the contrary. Kawin & Co. v. American Colortype Co., 243 F. 317, 156 C. C. A. 97.

Allegation of diversity of citizenship held prima facie proof thereof, and established as by default, unless traversed and proof made to the contrary. Id.

341. **Amendment.**—Where a bill was amended on complainants' motion, and not under compulsion of an order, the question whether the necessary diversity of citizenship to give the federal court jurisdiction was stated must be determined from the bill as amended. Patterson v. Delaware & Hudson Co. (C. C. A.) 251 F. 255.

345. **Objections to jurisdiction.**—That diversity of citizenship of the parties, necessary to give a federal court jurisdiction, has not been established as it should be, may be noticed by the court of its own motion. Wise v. Brotherhood of Locomotive Firemen and Enginemen (C. C. A.) 252 F. 961.

346. —— **Time for objection.**—In ancillary suit to restrain further proceedings in state court, held, that jurisdiction of original suit on ground that it was not removable as for diversity of citizenship could not be questioned. McCabe v. Guaranty Trust Co. of New York, 243 F. 845, 156 C. C. A. 357.

In the federal courts, where jurisdiction is based on diversity of citizenship, the objection that the court was without jurisdiction may be raised after defendants have answered to the merits. Hastings v. Hoog (D. C.) 234 F. 103.

347. —— **Determination as to jurisdiction and burden of proof.**—Evidence held insufficient to sustain burden resting on defendant of establishing change of domicile and consequent loss of citizenship in Tennessee, as citizen of which state he was sued. Stultz v. Cousins, 242 F. 794, 155 C. C. A. 382.

Evidence on question whether hus-

band of plaintiff, a resident of Pennsylvania, was in employ of a New York corporation at time he met his death held to conclusively show that he was employed by a Pennsylvania corporation, so there was no diversity of citizenship, giving federal District Court jurisdiction. Postal Telegraph-Cable Co. v. Darrow (C. C. A.) 250 F. 581.

In an action for false imprisonment, where on the issue as to jurisdiction based on diversity of citizenship it was specially found that plaintiff "is and was a resident of the state of Mississippi at the day of bringing this suit," such finding was sufficient to sustain an inference that plaintiff was both a citizen and resident of the state of Mississippi, and that therefore the court was vested with jurisdiction. Reichman v. Harris (C. C. A.) 252 F. 371.

Judgment against a county is res judicata, on mandamus against its officers to compel levy for and payment of the judgment, as to the defense, that might have been made in the action, that there was no diversity of citizenship between the real parties in interest to give the court jurisdiction. Bunch v. U. S. (C. C. A.) 252 F. 673.

Questions of jurisdiction of federal courts on diversity of citizenship may be disposed of on motion when depending upon facts appearing in the record; but, when depending on contested facts arising on plea that plaintiff is an alien, plaintiff may insist on jury trial. Kever v. Philadelphia & Reading Coal & Iron Co. (D. C.) 234 F. 814.

In suit in federal District Court to have an attachment and judgment declared to have priority over a mechanic's lien, suit to foreclose which was brought by one of the defendants in a state court, in which suit a receiver was appointed, who took possession of the attached property, questions as to whether the jurisdiction of the state court excluded that of the District Court should have been presented to the latter court in limine. Pacific Coast Pipe Co. v. Conrad City Water Co. (D. C.) 237 F. 673.

349. Waiver of objection.—Where a suit was brought in federal court on ground of diversity of citizenship, defendant, who appeared generally, pleaded to the bill, and offered some proof, waived any objection on the ground that she was not a citizen of district alleged. Hanson v. Hanson, 234 F. 853, 148 C. C. A. 451.

Jurisdiction cannot be conferred by consent or failure of parties to raise question in trial court. Spencer v. Patey, 243 F. 555, 156 C. C. A. 253.

Where the federal court's jurisdiction was invoked on the ground of diversity of citizenship, that requirement is absolutely essential and cannot be waived, and want of it will be error at any stage of the cause, though assigned by the party at whose instance the error was committed. Devost v. Twin State Gas & Electric Co. (C. C. A.) 250 F. 349.

A defendant, raising a plea of jurisdiction upon evidence coming out during the course of a trial, must withdraw his general answer and submit to determination of the case upon his plea; and submission on merits, without regard to the plea, waives the jurisdictional question. Kever v. Philadelphia & Reading Coal & Iron Co. (D. C.) 234 F. 814.

Defendant cannot stand on its plea to the jurisdiction and also contest the issue upon the merits, unless the trial court compels submission of the merits to the jury, conditional upon the jury's finding for the plaintiff upon the jurisdictional question. Id.

In a suit in a federal District Court, questions as to whether the jurisdiction of the court was excluded by the pendency of an action in a state court could not be waived, as, even if the parties consented thereto, the court would not knowingly invade the jurisdiction of another court. Pacific Coast Pipe Co. v. Conrad City Water Co. (D. C.) 237 F. 673.

A defendant, who removed an action against him by a citizen of the state in which the action was brought, and answered to the merits, waived jurisdiction over his person so long as plaintiff was a citizen of that state; but, when an alien was substituted as plaintiff, defendant then had a right to withdraw his answer and interpose a plea to the jurisdiction. Roman v. Lehigh Valley Coal Co. (D. C.) 241 F. 595.

Where, after the original complaint had been amended, so as to show that an alien, instead of a citizen of another state, was the proper plaintiff, defendant answered to the merits, without attempting to plead lack of jurisdiction, it thereby waived the objection to the jurisdiction of the federal court over an action by the alien against it. Id.

When diversity of citizenship is the ground of federal jurisdiction, if diversity of citizenship does not in fact exist, there is an entire absence of jurisdiction, which cannot be waived by the parties, and the court will dismiss on its own motion. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

VII. SUITS BETWEEN CITIZENS OF A STATE AND FOREIGN STATES OR CITIZENS

350. Suits by aliens.—See Keating v. Pennsylvania Co. (D. C.) 245 F. 155.

359. Nonresident citizens as aliens.—Under Act March 2, 1907, § 2 (Comp. St. 1916, § 3959), and article 4 of the treaty with Austria (17 Stat. 836), a naturalized Austrian, who has resided in Austria for two years, but is shown not to have renounced his American citizenship, cannot sue as an alien in

the federal courts, though he has not shown his American citizenship before a diplomatic or consular officer. Stein v. Fleischmann Co. (D. C.) 237 F. 679.

365. Waiver of objection.—Under Act March 3, 1887, as amended by Act Aug. 13, 1888, held, that alien's right to object to place of suit or to any defect in service may be waived. Smithson v. Roneo (D. C.) 231 F. 349.

VIII. ASSIGNMENT AND TRANSFERS OF CHOSES IN ACTION

367½. Effect of assignment in general.—That one object of conveyance of land to corporation was to secure necessary diversity of citizenship held not to deprive federal court of jurisdiction of action to quiet title. Doane v. California Land Co., 243 F. 67, 155 C. C. A. 597, certiorari denied 38 S. Ct. 60, 245 U. S. 660, 62 L. Ed. 535.

Under this subdivision, District Court held to have jurisdiction of suit against Canadian corporation by administrator of alien's assignee; the assignee and the administrator being citizens. Sands v. James Carruthers & Co. (D. C.) 243 F. 636.

371. Promissory notes—Indorsers and indorsees.—This subdivision does not deny to a federal court jurisdiction of an action by an assignee on notes indorsed and transferred by a payee, to whom they were made merely that he might, as agent of the maker, negotiate them with third persons. Baltimore Trust Co. v. Screven County (D. C.) 238 F. 834.

375. What are choses in action.—A suit by the grantee of a prior grantee to enjoin the cutting of standing timber held not one brought as assignee of a chose in action, but within the jurisdiction of a federal court, regardless of the citizenship of complainants' grantor. Crown Orchard Co. v. Dennis, 229 F. 652, 144 C. C. A. 62, reversing decree (D. C.) 220 F. 516.

Action to recover back money deposited in court as condition of granting temporary injunction held not one upon a note or chose in action within this section, as to actions by assignee. Menasha Wooden Ware Co. v. Southern Oregon Co., 244 F. 83, 156 C. C. A. 511; Id., 244 F. 90, 156 C. C. A. 518.

A suit by an assignee of an interest in the distributive share of an heir in an estate held not one by an assignee of a chose in action within this subdivision, in which jurisdiction is dependent on diversity of citizenshp between defendant and the assignor. Stotesbury v. Huber (D. C.) 237 F. 413.

Action in equity by assignee of oil and gas lease, to restrain others from operating on land, is not "suit to recover upon a chose in action in favor of any assignee," within this section, prohibiting the federal District Courts from entertaining such suits. Shaffer v. Marks (D. C.) 241 F. 139.

379. Contracts.—An action by the assignee of a building contract, providing for assignment, to recover for work done after the assignment is not within this subdivision, which denies jurisdiction of suits by assignees, unless the assignor could have sued in the same court. Cullman County, Ala., v. Vincennes Bridge Co. (C. C. A.) 251 F. 473.

407. Pleadings and record.—Under this section, and Rev. St. Mo. 1909, §§ 10001, 10002, 10004, petition in action by indorsee of note payable to makers' order and transferred to trust company held not to show jurisdiction. Houck v. Bank of Brinkley, 242 F. 881, 155 C. C. A. 469.

Where petition in action by indorsee of promissory note failed to show that federal District Court had jurisdiction, held, that suit should have been dismissed by such court on its own motion. Id.

408. Objections to jurisdiction.—Defendant, in consideration of money advanced to him by a partnership, agreed to assign an interest in his share of an estate. He executed an assignment in the name of the firm which was designated therein as a corporation. At the request of the firm, he executed a second assignment in lieu of the first to one of the partners as an individual. The assignee afterward repaid the money advanced to the firm and brought suit to establish and enforce the assignment. Held, that defendant was in no position to question the assignee's right to maintain the suit in his own name, and that, he and defendant being citizens of different states, a federal court had jurisdiction regardless of the citizenship of the other members of the firm. Stotesbury v. Huber (D. C.) 237 F. 413.

IX. NATURE AND EXTENT OF JURISDICTION IN GENERAL

410. Nature and extent of federal jurisdiction.—The District Court's jurisdiction is the creature of acts of Congress enacted pursuant to Constitution, and, apart from powers inherent in lawfully constituted judicial tribunal, such court has no jurisdiction other than that conferred by statute. Venner v. Pennsylvania Steel Co. of New Jersey (D. C.) 250 F. 292.

410½. Necessity of concurrent jurisdiction of state courts.—Under the Judicial Code, the federal court's jurisdiction at the suit of nonresident stockholders to appoint a receiver for an insurance company is not limited to cases where the state court would have similar jurisdiction. Welch v. Union Casualty Ins. Co. (D. C.) 238 F. 968, decree reversed O'Neil v. Welch (C. C. A.) 245 F. 261.

410¾. Effect of state statutes.—Act Pa. April 23, 1909 (P. L. 167), cannot take away the federal court's jurisdic-

tion under this section, as amended by Act Dec. 21, 1911, 37 Stat. 46, to maintain a receiver in possession of an insurance company's assets at a suit of nonresident stockholders after dissolution of the company by decree of the state court at the instance of the insurance commissioner. Welch v. Union Casualty Ins. Co. (D. C.) 238 F. 968, decree reversed O'Neil v. Welch (C. C. A.) 245 F. 261.

413. Jurisdiction, how obtained.—In every proceeding, criminal or civil, before cause can be determined by court and judgment given against defendant, court must have jurisdiction of subject-matter and defendant's person, so that some process must be resorted to in order to bring defendant into court, which process must be lawful. U. S. v. Simon (D. C.) 248 F. 980.

414. Jurisdiction by consent.—Jurisdiction of a federal court of an action, by a railroad employé to recover for an injury, as one arising under Employers' Liability Act, cannot be conferred by consent, irrespective of the facts. Chicago & A. R. Co. v. Allen, 249 F. 280, 161 C. C. A. 288.

An individual cannot confer upon a court, not otherwise possessing such powers, jurisdiction as it pertains to any particular matter, and the incumbents of the court cannot act as to such matters as a court. In re Bishop's Estate (C. C. A.) 250 F. 145.

While jurisdiction of the person can be given by consent of the defendants; jurisdiction of the subject-matter cannot be conferred on any court, either by assumption of jurisdiction, or consent of the parties, or request of all of the parties. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

418. Jurisdiction of subject-matter or of the person.—Where diversity of citizenship exists, federal courts of equity have jurisdiction to entertain suits for partition of real estate of decedent. Hastings v. Douglass (D. C.) 249 F. 378.

421. —— Enforcement of state laws or judgments.—Action for death under Code Va. 1904, §§ 2902–2904, held maintainable in federal court sitting in New York. Lauria v. E. I. Du Pont de Nemours & Co. (D. C.) 241 F. 687.

429. Retention and scope of jurisdiction once acquired.—Jurisdiction of federal District Court in suit presenting federal question and that of Supreme Court extends to all questions involved in case, including questions of state law, whether it is necessary to decide federal question or not. Greene v. Louisville & I. R. Co., 37 S. Ct. 673, 244 U. S. 499, 61 L. Ed. 1280, Ann. Cas. 1917E, 88.

Federal jurisdiction having been invoked on substantial grounds extends to determination of all questions involved in case. Louisville & N. R. Co. v. Greene, 37 S. Ct. 683, 244 U. S. 522, 61 L. Ed. 1291, Ann. Cas. 1917E, 97, modifying decree (D. C.) Same v. Bosworth, 230 F. 191.

Where federal District Court had jurisdiction of subject-matter warranting appointment of receiver of embarrassed corporation, it had authority to decide all questions arising therein, and its rulings could be questioned only by those properly parties. Scattergood v. American Pipe & Construction Co., 249 F. 23, 161 C. C. A. 83, certiorari granted Hitchcock v. Scattergood, 38 S. Ct. 583, 247 U. S. 516, 62 L. Ed. 1244.

In a suit in a federal court for infringement of trade-mark, where there is diversity of citizenship between the parties to give jurisdiction, the court may grant relief against the violation of common-law trade-mark rights, which do not depend on transactions in interstate commerce. Ingersoll v. Doyle (D. C.) 247 F. 620.

Federal court whose receiver has taken possession of railroad company's property held to have exclusive jurisdiction, and to be entitled to retain jurisdiction over property after it has been sold and delivered by receiver. International & G. N. Ry. Co. v. Concrete Inv. Co. (Tex. Civ. App.) 201 S. W. 718.

430. Ancillary and incidental jurisdiction.—A suit in a federal court for cancellation of instruments purporting to transfer a judgment at law, rendered by such court in favor of complainant, is ancillary in character, and the court has jurisdiction, regardless of the amount in controversy. Lee Line Steamers v. Robinson, 232 F. 417, 146 C. C. A. 411.

Where the court and all parties treated the receivership suit as being also for the benefit of general creditors, who proved their claims therein, such suit by the receiver is ancillary and within the court's jurisdiction without regard to the citizenship of the parties. Vallery v. Denver & R. G. R. Co. (C. C. A.) 236 F. 176.

Neither citizenship of parties nor any other factor that would ordinarily determine jurisdiction has any bearing on the right of the court to entertain jurisdiction of a suit ancillary to a pending suit. McCabe v. Guaranty Trust Co. of New York, 243 F. 845, 156 C. C. A. 357.

In suit to remove cloud, defendant's denial of any claim of title held to defeat jurisdiction; the jurisdiction of claim for trespass being merely incidental to the jurisdiction to remove the cloud. Sloane v. Kramer Bros. & Co. (D. C.) 230 F. 727.

Ancillary jurisdiction of federal courts may be invoked by stranger to original suit. Venner v. Pennsylvania Steel Co. of New Jersey (D. C.) 250 F. 292.

Where bill, seeking to enjoin corpo-

ration from selling its assets on ground of violation of anti-trust acts, etc., did not make prospective purchaser party because it was nonresident of district, held that, after consummation of transaction, supplemental bill, seeking same relief, did not invoke ancillary jurisdiction of court, and give it jurisdiction of purchaser. Id.

Ancillary jurisdiction of federal courts to protect property within their control from interference, etc., is dependent on original suit, and is not ousted because new parties are brought in any more than by subsequent change in condition arising pendente lite. Id.

Where the District Court for the Southern District of New York was without jurisdiction of a suit, the District Court for the Northern District cannot rightfully exercise ancillary jurisdiction therein, for that presupposes jurisdiction in the Southern District. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

432. —— **Adjudication of claims upon property in the custody of the court.**—A trustee in bankruptcy obtained an order enjoining a bank from paying out a deposit in which the bankrupt claimed an interest. Afterward another claimant, which was a nonresident, brought an action at law against the bank, which was a citizen of the district, to recover the deposit. Thereupon the bank filed a bill in the nature of a bill of interpleader in the same court, alleging that it claimed an interest in the fund through an assignment from the bankrupt and that there were also other claimants, who were made defendants. It asked an injunction against the prosecution of actions at law, and that the rights of the respective parties in the fund be determined. Held, that the effect of the bill was to draw in for a single decision the whole controversy, a part only of which was involved in the action at law, and that the bill was ancillary, and within the jurisdiction of the court, regardless of the citizenship of the other defendants. Sherman Nat. Bank of New York v. Shubert Theatrical Co. (D. C.) 238 F. 225.

The ancillary jurisdiction of a court to determine all questions as to rights in property of which it has taken possession, may be exercised by federal courts, though not authorized by statute. Darrough v. First Nat. Bank of Claremore (Okl.) 156 P. 191.

Jurisdiction of federal Circuit Court in receivership proceedings wherein title to land was involved held not limited to discovering then existing state of facts as to title. Samuel v. Houston Oil Co. of Texas (Tex. Civ. App.) 193 S. W. 246.

434. —— **Collection of assets by receiver.**—Where a court appointing a receiver had no jurisdiction, it cannot claim jurisdiction over property seized without the jurisdiction; so the fact receivers appointed by the District Court of the Southern District of New York have taken possession of property of the defendant in the Northern District does not give that court jurisdiction, where it exceeded its jurisdiction, etc., in appointing receivers, etc. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

436. —— **Cross-bills.**—Jurisdiction of a federal court, shown by a bill, does not support or aid its jurisdiction of a counterclaim, which does not merely concern matters already put in litigation by the bill. Cleveland Engineering Co. v. Galion Dynamic Motor Truck Co. (D. C.) 243 F. 405.

438. —— **Enforcement of judgments, decrees, or orders.**—Suit by bondholders' committee against trustee in mortgage, guarantor of bonds, and the latter's successor, under reorganization plan to enforce deficiency judgment against guarantor, cannot be maintained in federal court, without regard to citizenship, as ancillary to foreclosure proceedings in that court against the guarantor. Hamer v. New York Rys. Co., 37 S. Ct. 511, 244 U. S. 266, 61 L. Ed. 1125.

446. —— **Restraint of proceedings.**—Suit to enjoin actions in state court to recover overcharges by carrier is not ancillary to suit in federal court to enforce rates fixed by the state and restrain actions for overcharges, where decree granting relief had been reversed with directions to dismiss. St. Louis, I. M. & S. Ry. Co. v. McKnight, 37 S. Ct. 611, 244 U. S. 368. 61 L. Ed. 1200, affirming decree Bellamy v. St. Louis, I. M. & S. Ry. Co., 220 F. 876, 136 C. C. A. 442.

A suit in a federal court to enjoin prosecution of an action at law in the same court held ancillary to such action and within the jurisdiction of the court, regardless of the citizenship of the parties. Sherman Nat. Bank of New York v. Shubert Theatrical Co., 247 F. 256, 159 C. C. A. 350, affirming order (D. C.) 238 F. 225.

A federal court has jurisdiction, regardless of citizenship of parties or amount involved, of an ancillary suit to prevent relitigation in other courts of issues it has heard and determined in the original suit, and to protect the titles and rights of purchasers under its decree. St. Louis-San Francisco Ry. Co. v. McElvain (D. C.) 253 F. 123.

A dependent suit may be maintained by a party to the original suit, or by one who claims under the adjudication and the decree therein, against one who assails that adjudication or decree in a subsequent suit in a court without appellate jurisdiction, on the ground that it is illegal or ineffectual, although the latter was not a party to the original suit, the adjudication, or decree. Id.

447. —— Restraint of unfair competition in patent and trade mark cases.—In a bill for infringement of a patent, a claim for unfair competition in connection with the sale of the infringing article may properly be joined, regardless of the question of citizenship. Farmers' Handy Wagon Co. v. Beaver Silo & Box Mfg. Co., 236 F. 731, 150 C. C. A. 63, reversing decree (D. C.) 219 F. 234.

Where a patent has been held valid and infringed, the unfair competition feature arising out of the infringement may be included in an accounting for profits and damages, though the parties are citizens of the same state. Detroit Showcase Co. v. Kawneer Mfg. Co. (C. C. A.) 250 F. 234.

Where patent was found not to have been infringed, and parties to suit were citizens of same state, federal court is without jurisdiction over a cause of action for unfair competition, arising out of defendant's sale of the alleged infringing articles. Id.

449. —— Necessity of showing jurisdictional facts.—Where a declaration alleges all the facts essential to federal jurisdiction, the burden of proving lack of jurisdiction falls on the defendant. Bjornquist v. Boston & A. R. Co. (C. C. A.) 250 F. 929.

455. Determination of question of jurisdiction—Necessity of evidence to establish jurisdictional allegations.—Where allegations of declaration, not denied by answer, are sufficient to show jurisdiction of federal court, no proof to establish such jurisdiction is necessary. Fentress Coal & Coke Co. v. Elmore, 240 F. 328, 153 C. C. A. 254.

456. —— Presumption as to jurisdiction.—Marshal's return, not showing that person served with process was agent of foreign corporation for service of process, held not aided by any presumption, as jurisdictional facts must appear affirmatively. Boultbee v. International Paper Co., 229 F. 951, 144 C. C. A. 233.

In determining whether the alleged unconstitutionality of a state statute gives jurisdiction to a federal court, the presumption is that, if the statute is unconstitutional, the state courts will so declare. Supreme Council of Royal Arcanum v. Hobart, 244 F. 385, 157 C. C. A. 11.

457. Objections to jurisdiction.—When want of jurisdiction of the court of the main suit appears, it is the duty of a court asked to exercise ancillary jurisdiction to raise the question itself, and to decline to act if the want of jurisdiction in that court appears. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

459. —— Time of objection.—A plain defect of jurisdiction may be insisted upon at the hearing. Burdell v. Comstock (C. C.) 15 F. 395.

460. —— Waiver of objections.—Objection to the jurisdiction of a federal court is not waived by answering to the merits after a demurrer for the sole purpose of raising such objection has been overruled. In re Atlanta City R. Co., 17 S. Ct. 208, 164 U. S. 633, 41 L. Ed. 579.

That defendant's counsel moved to set aside service on ground that court was without jurisdiction of subject-matter of suit is not an admission of the court's jurisdiction over defendant's person or a consent to the exercise of it. Smith v. Government of Canal Zone, 249 F. 273, 161 C. C. A. 281.

A plea to the jurisdiction is a plea in abatement; and, where the defendant has admitted the jurisdiction or waived it by a plea in bar to the action, he cannot subsequently plead in abatement. Wittemore v. Malcomson (C. C.) 28 F. 605.

Under the rule in Ohio that a plea to the jurisdiction of the court, denying averments of diverse citizenship, must be by special plea of abatement, separately pleaded and tried, any plea to the merits is a waiver of the plea in abatement. Imperial Refining Co. v. Wyman (C. C.) 38 F. 574, 3 L. R. A. 503.

Jurisdictional facts prescribed by statute held absolutely essential to federal court's jurisdiction, regardless of parties' consent, and want thereof may be raised at any stage. United States Envelope Co. v. Transo Paper Co. (D. C.) 229 F. 576.

Where all parties were properly served and appeared, it is immaterial to the jurisdiction of the court that suit was by ancillary bill. Lancaster v. Police Jury, Parish of Avoyelles, State of Louisiana (D. C.) 254 F. 179.

Where a city voluntarily intervened in a suit against a street railway, and a quasi receivership was undertaken upon the city's demand for relief, held, that the city was not in a position to question the jurisdiction of the court to restrain alleged illegal action by the city with respect to fares charged. Henry L. Doherty & Co. v. Toledo Rys. & Light Co. (D. C.) 254 F. 597.

(2) Crimes and offenses.

4. Common-law offenses.—Federal courts have no common-law criminal jurisdiction, and it is essential to such jurisdiction that Congress shall have made the act a crime, affixed a punishment, and declared the court that shall have jurisdiction. Oliver v. U. S., 230 F. 971, 145 C. C. A. 165, certiorari denied 36 S. Ct. 721, 241 U. S. 670, 60 L. Ed. 1230.

There are no common-law crimes in the United States as a unit. U. S. v. Miller (D. C.) 236 F. 798.

5. Offenses punishable under state laws.—In so far as disloyal slanders or libels cause or tend to cause breaches of the peace, they are offenses against the state, and can be prosecuted only in the state courts. U. S. v. Hall (D. C.) 248 F. 150.

Courts of this state have no jurisdiction to punish Mexican soldiers killing a United States soldier incidental to a battle in Texas between Mexican and United States troops during a state of war between this country and Mexico. Arce v. State (Tex. Cr. App.) 202 S. W. 951.

10. Offense by accessory.—Where a statute provides that an accessory may be prosecuted and convicted as for a substantive felony, the crime is cognizable in any court having jurisdiction over the principal. Hoss v. U. S., 232 F. 328, 146 C. C. A. 376.

Under Penal Code, §§ 332, 335 (Comp. St. 1916, §§ 10506, 10509), one aiding a bank cashier in drawing bills of exchange contrary to Rev. St. § 5209 (Comp. St. 1916, § 9772), is guilty of a felony, and therefore the District Court which had jurisdiction of a prosecution against the principal has jurisdiction of accessory, though at the time of offense he was without the district. Id.

(3) Admiralty causes, seizures, and prizes.

Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any State; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

Act March 3, 1911, c. 231, § 24, par. 3, 36 Stat. 1091. Act Oct. 6, 1917, c. 97, § 1, 40 Stat. 395.

This paragraph was amended by Act Oct. 6, 1917, c. 97, § 1, 40 Stat. 395, cited above by inserting, after the words "where the common law is competent to give it," the words "and to claimants the rights and remedies under the workmen's compensation law of any State."

Notes of Decisions

4. Nature, grounds, and scope of jurisdiction in general.—State legislation affecting general maritime law held invalid, under Const. art. 3, § 2, article 1, § 8, giving Congress power to make all necessary laws, this section, and Judicial Code, § 256 (Comp. St. 1916, § 1233), giving federal District Courts exclusive jurisdiction of civil causes of admiralty jurisdiction. Southern Pac. Co. v. Jensen, 37 S. Ct. 524, 244 U. S. 205, 61 L. Ed. 1086, reversing judgment Jensen v. Southern Pac. Co., 109 N. E. 600, 215 N. Y. 514, L. R. A. 1916A, 403, Ann. Cas. 1916B, 276; Clyde S. S. Co. v. Walker, 37 S. Ct. 545, 244 U. S. 255, 61 L. Ed. 1116, reversing judgment In re Walker, 109 N. E. 604, 215 N. Y. 529, Ann. Cas. 1916B, 87.

Relative to taxation of costs, a controversy with respect to a contract between a proctor and his client for fees cannot be litigated in the admiralty suit. The Johnson Lighterage Co. No. 24, 248 F. 74, 160 C. C. A. 214, modifying decree (D. C.) 240 F. 435.

In view of the protection which a court of admiralty will accord the rights of a minority owner in the event of a dispute as to the employment of the vessel, a court of admiralty has jurisdiction to protect the rights of such an owner, where the majority owners intend to sell the vessel, and may enjoin them from transferring title unless a bond be given that will insure the minority owner will receive his share of the proceeds. The Olga (D. C.) 254 F. 439.

5½. Vessels subject to jurisdiction.—A pontoon wharf being a floating structure, injury thereto by a ship constitutes a maritime tort, of which admiralty has jurisdiction. The Bart Tully (C. C. A.) 251 F. 856.

No jurisdiction will be exercised over a sovereign, whether local or foreign, or over instrumentalities employed by it in the public service, by any proceedings in invitum, regardless of the form or character of the process. The Roseric (D. C.) 254 F. 154.

6½. Agreements ousting jurisdiction.—Under the rule of the American admiralty courts, an arbitration clause in a charter party does not deprive a party of his right to resort to the courts. The Eros (D. C.) 241 F. 186.

9. Saving of common-law remedy.—See notes under Const. art. 3, § 2, cl. 1, note 78, Comp. St. 1916.

Despite the saving clause, the rights of a seaman injured while in service of the ship must be measured according to rules of the maritime law, and cannot be measured by the common law.

Chelentis v. Luckenbach S. S. Co., 38 S. Ct. 501, 247 U. S. 372, 62 L. Ed. 1171, affirming judgment 243 F. 536, 156 C. C. A. 234.

A right of action in personam for a tort given by a state statute held enforceable by an action at law, under this section, although the tort was committed on shipboard. Keithley v. North Pac. S. S. Co. (D. C.) 232 F. 255.

Person who has a cause of action of admiralty cognizance has always been entitled to seek his remedy in either common-law courts, where they are competent to give it, or in admiralty courts. The Erie Lighter 108 (D. C.) 250 F. 490.

In view of the saving clause, while state Legislatures cannot in terms enlarge jurisdiction of admiralty, they may create new rights over matters within the jurisdiction of admiralty. North Pacific S. S. Co. v. Industrial Acc. Commission of California (Cal.) 163 P. 199.

Touching torts on high seas, state may create new rights or remedies, and enforce those rights in her own courts, without regard to admiralty, under construction of saving clause of Judiciary Act. Id.

If there is implied contract to pay wharfage, common-law action will lie, and action in personam can properly be brought in state court under saving clause of federal Judiciary Act of 1789. Adams v. John R. White & Son (R. I.) 103 A. 230.

Under this section a state common-law court has jurisdiction of action in personam by seaman for personal injuries occurring off Alaskan coast and arising from vessel's unseaworthiness. Larson v. Alaska S. S. Co. (Wash.) 165 P. 880.

9½. Remedy under state Workmen's Compensation Acts.—Prior to the amendment of this subdivision it was held that the New York Workmen's Compensation Act was invalid, as applying to ocean-going steamship, as conflicting with Const. art. 1, § 8, and article 3, § 2, this section, and Judicial Code, § 256 (Comp. St. 1916, § 1233), and inconsistent with Rev. St. §§ 4283–4285 (Comp. St. 1916, §§ 8021–8023) and Act June 26, 1884, § 18, 23 Stat. 57, Southern Pac. Co. v. Jensen, 37 S. Ct. 524, 244 U. S. 205, 61 L. Ed. 1086, reversing judgment Jensen v. Southern Pac. Co., 109 N. E. 600, 215 N. Y. 514. L. R. A. 1916A, 403, Ann. Cas. 1916B, 276; Clyde Steamship Co. v. Walker, 37 S. Ct. 545, 244 U. S. 255, 61 L. Ed. 1116, reversing judgment In re Walker, 109 N. E. 604, 215 N. Y. 529, Ann. Cas. 1916B, 87. And that claims for injury on ship in navigable waters of employés of one engaged in repairing and altering them for cargoes were maritime, within jurisdiction of admiralty, to exclusion of State Industrial Commission, having no common-law jurisdiction. Sullivan v. Hudson Nav. Co., 169 N. Y. S. 645, 182 App. Div. 152, order affirmed Doey v. Clarence P. Howland Co., 120 N. E. 53, 224 N. Y. 30, and Anderson v. Johnson Lighterage Co., 120 N. E. 55, and Keator v. Rock Plaster Mfg. Co., 120 N. E. 56, certiorari denied State Industrial Commission of State of New York v. Clarence P. Howland, 39 S. Ct. 11, 63 L. Ed. — and Same v. Johnson Lighterage Co., 39 S. Ct. 11, and Same v. Rock Plaster Mfg. Co., 39 S. Ct. 12, 63 L. Ed. —. It was also held that, in view of this subdivision, a state Workmen's Compensation Act did not cover injuries sustained by member of crew of vessel while in foreign port, though employed on the vessel as a barber. Hartman v. Toyo Kisen Kaisha S. S. Co. (D. C.) 244 F. 567. And that a state Workmen's Compensation Act, which in actions against an employer who has not accepted its terms provides a different measure of compensation from that of the maritime law, does not apply to a seaman injured while employed on a vessel on the navigable waters of the United States. Barrett v. Macomber & Nickerson Co. (D. C.) 253 F. 205. It was further held that where, although federal courts had exclusive jurisdiction over a claim for employé's death occurring in performance of a maritime contract, state Industrial Commission assumed to make award therefor under Workmen's Compensation Law, fact that both employer and insurance carrier acquiesced in award to extent that certain payments were made thereunder, and no appeal was taken therefrom, did not estop them thereafter from questioning commission's jurisdiction. Doey v. Clarence P. Howland Co., 120 N. E. 53, 224 N. Y. 30. Workmen's Compensation Act, as amended, though of optional character, does not apply to injuries received in course of employment to discharge cargo of coal from vessel engaged in interstate commerce and lying in navigable waters; maritime and admiralty jurisdiction being in federal courts. Duart v. Simmons, 121 N. E. 10, 231 Mass. 313. A coal passer on an interstate ferry on the Great Lakes could not have compensation under the Michigan Workmen's Compensation Act for injuries, but his case was within the jurisdiction of the federal District Court under Const. art. 3, § 2, and article 1, § 8, and Judiciary Act Sept. 24, 1789, § 9, as to admiralty jurisdiction; and a proceeding for workmen's compensation to a coal passer on a Great Lakes interstate ferry brought in the state court before amendment of the judiciary act to save to complainants all rights and remedies under the Workmen's Compensation law of any state was sub-

ject to the admiralty laws, and jurisdiction was in the federal District Court, since the statute could not be given a retroactive effect. Thornton v. Grand Trunk-Milwaukee Car Ferry Co. (Mich.) 168 N. W. 410.

One authority, however, held that, assuming that Workmen's Compensation Act comes within the scope of a remedy afforded by the common law, it is entitled to respect in admiralty courts under the saving clause of the Judiciary Act and since "common-law remedy," means any remedy with or without action or jury which is a substitute for a suit at law whereby a liability is imposed after due process of law, the Workmen's Compensation Act is within its saving clause. North Pacific S. S. Co. v. Industrial Acc. Commission of California (Cal.) 163 P. 199. It was also held that an injured seaman, claiming and receiving in state tribunals amount awarded under California Workmen's Compensation Act, or accepting amount fixed by agreement to be paid thereunder, cannot recover in admiralty. Riegel v. Higgins (D. C.) 241 F. 718.

Since the amendment of the provision by Act Cong. Oct. 6, 1917, c. 97, 40 Stat. 395, it was held that an employé of a stevedore, even if engaged in maritime occupation when injured by falling through hatch of vessel, may recover in the state court compensation under Compensation Act. Veasey v. Peters, 77 So. 948, 142 La. 1012. It was also held that while, when enacted, Workmen's Compensation Law, so far as making it applicable to longshore work in loading and unloading cargoes, was unconstitutional, as an invasion of admiralty jurisdiction, it became effective in that respect, without re-enactment, when by Act Cong. Oct. 6, 1917, § 2, 40 Stat. 395, recourse to rights and remedies under state Workmen's Compensation Law was permitted. Cimmino v. John T. Clark & Son (Sup.) 172 N. Y. S. 478. As to the effect of the amendment it has been held that Workmen's Compensation Act, which withdraws from private controversy all remedy for injuries received in hazardous work, and excludes every other remedy, does not extend to employés on a vessel in navigable waters, and the Industrial Insurance Commission cannot collect from an employer premiums on account of such employés, notwithstanding Act Cong. Oct. 6, 1917, 40 Stat. 395. Puget Sound Bridge & Dredging Co. v. Industrial Ins. Commission (Wash.) 177 P. 788.

Decision of the highest state court, denying relief under New Jersey Workmen's Compensation Act for drowning in navigable waters, holding that Act Oct. 6, 1917, 40 Stat. 395, saving to claimants rights and remedies under the workmen's compensation law of any state, was inapplicable, being passed after the accident, and that the rights of parties depended on the maritime laws, held not one allowing review by the national Supreme Court, on writ of error, under Act Sept. 6, 1916, § 2, 39 Stat. 726 (Comp. St. 1916, § 1214). Coon v. Kennedy, 39 S. Ct. 146, 63 L. Ed. —.

A stevedore, injured while loading a vessel, who was entitled under Judicial Code, § 24, par. 3, as amended by Act Oct. 6, 1917, 40 Stat. 395, to the remedy afforded by the state Workmen's Compensation Act, held not to have elected that remedy by signing at the request of an attorney the notice to his employer contemplated by the Compensation Act, and to be entitled to sue in admiralty, etc. Siebert v. Patapsco Ship Ceiling & Stevedore Co. (D. C.) 253 F. 685.

II. Suits between foreigners and against foreign vessels.—A merchant vessel, requisitioned and employed in the service of a foreign government, but remaining under the control and management of its owner, is not exempt from a suit in rem in a court of the United States for a maritime tort. The Attualita, 238 F. 909, 152 C. C. A. 43.

That a vessel libeled for a tort committed on the high seas sails under a foreign flag, and that the libelant is a subject of another foreign nation, is not sufficient to require a court of admiralty of the United States to decline jurisdiction. Id.

While, under the rule of international comity, a court will not exercise jurisdiction, at suit of an individual, over a vessel which is employed in the public business of a foreign nation, where after the attachment in such a suit of a privately owned foreign vessel, which had been requisitioned for service by its home government, the owners appear and have given bond for its release, the further action of the court can no longer affect the rights of the foreign government, but private rights only, and comity does not require it to discharge the attachment. The Luigi (D. C.) 230 F. 493.

A British libelant cannot maintain a suit in rem in an admiralty court of the United States against a German vessel to recover for repairs and supplies furnished in England, where the laws of both England and Germany are pleaded, and neither gives him a maritime lien, or right to proceed directly against the vessel, although in the absence of a showing of the foreign laws our own law would be applied. The Kaiser Wilhelm II (D. C.) 230 F. 717.

Under St. 3 & 4 Vict. c. 65, § 6, which confers on the English Court of Admiralty authority to arrest or proceed in rem against a foreign ship for necessaries supplied, a court of admiralty of the United States may entertain a suit

in rem to enforce a claim for necessaries supplied to a foreign ship in England, even though the English statute does not confer a maritime lien, but merely a right to sue the ship. Id.

Since the commencement of war between England and Germany, and the promulgation by each government of laws or decrees prohibiting its subjects from making any payments to subjects of the other, and while such decrees remain in effect, a court of admiralty of the United States, in a case where its action is discretionary, will refuse to entertain jurisdiction of a suit between subjects of the two countries to enforce payment of a claim which arose in a foreign country. Id.

A suit in rem may be maintained against property of a foreign government, although destined for its public use, to recover for salvage services rendering in saving it while in the possession of a lightering company, which had contracted to transport it from a railroad terminal to a vessel, but had no other connection with the foreign government, and where the property was still in its possession when libeled and seized by the marshal. The Johnson Lighterage Co. No. 24 (D. C.) 231 F. 365.

It is within the discretion of a court of admiralty of the United States to take jurisdiction of a suit for breach of charter between two foreign corporations. Aktieselskabet Korn-Og Foderstof Kompagniet v. Rederiaktiebolaget Atlanten (D. C.) 232 F. 403.

Foreign naval vessel held not subject to libel for damages for collision, though at time of collision carrying a cargo of general merchandise belonging to private persons. The Pampa (D. C.) 245 F. 137.

Under Shipping Act, § 9 (Comp. St. 1916, § 8146) vessel requisitioned by United States Shipping Board Emergency Fleet Corporation, and by United States Shipping Board chartered to French government as carrier of food, held subject to arrest under libel for collision on high seas. The Florence H. (D. C.) 248 F. 1012.

Court of admiralty will not in its discretion dismiss libel on ground that it would involve scrutiny of conduct of seamen or agents of French government, unless suggestion of diplomatic embarrassment be made by officers of government responsible as to those relations. Id.

The rights of an American seaman in the harbor of New York upon a British vessel can properly be adjudicated in a court of the United States according to the admiralty law, when this admiralty law is in exact accord with what his contract rights would be under the British statute. The Vestris (D. C.) 252 F. 201.

A naval transport, owned by a foreign government and in its possession, through a naval captain and crew, although chartered to a private individual to carry a commercial cargo, is not subject to seizure under process of an admiralty court of the United States, in a suit by a shipper for damage to cargo. The Maipo (D. C.) 252 F. 627.

No jurisdiction will be exercised over a sovereign, whether local or foreign, or over instrumentalities employed by it in the public service, by any proceedings in invitum, regardless of the form or character of the process. The Roseric (D. C.) 254 F. 154.

An admiralty court of the United States will not exercise its jurisdiction in rem over a vessel under requisition by the British government, and used by it for purposes of the war in which such government and the United States are cobelligerents against a common enemy, so long as the vessel remains in such service, and the fact that its officers and crew are still in the employment of the owner is immaterial. Id

The immunity from process granted to ship in public service of country by courts of another country is based upon the idea that sovereigns are of equal dignity and independence, and that out of regard for the right of a sovereign to be unhampered in use of such instrumentalities, and to maintain amicable relations between sovereigns, it is tacitly agreed that one sovereign should decline to exercise some of its prerogatives when it would necessarily place another sovereign in a subordinate position. Id.

13. Maritime contracts and services in general.—A contract of employment of a master held maritime, and within the admiralty jurisdiction, notwithstanding a provision incidentally requiring the employé to perform duties on shore.—Union Fish Co. v. Erickson, 235 F. 385, 148 C. C. A. 647.

A contract, enforceable in admiralty, must be wholly maritime. The Ada (C. C. A.) 250 F. 194.

Contract to float vessel, which had been cast on shore five years before and lay on dry land during that time, held not within admiralty jurisdiction. The Frances L. Skinner (D. C.) 248 F. 818.

In determining whether a contract be of maritime nature, locality is not controlling; the true test being the subject-matter of the contract, the nature and character of the work to be done. Doey v. Clarence P. Howland Co., 120 N. E. 53, 224 N. Y. 30.

14. Supplies and repairs, and services performed for vessel.—Admiralty has no jurisdiction over breach of a contract to furnish owners of 19 fishing steamers such coal as the 19 vessels might require during the season; such contract not being maritime in character, in that it did not begin and end in the necessities of a particular vessel for her own voyage. The Walter Adams (C. C. A.) 253 F. 20.

Since Act June 23, 1910 (Comp. St.

1916, § 7783), a contract to have a marine railway in readiness and in such a condition as to promptly place a vessel in a position where repairs could be made, is one of cognizance in admiralty. The Alliance (D. C.) 236 F. 361.

16. Charter parties and contracts of affreightment or transportation.—Admiralty has jurisdiction of a suit by a time charterer of a vessel, who is the owner pro hac vice, to recover possession from the owner, who, having taken possession to make repairs, refuses to return the vessel. The Nellie T., 235 F. 117, 148 C. C. A. 611.

Where a contract for the charter of a vessel gave charterer an option to purchase the same for the sum specified in the charter party as the hire, the contract must be deemed one for the sale of the vessel, and so it was within the jurisdiction of a court of admiralty, and proceeding in rem was not appropriate remedy for breach. The Ada (C. C. A.) 250 F. 194.

18. Salvage.—Where a tug was driven by a violent storm on land above the ordinary high-water mark, contract for its removal held "maritime" one, the service being one of "salvage," so that a suit on contract for removal was within admiralty jurisdiction. The Gulfport (C. C. A.) 250 F. 577.

A tug driven by a violent storm on land above ordinary high-water mark held subject to salvage, and a suit to recover for replacing it in the water within the admiralty jurisdiction. The Gulfport (D. C.) 243 F. 676.

19. Pilotage.—A suit by a vessel against her pilot to charge him with responsibility for her anchorage in an unlawful place is within the admiralty jurisdiction. Strathleven Steamship Co. v. Baulch, 244 F. 412, 157 C. C. A. 38, certiorari denied Baulch v. Strathleven S. S. Co., 38 S. Ct. 61, 245 U. S. 663, 62 L. Ed. 537.

21. Claims for wages.—Claim of carpenter against his employer, altering ship in navigable waters to fit it for cargo of grain, is within jurisdiction of admiralty, to the exclusion of the State Industrial Commission, in view of Const. U. S. art. 3, § 2, and this section. Doey v. Clarence P. Howland Co., 120 N. E. 53, 224 N. Y. 30.

23. Torts in general.—Suit in admiralty may be maintained against municipal corporation for tort, if cause of action is stated under maritime law, although same acts of its servants would not constitute cause of action under local state law. City of Chicago v. White Transp. Co., 243 F. 358, 156 C. C. A. 138, certiorari denied 38 S. Ct. 60, 245 U. S. 660, 62 L. Ed. 535.

Admiralty has jurisdiction of a suit for damages against a navigating vessel for injury to a submarine cable lying on the bottom of a channel. U. S. v. North German Lloyd (D. C.) 239 F. 587.

Admiralty has jurisdiction of a suit for the negligent injury by a vessel of a marine cable resting on the bottom under navigable waters although the ends of the cable are supported on the shore. The Toledo (D. C.) 242 F. 168.

Where bill of lading falsely recited that shipment was in apparent good condition, held, that admiralty had no jurisdiction whether tort consisted in its issuance or its negotiation. William A. Higgins & Co. v. Anglo-Algerian S. S. Co. (D. C.) 242 F. 568, decree reversed Higgins v. Same (C. C. A.) 248 F. 386.

A libel in admiralty against members of a Delaware county levy court to recover for injuries to a vessel, resulting from negligence in opening and operating a drawbridge across a navigable river, which was under control of levy court, cannot be maintained. The Alex. Y. Hanna (D. C.) 246 F. 157.

In cases of tort admiralty jurisdiction depends solely upon the place where the tort was committed, which must have been upon the high seas or other navigable waters. Doey v. Clarence P. Howland Co., 120 N. E. 53, 224 N. Y. 30.

24. Collisions.—Admiralty jurisdiction embraces a libel in rem to recover for damages inflicted by colliding vessel on unfinished foundation pier intended to support a beacon to be installed by the United States. Latta & Terry Const. Co. v. British Steamship "Raithmoor," 36 S. Ct. 514, 241 U. S. 166, 60 L. Ed. 937, reversing decree The Raithmoor (D. C.) 186 F. 849.

Damages for injury resulting from collision to a drilling platform erected on posts or piles driven in the bottom in navigable water held not recoverable in admiralty, but damages for injury to an attendant scow held within the admiralty jurisdiction. The Senator Rice (D. C.) 234 F. 101.

25. Personal injuries.—A suit against a vessel for negligent injury to workmen making repairs in a dry dock held within the admiralty jurisdiction. The Anglo-Patagonian, 235 F. 92, 148 C. C. A. 586, affirming decree (D. C.) 228 F. 1014.

Though a seaman of a California corporation injured while on one of its vessels recovered judgment against the corporation, held, that on its bankruptcy the federal courts had jurisdiction of a libel in admiralty against the stockholders, who were also primarily liable under the California Constitution. Buttner v. Adams, 236 F. 105, 149 C. C. A. 315.

In seaman's action for personal injuries, whether court had jurisdiction to consider the charge of negligence was governed by laws of place where accident took place. The Vestris (D. C.) 252 F. 201.

Admiralty has jurisdiction of suit in personam by employé of stevedore against employer to recover for injuries sustained through negligence of latter while engaged in loading vessel lying at dock in navigable waters. Veasey v. Peters, 77 So. 948, 142 La. 1012.

The work and injury of plaintiff while discharging cargo of coal from vessel engaged in interstate commerce, while lying in navigable waters, were maritime in their nature. Duart v. Simmons (Mass.) 121 N. E. 10.

A longshoreman while engaged in loading a vessel in navigable waters for his employer having a contract therefor was performing a maritime contract, and Industrial Commission would have no jurisdiction of his claim for compensation for injuries received in such work. Anderson v. Johnson Lighterage Co. (N. Y.) 120 N. E. 55.

Employé of plaster manufacturing company while in performance of his duties in unloading rock from vessel lying alongside a pier in East River was engaged in performance of maritime contract, so that Industrial Commission had no jurisdiction of his claim for injuries received in such work. Keator v. Rock Plaster Mfg. Co. (N. Y.) 120 N. E. 56.

The work of loading and unloading ships is maritime, as regards jurisdiction of claim for personal injury therein. Cimmino v. John T. Clark & Son (Sup.) 172 N. Y. S. 478.

Where servant was injured in hold of ship in navigable waters of Puget Sound, question of compensation was subject to controversy in admiralty in the federal courts, regardless of state law, although he was assisting only in unloading the ship, and not in its navigation. Shaughnessy v. Northland S. S. Co. (Wash.) 162 P. 546.

26. Wrongful death.—That a person injured on a vessel died on shore from the injury does not deprive an admiralty court of jurisdiction of a suit for his death. The Anglo-Patagonian, 235 F. 92, 148 C. C. A. 586, affirming decree (D. C.) 228 F. 1014.

General admiralty law affords no recovery for death occurring on high seas. The Sagamore, 247 F. 743, 159 C. C. A. 601.

(7) Suits under patent, copyright, and trade-mark laws.

11. Suits under patent laws—Royalties.—Paragraph 1 of this section provides, relative to the jurisdiction of District Courts, that the provision therein as to the sum or value of the matter in controversy shall not apply to the cases mentioned in succeeding paragraphs. Section 256, par. 5 (Comp. St. 1916, § 1233), provides that the jurisdiction of United States courts of all cases arising under the patent or copyright laws shall be exclusive of the courts of the several states. A bill and answer were in the ordinary forms employed in patent suits, except that the ultimate issue was whether plaintiffs were entitled to damages in the form of fixed royalties, instead of an indefinite sum in the form of profits, and an injunction was prayed restraining defendant from further using infringing furnaces until it should pay plaintiffs such fixed sum. Held, that the District Court had jurisdiction, though the sum involved was less than $3,000, as the bill showed that plaintiffs invoked the aid of the patent laws, and the suit might be said to have arisen under those laws. Swindell v. Youngstown Sheet & Tube Co. (C. C. A.) 230 F. 438.

15. Suits for infringement of patents—Unfair competition.—A federal court is without jurisdiction of a cause of action for unfair competition, where there is not diversity of citizenship between the parties, although joined with a cause of action for infringement of patent. W. F. Burns Co. v. Automatic Recording Safe Co., 241 F. 472, 154 C. C. A. 304, reversing decrees Automatic Recording Safe Co. v. Bankers' Registering Safe Co. (D. C.) 224 F. 506; Same v. W. F. Burns Co. (D. C.) 224 F. 512, and Same v. Burns Co. (D. C.) 224 F. 513.

Where federal court had jurisdiction because a patent was involved, held, that it could not grant an injunction restraining unfair competition without regard to the infringement of the patent. Shrauger & Johnson v. Phillip Bernard Co. (D. C.) 240 F. 131.

A federal court is not given jurisdiction of a suit for unfair competition between citizens of the same state by the fact that it is joined with a cause of action for infringement of a patent. Unit Const. Co. v. Huskey Mfg. Co. (D. C.) 241 F. 129.

Where complainant's trade-mark, registered under Act Feb. 20, 1905, c. 592, was valid, and had been infringed, federal court has jurisdiction of suit to enjoin infringement of trade-mark, as well as any unfair competition in connection with the infringement, notwithstanding defendants and complainant were citizens of same state. Stark Bros. Nurseries & Orchards Co. v. Stark (D. C.) 248 F. 154.

(8) Suits for violation of interstate commerce laws.

Interstate commerce in general.—An action to collect a freight bill from the consignor after the carrier failed to collect the full amount from the consignee involves no question under the Elkins Act or any other interstate

commerce laws. Yazoo & M. V. R. Co. v. Zemurray, 238 F. 789, 151 C. C. A. 639.

District Court held to have original jurisdiction of action by shipper against railroad company to recover excessive freight paid. National Elevator Co. v. Chicago, M. & St. P. Ry. Co., 246 F. 588, 158 C. C. A. 558.

Where a bill of lading for an interstate shipment required the owner or consignee to pay the freight, an action by a connecting carrier to recover freight due is governed by the Carmack Amendment (Act June 29, 1906 [Comp. St. 1916, §§ 8604a, 8604aa]); and under this subdivision is within the jurisdiction of the federal District Court, regardless of the amount involved. New York Cent. R. Co. v. Mutual Orange Distributors (C. C. A.) 251 F. 230.

The duty of an interstate telephone company, under Interstate Commerce Act of 1887, as amended in 1889 and 1910 (Comp. St. 1916, § 8563 et seq.), to furnish reasonable facilities for the transaction of their business may be enforced in federal courts. Stephens v. Ohio State Telephone Co. (D. C.) 240 F. 759.

Action for freight charges on interstate shipment held within jurisdiction of District Court, under Judicial Code, § 24, subd. 8, as arising under law regulating commerce. Wells Fargo & Co. v. Cuneo (D. C.) 241 F. 726.

Cited without definite application, Northern Pac. Ry. Co. v. Van Dusen Harrington Co. (C. C. A.) 245 F. 454.

(9) Penalties and forfeitures.

Penalties in general.—The federal District Court has no jurisdiction in admiralty over proceedings in personam for collection of the penalty prescribed by Harter Act, § 5 (Comp. St. 1916, § 8033), for refusal to give a clean bill of lading, etc., although, under Judicial Code, § 24, subd. 9 (Comp. St. 1916, § 991[9]), a qui tam action would lie to collect the penalty. U. S. v. James W. Elwell & Co. (C. C. A.) 250 F. 939.

As the federal District Court has jurisdiction of a qui tam action to collect the penalty prescribed by Harter Act, § 5 (Comp. St. 1916, § 8033), for refusal to issue a clear bill of lading, etc., held that, where respondent answered a libel in personam to collect the same, the proceeding may be treated as the analogue of a complaint qui tam at common law, and need not be dismissed for want of jurisdiction. Id.

(14) Suits to redress deprivation of civil rights.

1. Protection of civil rights in general.—This subdivision gives a federal court no jurisdiction over a bill to enjoin a local board and adjutant general from inducting complainant into military service under the Selective Service Act, on the ground that interruption of complainant's employment would deprive him of a property right, for complainant has in no just sense a property right in his employment. Bonifaci v. Thompson (D. C.) 252 F. 878.

(16) Suits against national-banking associations.

14. Suits on liability of officers.—Federal question held involved, giving federal District Court jurisdiction under Rev. St. § 5198 (Comp. St. 1916, § 9759), and Act Aug. 13, 1888, § 4, without regard to citizenship, in action to enforce personal liability of directors in national bank, under Rev. St. § 5239 (Comp. St. 1916, § 9831), for damages by purchaser of capital stock, relying on false reports of the directors. Chesbrough v. Woodworth, 37 S. Ct. 579, 244 U. S. 72, 61 L. Ed. 1000, affirming judgment 221 F. 912, 137 C. C. A. 482.

19. Suits by or against receivers.—A suit by the receiver of a national bank in the course of winding up its affairs held within the jurisdiction of a federal District Court, under this subdivision. Bates v. Dresser (D. C.) 229 F. 772.

(18) Suits against consuls and vice consuls.

Scope and effect of statute.—Under Const. U. S. art. 3, § 2, subds. 1, 2, article 3, § 1, and article 6, subd. 2, and Judicial Code, 1911, § 24, subd. 18, and section 256, subd. 8, New York Supreme Court held to have no jurisdiction of wife's action for separation, under Code Civ. Proc. N. Y. § 1762, as against husband, consul for republic of Peru, so that service of summons would be vacated and complaint dismissed. Higginson v. Higginson, 158 N. Y. S. 92, 96 Misc. Rep. 457.

(20) Suits against United States.

3. Suits against federal officers or agents.—Action against postmaster to enjoin him from excluding publication from mails pursuant to direction of Postmaster General is not technically one against the sovereign. Masses

Pub. Co. v. Patten, 245 F. 102, 157 C. C. A. 398.

9. Actions of tort.—Action for damages for injuries to mules hired to agent of United States, claimed to have resulted from negligence, is one sounding in tort, and cannot be maintained under 24 Stat. 505. Occidental Const. Co. v. U. S., 245 F. 817, 158 C. C. A. 157.

10. Implied contract in general.—Consent of United States to be sued under this subdivision being limited to claims founded upon contract, express or implied, if riparian proprietor on North branch of Chicago river can recover against government for dredging in front of his property to improve navigation, it must be on implied contract. Tempel v. U. S., 39 S. Ct. 56, 63 L. Ed. —.

Law will imply promise by United States to make compensation required by this subdivision, where property to which government asserts no title, conceding ownership in an individual, is taken pursuant to act of Congress as private property to be applied for public uses. Id.

Where it does not appear that at time of taking property there was any claim by United States of right to invade it without payment of compensation, it must be assumed government intended to make compensation for any property taken, so as to afford basis for implied promise, enforceable by action under this subdivision. Id.

If claim of United States of right to dredge North branch of Chicago river to improve navigation was unfounded, property right of riparian proprietor, whose submerged land was dredged, was violated; but his cause of action, if any, sounds in tort, for which this subdivision affords no remedy. Id.

When implied promise of United States to pay for property taken has once arisen, later denial by government, at time of suit against it under this subdivision or otherwise, of its liability to make compensation, does not destroy injured party's right in contract, and convert act of taking into a tort. Id.

30. Procedure in exercise of jurisdiction.—Judgments of the District Courts, in the exercise of the power conferred on them, concurrently with the Court of Claims, by the Tucker Act of March 3, 1887, 24 Stat. 505, to decide claims against the United States, are reviewable exclusively and directly by the Supreme Court, and this remedy is unaffected by the general distribution of appellate power by Judiciary Act 1891, or by the Judicial Code; implications of repeal being prevented by sections 294, 295, thereof (Comp. St. 1916, §§ 1271, 1272), and Tucker Act, § 4 (Comp. St. 1916, § 1574), being excepted from the repealing clause. J. Homer Fritch, Inc., v. U. S., 39 S. Ct. 158, 63 L. Ed. —.

Judicial Code, § 24, par. 20, construed with respect to procedure in the District Court in suits against the United States, and held, that the United States may be brought in by summons served on the district attorney. Mill Creek & Minehill Nav. & R. Co. v. U. S. (D. C.) 246 F. 1013.

Cited without definite application, Butterick Co. v. U. S. (D. C.) 240 F. 539; E. W. Bliss Co. v. U. S., 53 Ct. Cl. 47.

(24) Suits concerning allotments of land to Indians; decrees; appeal.

Protection of rights under oil and gas lease.—See Sandusky Foundry & Machine Co. v. De Lavaud (D. C.) 251 F. 631.

Issues involved in suit to protect alleged rights under oil and gas lease and set aside conflicting lease are within jurisdiction of federal court, where the first lease was authorized by United States Court of Indian Territory and concerned Indian lands, and because it was asserted that the Secretary of the Interior had no authority to approve or disapprove the lease. Wellsville Oil Co. v. Miller, 37 S. Ct. 362, 243 U. S. 6, 61 L. Ed. 559, affirming judgment 150 P. 186, 48 Okl. 386.

Cited without definite application, McCullough v. Smith (C. C. A.) 243 F. 823; Vitkus v. Clyde S. S. Co. (D. C.) 232 F. 288; Ostrom v. Edison (D. C.) 244 F. 228; Brady v. J. B. McCrary Co. (D. C.) 244 F. 602; M. Hohenberg & Co. v. Mobile Liners, Inc. (D. C.) 245 F. 169.

§ 991a. (Act Feb. 22, 1917, c. 113.) Same; bills of interpleader by insurance companies.

The district courts of the United States shall have original cognizance to entertain suits in equity begun by bills of interpleader where the same are filed by any insurance company or fraternal beneficiary society, duly verified, and where it is made to appear by such bill that one or more persons, being bona fide claimants against such company or society, reside within the jurisdiction of said court; that such company or society has made or issued some policy of insurance or certificate of membership providing for the

payment of a sum of money of at least $500 as insurance or benefits to a beneficiary or beneficiaries or to the heirs, next of kin, or legal representative of the person insured or member; that two or more adverse claimants, citizens of different States, are claiming or may claim to be entitled to such insurance or benefits and that such company or society deposits the amount of such insurance or benefits with the clerk of said court and abide the judgment of said court. In all such cases the court shall have the power to issue its process for said claimants, returnable at such time as the said court or a judge thereof shall determine, which shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found; to hear said bill of interpleader and decide thereon according to the practice in equity; to discharge said complainant from further liability upon the payment of said insurance or benefit as directed by the court, less complainant's actual court costs; and shall have the power to make such orders and decrees as may be suitable and proper and to issue the necessary writs usual and customary in such cases for the purpose of carrying out such orders and decrees: Provided, That in all cases where a beneficiary or beneficiaries are named in the policy of insurance or certificate of membership or where the same has been assigned and written notice thereof shall have been given to the insurance company or fraternal benefit society, the bill of interpleader shall be filed in the district where the beneficiary or beneficiaries may reside. (39 Stat. 929.)

This section was an act entitled "An act authorizing insurance companies and fraternal beneficiary societies to file bills of interpleader," cited above.

Notes of Decisions

District in which suit must be brought.—Under this section, authorizing insurance companies to file bills of interpleader, vesting District Courts of the United States with jurisdiction, and providing that bill "shall be filed in the district where the beneficiary or beneficiaries reside," suit must be brought in the district of the residence of the beneficiary, whether there has been an assignment of the policy or not. New York Life Ins. Co. v. Kennedy (D. C.) 253 F. 287.

Necessity of deposit in court.—Under this section, a deposit of the amount of the insurance in court is a condition precedent to the exercise of the jurisdiction granted. Penn Mut. Life Ins. Co. v. Henderson (D. C.) 244 F. 877.

§ 992. (Act Oct. 22, 1913, c. 32.) Commerce Court abolished, etc.

Notes of Decisions

See U. S. v. Illinois Cent. R. Co., 37 S. Ct. 584, 244 U. S. 82, 61 L. Ed. 1007.

Jurisdiction in general.—This section vested in federal District Courts only same jurisdiction that was formerly vested in Commerce Court by Act June 18, 1910, 36 Stat. 539, hence where Commission while recognizing terminal railway as common carrier and fixing maximum joint rates failed to fix allowances and divisions of rates which might be accorded by trunk lines, District Court is without jurisdiction in first instance to exercise such administrative authority. Manufacturers' Ry. Co. v. U. S., 38 S. Ct. 383, 246 U. S. 457, 62 L. Ed. 831.

Jurisdiction of state court.—State court has jurisdiction, notwithstanding Act June 18, 1910, 36 Stat. 539, and this section, of suit to enjoin express companies from putting into effect special tariffs increasing intrastate rates, though answer sets up as justification order of Interstate Commerce Commission. American Exp. Co. v. State of South Dakota ex rel. Caldwell, 37 S. Ct. 656, 244 U. S. 617, 61 L. Ed. 1352, modifying decree State v. American Exp. Co., 161 N. W. 132, 38 S. D. 227.

§ 993. (Jud. Code, § 207.) Same; jurisdiction.

Notes of Decisions

Restraining enforcement of orders of Interstate Commerce Commission.—Equity is without jurisdiction to enjoin enforcement of order of Interstate Commerce Commission refusing to extend time for compliance with Panama Canal Act, § 11, prohibiting after July 1, 1914, ownership by railroad in any

common carrier by water when railroad might compete for traffic with the water carrier. Lehigh Valley R. Co. v. U. S., 37 S. Ct. 397, 243 U. S. 412, 61 L. Ed. 819, affirming decree (D. C.) 234 F. 682.

Jurisdiction of federal District Court under Act June 18, 1910, § 1, 36 Stat. 539, and Act Oct. 22, 1913, 38 Stat. 208, of cases brought to enjoin order of Interstate Commerce Commission, does not extend to a suit to set aside an order fixing a future day for hearing of complaints for failure to furnish cattle cars on demand. U. S. v. Illinois Cent. R. Co., 37 S. Ct. 584, 244 U. S. 82, 61 L. Ed. 1007.

In a suit to set aside an order of the Interstate Commerce Commission, where the evidence before the Commission was conflicting and ample to sustain the findings, they are conclusive. Louisville & N. R. Co. v. U. S., 38 S. Ct. 141, 245 U. S. 463, 62 L. Ed. 400, affirming decree (D. C.) 225 F. 571.

Suit to enjoin state authorities from interfering with rates raised under order of Interstate Commerce Commission held within jurisdiction of District Court, under Act June 18, 1910, c. 309, § 1, 36 Stat. 539, and this section. Illinois Cent. R. Co. v. Public Utilities Commission of Illinois, 38 S. Ct. 170, 245 U. S. 493, 62 L. Ed. 425.

Costs may be allowed against United States in a suit against it under Judicial Code, § 24 (20), notwithstanding repeal by section 297 of that Code of Act of March 3, 1887, since provision of section 2 of such act conferring on District Courts jurisdiction concurrent with Court of Claims over claims against the United States is carried into section 24 (20) of the Code, but the provision of section 15 of such act is carried in as section 152 of the Code, and while section 24 (20) is a part of chapter 2 of the Code, and section 152 is a part of chapter 7, it is declared by sections 294 and 295 that the laws revised are to be construed as continuations of existing laws. U. S. v. Cress, 37 S. Ct. 380, 243 U. S. 316, 61 L. Ed. 746.

Interstate Commerce Act Feb. 4, 1887, c. 104, § 5, 24 Stat. 380, as amended by Panama Canal Act Aug. 24, 1912, c. 390, § 11, 37 Stat. 566 (Comp. St. 1916, §§ 8567, 8568), makes it unlawful for any railroad company subject to the provisions of the act after July 1, 1914, to own, operate, control, or have any interest in any common carrier by water with which its railroad does or may compete for traffic, under penalty of a fine for each day's violation. By a further provision it confers on the Interstate Commerce Commission jurisdiction to determine, on application of any railroad company also owning or controlling a water line, the questions of fact as to competition or possibility of competition between the rail and water lines, and upon certain findings to make an order extending the time during which the water service may be continued after July 1, 1914. In all such cases the order of the commission is made final. Held, that an order of the commission pursuant to the statute dismissing the petition of a carrier for such an extension does not require a dissolution of the connection between the rail and water service, but merely leaves the petitioner subject to the operation of the statute, and that a suit in the District Court to enjoin enforcement of the commission's order is not an appropriate proceeding to review its action. Lehigh Valley R. Co. v. U. S. (D. C.) 234 F. 682.

Where the old rates had injured a town in Iowa, new rates permitted by Interstate Commerce Commission will not be temporarily enjoined pending a suit against enforcement, though such rates might temporarily injure towns in South Dakota. Brown Drug Co. v. U. S. (D. C.) 235 F. 603.

An order of the Interstate Commerce Commission directing the establishment by a railroad company of an increased rate on logs between certain points as a reasonable rate held supported by substantial evidence, and not to involve any error of law which would authorize a court to enjoin its enforcement at the suit of shippers. McLean Lumber Co. v. U. S. (D. C.) 237 F. 460.

Jurisdiction of such a suit is not affected by the fact that the order of the Commission has already been complied with by the railroad company by putting the rates into effect. Id.

A suit by shippers to enjoin enforcement of an order of the Interstate Commerce Commission requiring the establishment and maintenance of rates is not open to the objection that it seeks to have the court itself establish rates. Id.

Owners of lumber mills, whose operation is dependent to a large extent upon logs shipped by them over a particular railroad, have such a pecuniary "interest" in the rates charged for the transportation of logs over such road as to entitle them to maintain a suit to enjoin enforcement of an order of the Interstate Commerce Commission fixing such rates, made in a proceeding to which they were parties. Id.

The courts have power, and are required by the statute, to set aside and enjoin the enforcement of an order of the Interstate Commerce Commission, based upon a finding which is unsupported by the evidence. Chestnut Ridge Ry. Co. v. U. S. (D. C.) 248 F. 791.

Jurisdiction of state court.—See American Exp. Co. v. State of South Dakota ex rel. Caldwell, 37 S. Ct. 656,

244 U. S. 617, 61 L. Ed. 1352, modifying decree State v. American Exp. Co., 161 N. W. 132, 38 S. D. 227; note under § 992.

Injunction suit by state to compel railway company to obey orders of Railroad Commission not declared void by any court was properly brought in a state court; Judicial Code, §§ 207, 208, not applying. Abilene & S. Ry. Co. v. State (Tex. Civ. App.) 199 S. W. 878.

§ 994. (Act Oct. 22, 1913, c. 32.) Venue of suits.

Notes of Decisions

District in which suit must be brought.—Suit by carriers to restrain state authorities from interfering with rates increased under order of Interstate Commerce Commission held not one required to be brought in the district of the residence of the parties on whose petition the order was made, by Interstate Commerce Act, § 16 (Comp. St. 1916, § 8584), and this section. Illinois Cent. R. Co. v. Public Utilities Commission of Illinois, 38 S. Ct. 170, 245 U. S. 493, 62 L. Ed. 425.

Under Act Oct. 22, 1913, c. 32, and Judicial Code, §§ 208, 211, suit to set aside order of the Interstate Commerce Commission, made on petition of residents of Missouri, held not maintainable in Northern district of Illinois; the United States being suable only where it consents to be sued. Id.

Cross-bill to set aside order of Interstate Commerce Commission held not maintainable in suit in district other than that of the residence of the persons on whose petition the order was made, as the immunity of the United States from suit recognizes no distinction between cross-bills and original bills. Id.

Act Oct. 22, 1913, c. 32, 38 Stat. 219 (Comp. St. 1916, § 994), which provides that "the venue of any suit hereafter brought to enforce, suspend, or set aside * * * any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, * * * except that where the order does not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office." Held, that a suit by petitioners before the Commission, to review an order establishing railroad rates, whether such order was made on their petition or not, was within the jurisdiction of the court of the district wherein all the petitioners either reside or have their principal operating office, and that whether or not the railroad company has its principal operating office within the district is immaterial. McLean Lumber Co. v. U. S. (D. C.) 237 F. 460.

Jurisdiction of state court.—See American Exp. Co. v. State of South Dakota ex rel. Caldwell, 37 S. Ct. 656, 244 U. S. 617, 61 L. Ed. 1352, modifying decree State v. American Exp. Co., 161 N. W. 132, 38 S. D. 227; note under § 992.

Cited without definite application, Eastern Texas R. Co. v. Railroad Commission of Texas (D. C.) 242 F. 300.

§ 996. (Jud. Code, § 209.) Jurisdiction of the court, how invoked.

See Brown Drug Co. v. U. S. (D. C.) 235 F. 603.

Parties to suit.—The United States or the Interstate Commerce Commission held not necessary parties to suit by carriers to enjoin state authorities from interfering with rates raised, under order of Interstate Commerce Commission. Illinois Cent. R. Co. v. Public Utilities Commission of Illinois, 38 S. Ct. 170, 245 U. S. 493, 62 L. Ed. 425.

New trial.—A new trial granted in an action on an award of damages by the Interstate Commerce Commission, on the ground that the award, which was part of the evidence submitted to the jury, was made on an erroneous basis. Clark Bros. Coal Mining Co. v. Pennsylvania R. Co. (D. C.) 238 F. 642.

§ 997. (Jud. Code, § 208.) Suits to enjoin, etc.

See Brown Drug Co. v. U. S. (D. C.) 235 F. 603.

Dismissal as to United States.—Cross-bill to set aside order of Interstate Commerce Commission held not maintainable against other defendants, after dismissal as to the United States; the United States being a necessary party under Judicial Code, §§ 208, 211. Illinois Cent. R. Co. v. Public Utilities Commission of Illinois, 38 S. Ct. 170, 245 U. S. 493, 62 L. Ed. 425.

Jurisdiction of state court.—An action to enjoin the charging of a schedule of intrastate express rates higher than those set by state railway board pursuant to Laws 1911, c. 152, and without the notice required by Laws 1913, c. 304, though such schedule was prepared in obedience to an order of

the Interstate Commerce Commission to make nondiscriminating rates was properly brought in the state court; Act Cong. Oct. 22, 1913, requiring a suit "to enforce, suspend, or set aside any order of interstate commerce commission," to be brought in federal court, not applying. State v. American Express Co. (S. D.) 161 N. W. 132.

Injunction suit by state to compel railway company to obey orders of Railroad Commission not declared void by any court was properly brought in a state court; Judicial Code, §§ 207, 208, not applying. Abilene & S. Ry. Co. v. State (Tex. Civ. App.) 199 S. W. 878.

§ 998. (Act Oct. 22, 1913, c. 32.) Interlocutory injunctions.

Jurisdiction of court composed of three judges.—Where on application for temporary injunction against enforcement of new rates permitted by Interstate Commerce Commission, District Judge calls in two other judges, one of them being a Circuit Judge, the court as constituted is without jurisdiction to dispose of the case on the merits. Brown Drug Co. v. U. S. (D. C.) 235 F. 603.

Cited without definite application, McLean Lumber Co. v. U. S. (D. C.) 237 F. 460.

§ 1004. (Jud. Code, § 211.) Suits to be against United States.

District in which suit must be brought.—Under Act Oct. 22, 1913, c. 32, and Judicial Code, §§ 208, 211, suit to set aside order of the Interstate Commerce Commission, made on petition of residents of Missouri, held not maintainable in Northern district of Illinois; the United States being suable only where it consents to be sued. Illinois Cent. R. Co. v. Public Utilities Commission of Illinois, 38 S. Ct. 170, 245 U. S. 493, 62 L. Ed. 425.

§ 1005. (Jud. Code, § 212.) Attorney General to control all cases, etc.

See McLean Lumber Co. v. U. S. (D. C.) 237 F. 460.

§ 1006. (Jud. Code, § 213.) Complainants may appear, etc.

See McLean Lumber Co. v. U. S. (D. C.) 237 F. 460.

CHAPTER THREE—DISTRICT COURTS—REMOVAL OF CAUSES

Sec.
1010. Removal of suits from State to United States district courts.
1011. Procedure for removal.
1012. Suits under grants of land from different States.
1015. Suits and prosecutions against revenue officers, etc.
1016. Removal of suits by aliens.
1019. Suits improperly in district court may be dismissed or remanded.
1020. Proceedings in suits removed.
1021. Time for filing record; return of record, how enforced.

§ 1010. (Jud. Code, § 28, as amended, Act Jan. 20, 1914, c. 11.) Removal of suits from State to United States district courts.

Jurisdiction of federal court in general, see notes under § 991(1) and Const. art. 3, § 2, cl. 1.

Notes of Decisions

I. VALIDITY AND CONSTRUCTION IN GENERAL

(B) Construction

8. Construction of Judicial Code provisions.—Judicial Code held not to have changed, in respect to removal of causes and venue of federal courts, Judiciary Act of 1887, as amended in 1888, and decisions under that act are as binding as if made under the Judicial Code. Keating v. Pennsylvania Co. (D. C.) 245 F. 155.

(C) State statutes restricting removal

10½. Effect of state laws in general.—Nonresident railroad companies to which Washington railroad company transferred its franchise and right of way, including tunnel, limitations against suit against Washington company, having run, held entitled to re-

move cause for injuries occasioned by construction and maintenance of tunnel, despite Const. Wash. art. 12, § 8. City of Seattle v. Great Northern Ry. Co. (D. C.) 239 F. 1009.

11½. Effect of state statute prescribing procedure.—A local statute cannot make parties to an action indispensable so as to deprive a federal court of jurisdiction on removal. Webb v. Southern Ry. Co. (D. C.) 235 F. 578.

The jurisdictional facts for removal of a cause to a federal court, claim of exemption under federal statutes from taxation, existing, removal of the litigation, having its basis in attempted state taxation, cannot be defeated by form of judicial review prescribed by the state. Iowa Loan & Trust Co. v. Fairweather (D. C.) 252 F. 605.

12. Restrictions on foreign corporations.—When the maintenance of an action commenced in a state court is prohibited by a state statute, because of the failure of plaintiff as a foreign corporation to comply with its requirements, plaintiff cannot better its position by removing the cause into a federal court. Utah Const. Co. v. St. Louis Construction & Equipment Co. (D. C.) 254 F. 321.

13. —— Validity.—St. Wis. 1915, § 1770f, providing for revocation of license of any foreign corporation to do business in the state when it applies to remove to a federal court any suit brought against it, held unconstitutional. Donald v. Philadelphia & Reading Coal & Iron Co., 36 S. Ct. 563, 241 U. S. 329, 60 L. Ed. 1027, affirming decree Western Union Telegraph Co. v. Frear (D. C.) 216 F. 199.

State Constitution and laws, denying a foreign corporation doing business in the state the right to remove causes against it to the federal court under penalty of being denied the benefit of limitation statutes, are invalid. Quinette v. Pullman Co., 233 F. 980, 147 C. C. A. 654, denying rehearing 229 F. 333, 143 C. C. A. 453.

Civ. Code Ariz. 1913, pars. 2228, 2243, declaring that a foreign corporation doing business in the state shall forfeit its charter by removing an action against it to the federal court, and making continuance of business after the removal a misdemeanor, are invalid, and their operation will be enjoined on behalf of a foreign corporation which removed an action to the federal court. Copper Queen Consol. Mining Co. v. Jones (D. C.) 237 F. 131.

14½. Effect of state statutes regulating practice.—A state statute cannot deprive a party of the right of removal by designating him as plaintiff in a particular class of suits where he is essentially defendant. Chicago, M. & St. P. Ry. Co. v. Drainage Dist. No. 8 of Shelby County, Iowa (D. C.) 253 F. 491.

II. RIGHT OF REMOVAL IN GENERAL

(A) *Source and nature of right*

15. Source of right of removal.—Under Judicial Code, c. 3, §§ 28, 39, specifying certain grounds for removal, the right of removal is statutory, and suit commenced in state court must remain there until cause is shown for its transfer under an act of Congress. Great Northern Ry. Co. v. Alexander, 38 S. Ct. 237, 246 U. S. 276, 62 L. Ed. 713, dismissing writ of error Alexander v. Great Northern Ry. Co., 154 P. 914, 51 Mont. 565.

18. Nature of right of removal.—The right to remove a suit from a state into a federal court is purely statutory, and the right must be clear, and, if doubtful, the cause should for that reason alone be remanded. Ostrom v. Edison (D. C.) 244 F. 228.

The rights of a plaintiff to bring and of defendant to remove a suit over which the federal and state courts have concurrent jurisdiction are not reciprocal. Id.

Where it appears on the face of the record, including the petition for removal, that the cause is removable, it is the duty of the state court to proceed no further with the case. E. H. Emery & Co. v. Chicago, B. & Q. R. Co. (Iowa) 170 N. W. 540.

For purposes of one defendant's motion to remove the action to a federal court, the allegations of the complaint, setting out a joint tort committed by both defendants, will be assumed to be true. Powell v. Southern Ry. Co. (S. C.) 96 S. E. 292.

18½. Time of existence of ground of removal.—The right of removal depends upon the case disclosed by the pleadings when the petition for removal is filed. Baillie v. Backus (D. C.) 230 F. 711.

(B) *Suits or actions removable*

22. Statutory remedies and proceedings in general.—Under a state statute establishing drainage districts, authorizing them to construct drains and assess the cost on property benefited, and giving the property owner a right of appeal from the assessment to the district court, such an appeal is a "suit," in which the appellant is defendant, within the meaning of the Removal Act. Chicago, M. & St. P. Ry. Co. v. Drainage Dist. No. 8 of Shelby County, Iowa (D. C.) 253 F. 491.

24. Proceedings concerning estates of decedents—Probate of wills.—A nonresident, who filed a caveat to proceedings in the Georgia courts for the probate of a will, is not entitled to re-

move the cause to the federal court, for the case was a purely probate one, and not a suit inter partes. Meadow v. Nash (D. C.) 250 F. 911.

Probate proceedings are not within the words "suit of civil nature, at law or in equity" in Act Cong. March 3, 1911, §§ 24, 28, and are not removable. Powell v. Watkins (N. C.) 90 S. E. 207.

26. Mandamus proceedings.—Under Rem. & Bal. Code Wash. § 1026, proceeding for writ of mandate to require operation of street cars held not removable, under Judicial Code, § 28, though petition asked for receivers in case of refusal to obey the writ. State of Washington v. Puget Sound Traction, Light & Power Co. (D. C.) 243 F. 748.

29. Tax proceedings.—Under Rev. St. Neb. 1913, §§ 6632, 6634, 6635, and in view of sections 1205 and 1212, and Const. art. 6, §§ 1, 16, a proceeding by a Nebraska county to assess inheritance taxes against real and personal property as the property of a decedent, which another claimed as surviving joint tenant, is, when it reaches the county court, a contest inter partes, and so is a suit, within the removal statutes. Smith v. Douglas County, Neb. (C. C. A.) 254 F. 244.

A proceeding on appeal from a board of review of assessments under Code Supp. Iowa 1907, § 1373, held a "suit," within Judicial Code, § 28, and removable by a nonresident defendant. In re Mississippi River Power Co. (D. C.) 241 F. 194.

37. Condition of the cause.—A case, not removable from a state court when commenced, may afterwards become removable. Great Northern Ry. Co. v. Alexander, 38 S. Ct. 237, 246 U. S. 276, 62 L. Ed. 713, dismissing writ of error Alexander v. Great Northern Ry. Co., 154 P. 914, 51 Mont. 565.

A complainant, who had filed a bill in a state court and obtained a restraining order and order to show cause, held estopped to say that no "suit" was pending within the removal statute (Judicial Code, § 28), although subpœna had not issued. English v. Supreme Conclave, Improved Order of Heptasophs (D. C.) 235 F. 630.

A motion to remove a cause to the federal court because of a separable controversy between plaintiff and the nonresident defendant must be determined as the cause of action is presented before defendant is required to answer, unless thereafter plaintiff by some voluntary action creates a separable controversy. Gurley v. Southern Power Co. (N. C.) 92 S. E. 262.

(C) Courts from and to which causes may be removed

41. Court to which cause may be removed.—Where the only ground of jurisdiction was a diversity of citizenship, an action brought by a Maine corporation against a New Jersey corporation and a West Virginia corporation in a court of Ohio, where both defendants were doing business, and where the cause of action arose, could not be removed by the West Virginia corporation to the District Court for one of the districts of West Virginia, as the "proper district" within section 28 is the district in which the suit is pending, especially as the clerk of the state court would not be within the territorial jurisdiction of any other District Court and could not be reached by its process. New York Coal Co. v. Sunday Creek Co. (D. C.) 230 F. 295.

The "proper district" into the court of which a cause may be removed under Judicial Code, § 28, is limited to the district in whose territory the suit is pending. Ostrom v. Edison (D. C.) 244 F. 228.

Where plaintiff, in action brought in L. county in Western federal district, was citizen of S. county within Western district, and defendant, a Missouri corporation maintaining place of business in S. county, cause could not be removed to federal court for Western district on ground of diversity of citizenship. Central Coal & Coke Co. v. Graham (Ark.) 196 S. W. 940.

(D) Original jurisdiction of United States court

43. Jurisdiction of United States courts in general.—Only cases within the original jurisdiction of the District Court are removable from state courts. Ivanoff v. Mechanical Rubber Co. (D. C.) 232 F. 173.

47. Jurisdiction over particular proceedings.—Jurisdiction of state court, acquired by attachment and publication, held not lost by removal of cause, though federal court could not have acquired original jurisdiction in that way. Missouri Valley Bridge & Iron Co. v. Blake, 231 F. 417, 145 C. C. A. 411.

48. Jurisdiction dependent on citizenship or residence of parties—Citizenship or residence of defendant.—Under Judicial Code, §§ 24, 28, a United States citizen, not a citizen of any state, cannot remove an action brought against him by a citizen of the state. Hough v. Société Electrique Westinghouse de Russie (D. C.) 231 F. 341.

Under statute allowing actions falling within original jurisdiction of District Court to be removed by defendants, nonresidents of state in which it was begun, held, that alien living within state might remove cause begun in the state court to federal court. Best v. Great Northern Ry. Co. (D. C.) 243 F. 789.

49. —— Citizenship or residence of plaintiff.—A suit in a state not the

residence of either plaintiff or defendant is not removable to the federal courts on the ground of diverse citizenship. American Oil & Supply Co. v. Western Gas Const. Co., 239 F. 505, 152 C. C. A. 383; New York Coal Co. v. Sunday Creek Co. (D. C.) 230 F. 295; Jackson v. William Kenefick Co. (D. C.) 233 F. 130; Doherty v. Smith (D. C.) 233 F. 132; O'Neil v. Birdseye (D. C.) 244 F. 254; Peninsula Lumber Co. v. Royal Indemnity Co. (D. C.) 237 F. 297; Stewart v. Cybur Lumber Co. (Miss.) 72 So. 276.

Under Judicial Code, §§ 28, 51, action by nonresident alien against New Jersey corporation pending in Ohio state court held not removable to District Court for Northern District of Ohio. Ivanoff v. Mechanical Rubber Co. (D. C.) 232 F. 173.

Despite Judicial Code, § 34, a suit by an alien against citizens of a foreign state cannot be removed to the federal District Court for the state where the action was begun. Jackson v. William Kenefick Co. (D. C.) 233 F. 130.

Under Judicial Code, §§ 24, 28, 51, held that, where an action in the state court, begun by an alien against a foreign corporation, was removed to the federal court, it cannot, on motion of the alien, be remanded. Keating v. Pennsylvania Co. (D. C.) 245 F. 155.

50. Restrictions as to district in which suit might have been brought.—See note 24 under § 1020, post.

Where jurisdiction of federal court depends upon diversity of citizenship under Judicial Code, § 51, plaintiff in case of removal has right to insist upon or waive his objection to jurisdiction because district is not proper district. Guaranty Trust Co. of New York v. McCabe (C. C. A.) 250 F. 699.

Where jurisdiction depended on fact that case arose under law of the United States, held, that it could not be removed to the District Court for a district other than that of which defendant was an inhabitant. Orr v. Baltimore & O. R. Co. (D. C.) 242 F. 608.

Under Jud. Code, § 57, to sustain jurisdiction on removal of a suit in a district of which neither party is a resident on the ground that it is a local action, the bill must be considered as a whole, and the court must be able to grant full relief in rem. O'Neil v. Birdseye (D. C.) 244 F. 254.

An action between citizens of different states cannot be removed to federal court, under Judicial Code, § 28, unless court to which removal is sought would have had jurisdiction, under section 51, if action had been instituted therein. Keating v. Pennsylvania Co. (D. C.) 245 F. 155.

Where a suit is within the jurisdiction of the federal District Court by reason of diversity of citizenship and the amount in controversy, the right of a nonresident defendant to remove the cause is absolute, under Act March 3, 1911, though plaintiff could not sue in that district. M. Hohenberg & Co. v. Mobile Liners (D. C.) 245 F. 169.

Under Judicial Code, § 28 (Comp. St. 1916, § 1010), providing for removal and sections 24, 51 (Comp. St. 1916, §§ 991, 1033), relating to the jurisdiction and venue of suits a suit begun in the state court may be removed where there is diversity of citizenship between the parties though all of the plaintiffs were not residents of the district to which it was removed. James v. Amarillo City Light & Water Co. (D. C.) 251 F. 337.

Under Judicial Code, §§ 28, 51, plaintiff, being resident of Massachusetts district, jurisdiction of United States District Court for such district may be invoked by petition for removal of suit from state court by defendant resident in another state. Dunbar v. Rosenbloom, 119 N. E. 829, 230 Mass. 176.

Under Judicial Code, § 29, regulating the removal of suits from state courts to federal courts a federal court in a district other than the district including the forum where such suit was brought is without jurisdiction on removal. Stewart v. Cybur Lumber Co. (Miss.) 72 So. 276.

Under Act Cong. March 3, 1887, §§ 1, 2, as amended by Act Cong. Aug. 13, 1888, held, that an action brought in the state court outside the federal district of plaintiff's residence was not, over plaintiff's objection, removable for diversity of citizenship to the federal court on petition of a defendant residing in another state. St. Louis & S. F. R. Co. v. Hodge (Okl.) 157 P. 60.

Where plaintiff, a resident of the Western federal district of Oklahoma sued in a state district court lying in the Eastern district, defendant, a nonresident, is not entitled to remove the cause to the federal court of the Eastern district on ground of diversity of citizenship. Ft. Smith & W. R. Co. v. Knott (Okl.) 159 P. 847.

Action brought in state court outside of federal court district in which plaintiff resides is not on objection by the plaintiff removable to federal court district in which he does not reside on petition of defendant, where he is a resident of another state. Riter-Conley Mfg. Co. v. O'Donnell (Okl.) 168 P. 49.

(E) Waiver of right to remove

51. Power to waive and mode of waiver.—The provisions of Judicial Code, § 28, that no case arising under the Employers' Liability Act, brought in a state court, shall be removable, may not be waived. Mitchell v. Southern Ry. Co. (D. C.) 247 F. 819.

52. Particular acts as waiver.—Where court directed verdict for resident defendant without consent of plaintiff, it properly refused nonresident defendant's application for removal to fed-

eral court. Craig v. Kansas City Terminal Ry. Co., 197 S. W. 141, 271 Mo. 516.

53. —— **Participation by party removing cause in proceedings in state court.**—A defendant does not waive his right to insist on the removal of a cause of action by following the case in the state court after that court has denied the right to remove. Nelson v. Black Diamond Mining Co. (D. C.) 237 F. 264.

III. REMOVAL OF CASES ARISING UNDER CONSTITUTION, LAWS OR TREATIES OF THE UNITED STATES

(C) *Cases arising under laws of United States*

67. **Actions against or for acts of United States officers.**—Under Judicial Code, §§ 24, 28, held, that suit begun in state court to enjoin postal inspector from delivering to third person property in possession of petitioner, who had been appointed postmaster, may by defendant be removed to federal court. Porter v. Coble, 246 F. 244, 158 C. C. A. 404.

Under Act March 3, 1891, §§ 2, 4, prisoner's action against warden of United States penitentiary for injuries from negligence held to arise under the United States laws, so as to be removable. Steele v. Halligan (D. C.) 229 F. 1011.

Under Const. U. S. art. 1, § 8, subsec. 17, Const. Wash. art. 25, and Rem. & Bal. Code Wash. § 6853, cause of action for negligence arising on territory acquired for United States penitentiary held removable to federal court. Id.

75. **Actions by or against United States corporations in general.**—An action by a shipbuilding company against the Emergency Fleet Corporation organized under Act March 3, 1901, pursuant to the United States Shipbuilding Act (Comp. St. 1916, §§ 8146a–8146r), upon an alleged contract for the building of ships, which it was not allowed to build, is an action arising under the Constitution and laws of the United States, and is not subject to remand from the federal District Court to the state court. Union Timber Products Co. v. United States Shipping Board Emergency Fleet Corporation (D. C.) 252 F. 320.

Under Act Cong. Jan. 28, 1915, § 5, the fact that a railroad company was incorporated by congressional act does not entitle it to remove an action from the state to the federal courts. Texas & Pac. Ry. Co. v. Hanson (Tex. Civ. App.) 189 S. W. 289; Texas & P. Ry. Co. v. Hughes (Tex. Civ. App.) 192 S. W. 1091.

Under Act Cong. Jan. 28, 1915, § 5 (Comp. St. 1916, § 1233a), as to jurisdiction of actions affecting railroad companies incorporated under an act of Congress, a passenger's suit for injuries was not removable to the federal court on the ground that it involved a question of law arising under a federal statute, although the cause of action arose prior to enactment of such statute but the action was not brought until thereafter. Texas & P. Ry. Co. v. Mercer (Tex. Civ. App.) 195 S. W. 263.

76½. **Actions against federal controlled railroad.**—Actions against railroad company, instituted in state court after President by proclamation assumed control of railroads under Act Aug. 29, 1916 (Comp. St. 1916, § 1974a), are not actions arising under Constitution or laws of United States, so as to be removable to federal courts, under Judicial Code, § 28; the presidential proclamation not having the force of law. Muir v. Louisville & N. R. Co. (D. C.) 247 F. 888.

85. **Cases under laws relating to interstate commerce.**—See Southern Pac. Co. v. Stewart, 38 S. Ct. 130, 245 U. S. 359, 62 L. Ed. 345, dismissing writ of error 233 F. 956, 147 C. C. A. 630.

A suit for injunction held not removable under Judicial Code, § 28, as arising under federal Constitution and laws, though validity of contract alleged might depend upon Interstate Commerce Act. Smith v. Barnett (D. C.) 242 F. 83.

An action for injuries to an interstate shipment of live stock is governed by the various acts regulating commerce, and so is one arising under the Constitution or laws of the United States within this section and section 24 (section 991), giving the District Courts jurisdiction of such causes; that is, the right arising to hear and determine the same. Hartford Fire Ins. Co. v. Kansas City, M. & O. Ry. Co. of Texas (D. C.) 251 F. 332.

Though defendant refrigerator company was not a common carrier, held, that its liability depended on contract with railroad company, and not Interstate Commerce Act; hence though it did not fall within this section, as amended by Act Jan. 20, 1914, c. 11, defendant could not remove from state court a suit against it for less than $3,000 on ground that it was governed by act of Congress. E. H. Emery & Co. v. American Refrigerator Transit Co., 38 S. Ct. 414, 246 U. S. 634, 62 L. Ed. 912.

87. —— **Restriction on removal of cases under the employer's liability act.**—An action under the federal Employers' Liability Act cannot be removed to the federal court. St. Joseph & G. I. Ry. Co. v. Moore, 37 S. Ct. 278, 243 U. S. 311, 61 L. Ed. 741, affirming judgment Moore v. St. Joseph & G. I. Ry. Co., 186 S. W. 1035, 268 Mo. 31; Southern Ry. Co. v. Puckett, 37 S. Ct. 703, 244 U. S. 571, 61 L. Ed. 1321, affirming judgment 85 S. E. 809, 16 Ga. App. 551; Martin v. New York, N. H. &

H. R. Co. (D. C.) 241 F. 696; Givens v. Wight (D. C.) 247 F. 233; Lusk v. Osborne, 191 S. W. 944, 127 Ark. 170; Northern Trust Co. v. Grand Trunk Western R. Co., 207 Ill. App. 11.

Under Act April 5, 1910, prohibiting removal of causes arising under federal Employer's Liability Act, allegation that plaintiff's deceased was employed in interstate commerce when killed brought case within such act, so as to prevent removal, either because of diversity of citizenship or because arising under a federal law. Great Northern Ry. Co. v. Alexander, 38 S. Ct. 237, 246 U. S. 276, 62 L. Ed. 713, dismissing writ of error Alexander v. Great Northern Ry. Co., 154 P. 914, 51 Mont. 565.

Where plaintiff consistently contended that proof supported complaint's allegation that plaintiff's deceased was employed in interstate commerce when killed, defendant railroad could not remove case, although its claim that deceased was not so employed, and that prohibition against removing cases arising under federal Employers' Liability Act did not apply, was upheld by state Supreme Court. Id.

Employers' Liability Act April 22, 1908, as amended by Act April 5, 1910, held to make a case nonremovable, where under the facts alleged such act must control in the case, though there is a count in terms under the state law. Jones v. Southern Ry. Co. (D. C.) 236 F. 584.

Pullman Company is not common carrier by railroad, within federal Employers' Liability Act, and action against it for death may be removed to federal court. Martin v. New York, N. H. & H. R. Co. (D. C.) 241 F. 696.

In determining whether plaintiff's cause was one arising under Employers' Liability Act, and hence not subject to removal on ground of diversity of citizenship, federal court can look only to plaintiff's petition. Givens v. Wight (D. C.) 247 F. 233.

Where plaintiff in one petition in action in state court in alternative joined action under Employers' Liability Act with one under state statutes, held, that she waived provisions of such Liability Act prohibiting removal of causes thereunder to federal court. Id.

The provisions of Judicial Code, § 28, that no case arising under the Employers' Liability Act, brought in a state court, shall be removable, held a limitation on the jurisdiction of all the federal District Courts as a class. Mitchell v. Southern Ry. Co. (D. C.) 247 F. 819.

U. S. Comp. St. 1916, § 8662, prohibiting removal from a state to a federal court of suits under the Employers' Liability Act, forbids the removal of an employé's suit, though defendant is incorporated by act of Congress. Texas & P. Ry. Co. v. Sherer (Tex. Civ. App.) 183 S. W. 404.

(D) Allegations in pleadings

94. General rules.—Whether case arising under a federal law is removable when it is commenced, no fraudulent attempt to evade removal being claimed, is determined by complaint or petition, and it cannot be made removable by petition for removal or defendant's subsequent pleadings. Great Northern Ry. Co. v. Alexander, 38 S. Ct. 237, 246 U. S. 276, 62 L. Ed. 713, dismissing writ of error Alexander v. Great Northern Ry. Co., 154 P. 914, 51 Mont. 565.

Case arising under federal laws, if nonremovable on complaint when commenced, cannot be made removable by defendant's evidence or order of court upon a contested issue, but only by plaintiff voluntarily amending his pleadings, or by his voluntary dismissal or nonsuit of parties defendant. Id.

Rule that before cause is removable plaintiff's statement of cause of action must show it to be based on federal laws and Constitution held not to apply to reservations and sites to which territorial jurisdiction of federal courts extend. Steele v. Halligan (D. C.) 229 F. 1011.

An action instituted in state court cannot be removed to federal court on ground that question arising under Constitution or laws of United States is involved, unless complaint necessarily shows such questions are involved. Nevada-California Power Co. v. Hamilton (D. C.) 235 F. 317.

Where the complaint sought damages for a conspiracy to injure plaintiff's business, based on a patent monopoly, but no adjudication as to the validity of patents or infringement was sought, the action was not one concerning patents, and, there being no other ground of jurisdiction, the action could not be removed from the state court. Charroin v. Romort Mfg. Co. (D. C.) 236 F. 1011.

To remove from state to federal court action on ground it arose under Constitution and laws of United States, such fact must appear from plaintiff's initial pleading; and, where it did not, cause cannot be removed, though action was against railroad company, and President, under Act Aug. 29, 1916, had taken possession of and assumed control of railroads before initiation of action. Muir v. Louisville & N. R. Co. (D. C.) 247 F. 888.

99. Cases under laws relating to interstate commerce.—A petition seeking to recover for injuries to a shipment of cattle, alleging that the cattle were shipped from one state to another, though making no specific reference to any federal law, states an action arising thereunder, as the various acts regulating commerce govern. Hartford Fire Ins. Co. v. Kansas City, M. & O. Ry. Co. of Texas (D. C.) 251 F. 332.

100. Employers' liability act.—Though allegations that decedent was employé

of defendant railroad were not fraudulent in invidious sense, cause held removable on showing that he was employé of defendant Pullman Company. Martin v. New York, N. H. & H. R. Co. (D. C.) 241 F. 696.

Declaration against interstate carrier for injury to employé does not state cause of action under the federal Employers' Liability Act; so as to preclude removal under amendment of 1910 (Comp. St. 1916, § 8662) unless it alleges that at time of injury the employé was also engaged in interstate commerce. Northern Trust Co. v. Grand Trunk Western Ry. Co., 118 N. E. 986, 282 Ill. 565.

Whether cause of action was under federal Employers' Liability Act not removable was to be determined from the pleadings as they stood when petition for removal and bond were filed. Id.

Action against interstate railroad for death of workman, brought by his widow and administratrix for benefit of herself and infant children, is not removable as matter of law because petition does not specifically allege dependency when allegations show that action was brought under federal Employers' Liability Act and not under state law. Griffith v. Midland Valley R. Co., 166 P. 467, 100 Kan. 500, certiorari denied Midland Valley R. Co. v. Griffith, 38 S. Ct. 12, 245 U. S. 653, 62 L. Ed. 532, and writ of error dismissed 38 S. Ct. 133, 245 U. S. 633, 62 L. Ed. 522.

Complaint, in action against interstate and intrastate railroad for death of car repairer, stating that car on which deceased was working was brought in for repairs shortly before accident, "with a view to its being returned and continued in use by said defendant in such interstate and intrastate commerce," sufficiently alleged, as against petition for removal, that deceased was engaged in interstate commerce, and therefore was within the federal Employers' Liability Act. Cook v. Southern Ry. Co. (S. C.) 96 S. E. 148.

IV. REMOVAL OF CAUSES FOR DIVERSITY OF CITIZENSHIP

(A) *Diversity of citizenship as ground of removal*

102. Diversity of citizenship necessary to give jurisdiction to United States courts.—See notes in § 991 and Const. art. 3, § 2, cl. 1.

103. Diversity of citizenship of coplaintiffs and codefendants.—Under Code Ala. 1907, § 2490, action in Alabama state court by a resident thereof against a Virginia corporation, to recover for damages resulting from fire, where nominal plaintiff sought to recover for benefit of insurance companies, which had by payment of part of loss been partially subrogated to his rights, must be treated as action by several plaintiffs, residents of different states. Webb v. Southern Ry. Co., 248 F. 618, 160 C. C. A. 518, reversing judgment (D. C.) 235 F. 578, and certiorari denied Southern R. Co. v. Webb, 38 S. Ct. 582, 247 U. S. 518, 62 L. Ed. 1245.

Where it appears that defendant, as to whom diversity of citizenship does not exist as cause for removal, was employé of his codefendant, that his liability is predicated on nonfeasance rather than misfeasance or malfeasance is not material. Sumey v. Craig Mountain Lumber Co. (Idaho) 170 P. 112, certiorari denied Craig Mountain Lumber Co. v. Sumey, 38 S. Ct. 336, 246 U. S. 667, 62 L. Ed. 929.

The residence of persons summoned as trustees, who have no interest in the main controversy, but are merely stakeholders, is immaterial on the question of removal to the federal court. Dunbar v. Rosenbloom, 119 N. E. 829, 230 Mass. 176.

104. Assignees.—Where plaintiff in New York courts sued nonresidents on claim assigned by members of New York firm, citizenship of his assignors will control jurisdiction of federal court on removal of cause. Guaranty Trust Co. of New York v. McCabe (C. C. A.) 250 F. 699.

Assignee of New York firm all members of which were not citizens of Southern district held, under Judicial Code, § 51, not entitled to sue nonresident defendants in that district, and, cause having been removed from New York court under section 28, to Southern district, it should be remanded. Id.

107. Actions by or against states.—An action by the state, under Rev. Laws Nev. §§ 3657–3664, to collect taxes, cannot, though defendant be a foreign corporation, be removed to federal courts on ground of diversity of citizenship. Nevada-California Power Co. v. Hamilton (D. C.) 235 F. 317.

Quo warranto by state, on relation of city, against foreign corporation, for failure to comply with franchise, instituted by Attorney General, under Rev. Laws Nev. §§ 5656–5659, 5663, as to quo warranto, held action by state, and not city, preventing removal for diversity of citizenship. State v. Reno Traction Co. (Nev.) 171 P. 375, L. R. A. 1918D, 847.

109. Time of existence of ground of removal.—The right of removal depends upon the case disclosed by the pleadings when the petition for removal is filed. Baillie v. Backus (D. C.) 230 F. 711.

(B) *Improper or collusive joinder of parties*

110. Joinder to give jurisdiction or authorize removal.—Where judge of state court on petition for removal for diversity of citizenship, finds that both defendants appear to be jointly liable

and proper parties, it should retain jurisdiction, regardless of plaintiff's motive in suing defendant, as to whom diversity of citizenship does not exist. Sumey v. Craig Mountain Lumber Co. (Idaho) 170 P. 112, certiorari denied Craig Mountain Lumber Co. v. Sumey, 38 S. Ct. 336, 246 U. S. 667, 62 L. Ed. 929. See, also, notes under § 1019.

111. Joinder to prevent removal.—To establish fraudulent joinder of defendant to prevent removal of a cause, it must be shown that plaintiff had no reasonable ground to believe he could recover against that defendant. Hough v. Société Electrique Westinghouse de Russie (D. C.) 231 F. 341.

That the state courts could give no judgment against a defendant, alleged to have been joined to prevent removal, except in violation of the Fourteenth Amendment, does not entitle defendant to removal. Id.

A resolution of a foreign corporation held to give reasonable grounds to believe that plaintiff would be in better position with a judgment against the liquidator as well as against the corporation, so that his joinder was not fraudulent. Id.

Where a citizen is fraudulently and collusively joined as codefendant with a foreign corporation with the sole intent to prevent a removal, the foreign corporation is entitled to removal. Nelson v. Black Diamond Mining Co. (D. C.) 237 F. 264.

The right of removal may not be defeated by fraudulent joinder of a resident defendant having no connection with the controversy. Martin v. Matson Nav. Co. (D. C.) 239 F. 188.

In an action under federal Employers' Liability Act, court properly denied a petition for removal to federal court on ground of diversity of citizenship under allegations of fraudulent joinder. Lusk v. Osborne, 191 S. W. 944, 127 Ark. 170.

113. Right to join.—County in Georgia, issuing two series of warrants on same consideration, held proper and necessary party to suit between the holders of the two series, and suit could not be removed from Georgia state court to the federal court. Continental Trust Co. v. Butts County (D. C.) 242 F. 539.

In relation to removal of causes, when party is in lawful assertion of right in bringing action against resident and nonresident defendant, law attaches no importance to motive in pursuing course. Hollifield v. Southern Bell Telephone & Telegraph Co. (N. C.) 90 S. E. 996.

119. Joinder of master and servant.—Where relation of master and vice principal was such that tort resulting in injury to a servant was joint, the joinder of vice principal and master in action in court of state of which servant and vice principal were citizens, held not fraudulent, and intended to defeat jurisdiction of federal court. Deutsch v. Alaska Gastineau Mining Co. (D. C.) 237 F. 215.

In an action against steamship company, assistant engineer, and chief engineer, held, that cause was properly removable from state court; chief engineer being only resident party, and his joinder being improper, as liability was distinct from that of steamship company. Martin v. Matson Nav. Co. (D. C.) 239 F. 188.

In an action for death of a servant, where there was evidence that a superior servant was guilty of negligence, the action against the superior servant and the employer, which was a nonresident corporation, could not be removed to the federal court merely because the motive of joining the nonresident defendant with the local defendant was fraudulent, where a joint cause of action against all defendants was properly pleaded, and supported by sufficient evidence to make question of joint liability one for the jury. Buskirk v. Caudill (Ky.) 206 S. W. 867.

Where injured employé sued employing company and foreman jointly, foreman being only resident defendant, fact of his insolvency made no difference in relation to right of employer to remove cause to federal court on ground of fraud in joining defendants. Hollifield v. Southern Bell Telephone & Telegraph Co. (N. C.) 90 S. E. 996.

Motive of plaintiff in joining an impecunious employé as codefendant with a nonresident corporation in a negligence suit is not material upon the question of the right of the corporation to remove the cause to a federal court if the defendants are jointly liable under the local laws. Clark v. American Agricultural Chemical Co. (S. C.) 97 S. E. 705.

Complaint of plaintiff employé in action for personal injuries held upon its face to show liability on the part of defendant nonresident employer, and its resident codefendant, and that it did not show fraudulent joinder of parties defendant. Id.

120. Effect of evidence, verdict, or judgment.—Where plaintiff insists on liability of both defendants, but nonsuit is granted one as to whom diversity of citizenship does not exist, other defendant is not thereafter entitled to a removal, as right is not contingent on facts developed at trial. Sumey v. Craig Mountain Lumber Co. (Idaho) 170 P. 112, certiorari denied Craig Mountain Lumber Co. v. Sumey, 38 S. Ct. 336, 246 U. S. 667, 62 L. Ed. 929.

A motion to remove to the federal court an action brought in the state court against a resident and a nonresident corporation charged with liability for the death of plaintiff's decedent, who was an employé of the resident corporation, made upon dis-

missal of the case as to the latter corporation at the close of plaintiff's case upon its special plea, opposed by plaintiff, that plaintiff's remedy against it was by arbitration under the Illinois Workmen's Compensation Act, held properly denied, where plaintiff's contention, opposing the special plea, was bona fide, and there was no proof of the allegation in the resident corporation's petition in support of the motion of plaintiff's fraud in joining such corporation as a party defendant. Gordon v. Grand Trunk Western Ry. Co., 209 Ill. App. 195.

A verdict in favor of a local defendant alleged to have been fraudulently joined with a nonresident defendant is not conclusive of a fraudulent joinder. West Kentucky Coal Co. v. Key, 198 S. W. 724, 178 Ky. 220.

121. Pleading and proof of fraudulent purpose.—See note 73 under § 1011.

(C) Parties entitled to remove

125. Residence of party removing cause.—See Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162.

A suit by railway bondholders to determine the interest they acquired in the property by the use of their bonds at a sale under decree of the federal court is not removable under Judicial Code, § 28 (Comp. St. 1916, § 1010), by a defendant incorporated in the state in which the suit was brought. Genesee Valley Trust Co. v. Kansas City, M. & O. Ry. Co. (D. C.) 240 F. 524.

127. Removal by one or more co-parties.—When answer of defendant seeking to implead another does not set up cause of action against third person against whom plaintiff has no cause of action and who was not original party, removal of cause to federal court on petition of such third person may be denied. Andrews v. Rice (Tex. Civ. App.) 198 S. W. 666.

(D) Allegations in pleadings

133. General rules.—Where fraudulent joinder of party defendant to defeat removal to federal court is charged, that issue must be determined though purpose of cause of action is what complaint declares it to be. Deutsch v. Alaska Gastineau Mining Co. (D. C.) 237 F. 215.

For the purpose of removal of a cause the issue tendered is what plaintiff makes it in his complaint. Martin v. Matson Nav. Co. (D. C.) 239 F. 188.

Whether cause of action was removable from state to federal court for diversity of citizenship was to be determined from the pleadings as they stood when petition for removal and bond were filed. Northern Trust Co. v. Grand Trunk Western Ry. Co., 118 N. E. 986, 282 Ill. 565.

In view of the allegations of the petition for removal for diversity of citizenship under Act Cong. March 3, 1887, §§ 1, 2, as amended by Act Cong. Aug. 13, 1888, held, that the allegations of plaintiff's petition could be considered in determining the question of removability. St. Louis & S. F. R. Co. v. Hodge (Okl.) 157 P. 60.

134. Particular allegations.—In action against railroad company for death of nine year old son, petition held to show suit was for only $3,000, and not removable to federal court on ground of diversity of citizenship, despite allegation of damage of $25,000. Barber v. Atlantic Coast Line R. Co. (Ga. App.) 94 S. E. 280.

V. SEPARABLE CONTROVERSIES

(A) Nature of controversy

136. Single or separable controversy.—Where action was begun in state court by several plaintiffs, only one of whom was a resident of state, against defendant, a nonresident, defendant is not entitled to remove cause to federal court, unless there is a separable controversy between it and that plaintiff who was a resident of state wherein action was begun. Webb v. Southern Ry. Co., 248 F. 618, 160 C. C. A. 518, reversing judgment (D. C.) 235 F. 578, and certiorari denied Southern R. Co. v. Webb, 38 S. Ct. 582, 247 U. S. 518, 62 L. Ed. 1245.

The liability of a corporation for breach of a contract, and of a liquidator subsequently appointed for the corporation, held several and not joint (Judicial Code, § 28). Hough v. Société Electrique Westinghouse de Russie (D. C.) 232 F. 635.

A cause held removable by a nonresident corporation defendant, as involving a separate controversy between complainant and such defendant. English v. Supreme Conclave, Improved Order of Heptasophs (D. C.) 235 F. 630.

Controversy between port district of a city and a railroad company and its tenant held separable with respect to tenant and railroad company, so that railroad company, which was citizen of state other than that of which tenant and port district were citizens, might remove cause to federal courts. Port of Seattle v. Oregon & W. R. Co. (D. C.) 242 F. 986.

Where declaration in action in state court, in which resident and nonresident were joined as defendants, states cause of action, there is no separable controversy which nonresident can remove to federal court. Baker v. Jacksonville Traction Co. (D. C.) 247 F. 718.

To entitle a nonresident defendant to removal of the cause to the federal court under this section, the controversy as to him must be separable

from that against the resident codefendants. Parlin & Orendorff Implement Co. v. Frey (Tex. Civ. App.) 200 S. W. 1143.

137. —— **Actions involving title to or possession of real property.**—Where defendant, a resident of New York, contracted to convey lands located in Kentucky, he cannot, suit having been instituted in the Kentucky state courts, and the holders of incumbrances, who were citizens of that state, made parties defendant, remove the cause to the federal court on the ground of separable controversy, for the incumbrancers were proper parties, and a defendant has no right to say that an action shall be several which a plaintiff elects to make joint. Bryan v. Barriger (D. C.) 251 F. 328.

138. —— **Actions involving rights of mortgagors and mortgagees.**—Where a petition to condemn land of mortgagor was duly served on mortgagor, and it failed to petition for removal to federal court within time, there is no separable controversy which will entitle the mortgagee to removal of cause to federal court thereafter on ground of diversity of citizenship. In re City of Seattle (D. C.) 237 F. 100.

142. —— **Corporations and their officers and stockholders.**—Plaintiff, a citizen of Oregon, owned 5 per cent. of the stock of an Oregon mining company, and corporations controlled by B. owned the other 95 per cent. B., the corporations controlled by him, and their other officers had misappropriated surplus funds of the mining company and converted them to their own use and benefit, and plaintiff sued them for an accounting, also naming the mining company as a defendant. The complaint went into minute detail as to the misappropriations, showing that they were sometimes made through B.'s machinations, sometimes through the acts of one or other of his companies, and sometimes by other officers of such companies; but in several parts of the bill defendants were charged jointly with participating in the misappropriations, and from the whole bill it was apparently drawn on the theory that there was a joint participation by the defendants named in a common scheme to withdraw the surplus funds of the mining company, with a view to preventing plaintiff from obtaining his just share of the profits. The defendants other than the mining company were all nonresidents of Oregon. Held, that there was no separable controversy between plaintiff and B., and the suit was not removable, as there was no joinder of separate causes of action, but only a particularization of different items of misappropriation, all entering into and forming elements of the general accounting demanded. Baillie v. Backus (D. C.) 230 F. 711.

A controversy between bondholders of an insolvent railroad who joined in the purchase at the foreclosure sale to determine their interest in the property purchased does not involve a separable controversy against the reorganized corporation which purchased the property so as to authorize removal by it alone. Genesee Valley Trust Co. v. Kansas City, M. & O. Ry. Co. (D. C.) 240 F. 524.

There is not a separable controversy between a receiver, suing director for paying dividends contrary to 2 Comp. St. N. J. 1910, p. 1617, § 30, and the nonresident defendants, so as to permit removal of cause under this section. Holcombe v. Ames (N. J. Ch.) 100 A. 609.

143. —— **Actions involving the rights and liabilities of principals and sureties.**—In an action for breach of a building contract against the contractor and the surety on its bond for performance of the contract, there is but one cause of action, and the controversy is not separable within the meaning of the removal statute. City of Seattle v. Beer's Bldg. Co. (D. C.) 242 F. 988.

158. **Determination or dismissal as to some defendants.**—Where a judgment against both the resident and nonresident defendants in an action for damages caused by their joint negligence was affirmed as to the resident defendant, but reversed and remanded as to the nonresident defendant, the controversy did not thereby become separable so as to entitle the nonresident to remove. Gurley v. Southern Power Co. (N. C.) 92 S. E. 262.

159. **Removal of whole suit.**—Where action to quiet title, brought in state court against defendant, a domestic resident railroad, was on the motion of the nonresident codefendant alone removed into the federal court, the cause was severable, and its removal left the cause against the resident railroad in the state court. Stuart v. Colorado Eastern R. Co. (Colo.) 156 P. 152.

(B) Joint or joint and several causes of action

160. **General rules.**—Where a joint recovery against several defendants is claimed upon a cause of action which justifies a joint recovery, there is no separable controversy, though plaintiff might have elected to present a separable controversy with one of the defendants. Baillie v. Backus (D. C.) 230 F. 711.

Where a joint recovery is claimed upon a cause of action which justifies such recovery, there is no separable controversy, though plaintiff might have presented a separable controversy. Id.

161. Contracts.—To justify a separation of the defendants joined in a suit it is not enough that they may be at the election of the plaintiff proceeded against either jointly or separately, but there must be more than one cause of action. Parlin & Orendorff Implement Co. v. Frey (Tex. Civ. App.) 200 S. W. 1143.

In view of Rev. St. Tex. 1911, art. 587, as to suing indorsers jointly with the principal obligors, and article 1842 as to prerequisites of judgment against indorsers, an action by the payee against the maker, and a guarantor by separate instrument, for delinquent interest and attorney's fees, prior to maturity of the note, is not separable so as to entitle nonresident guarantor to removal of the cause. Id.

162. Torts.—An action against a master and its vice principal for joint tort held to involve no separable controversy, and so the master, though a citizen of a different state from that of which the servant and vice principal were citizens, has no right of removal to the federal court on such ground. Deutsch v. Alaska Gastineau Mining Co. (D. C.) 237 F. 215.

In action against individuals and corporations to enjoin conspiracy to injure railroad company by diverting traffic, held, that there was no separable controversy with the corporations, authorizing removal under Judicial Code, § 28. Smith v. Barnett (D. C.) 242 F. 83.

A suit in equity against a number of defendants charged with having obtained property through a fraudulent conspiracy is not separable, and cannot be removed by one defendant alone. O'Neil v. Birdseye (D. C.) 244 F. 254.

Under Comp. Laws Fla. 1914, §§ 1389, 3148, causes of action against motorman and foreign corporation operating street car system for negligent injuries may be joined, and foreign corporation cannot remove same to federal court for diversity of citizenship; there being no separable controversy. Baker v. Jacksonville Traction Co. (D. C.) 247 F. 718.

Where plaintiff's declaration in action begun in state court after setting forth joint cause of action against his employer, a foreign corporation, and a local corporation, contained further averments disclosing cause of action against his employer, based on relation of master and servant, there was separable controversy, which employer being a foreign corporation, could, under Removal Act (Judicial Code, § 28), remove to federal court. Puckett v. Columbus Power Co. (D. C.) 248 F. 353.

In action by resident administrator for $50,000 damages for death of intestate servant against foreign corporation and its superintendents, resident defendants, held, that, as petition did not state joint cause of action against corporation and resident defendants, corporation's petition for removal to federal court was properly granted. Fogarty's Adm'r v. Bates & Rogers Const. Co., 203 S. W. 720, 180 Ky. 848.

In action for death of servant where there was evidence that deceased's foreman was guilty of gross negligence, the action against the foreman and the employer, which was a nonresident corporation, could not be removed to the federal court merely because no recovery was obtained against the resident defendant. Buskirk v. Caudill, 203 S. W. 864, 181 Ky. 45.

164. Joint operation of railroad—Lessor and lessee.—Nonresident operating railroad joined as defendant with its lessor, a resident railroad, for negligence cannot remove cause to federal court as presenting a separable controversy. McAllister v. Chesapeake & O. Ry. Co., 37 S. Ct. 274, 243 U. S. 302, 61 L. Ed. 735.

A nonresident operating a railway company joined as party defendant with its lessor, a resident railway company, in action for tort in operation of road, may not remove the cause to a federal court as presenting a separable controversy. Chicago & A. R. Co. v. McWhirt, 37 S. Ct. 392, 243 U. S. 422, 61 L. Ed. 826, affirming judgment McWhirt v. Chicago & A. R. Co. (Mo.) 187 S. W. 830.

165. —— Master and servant.—An action against a nonresident railway corporation and a resident servant in a state court by a resident is not removable to federal courts on the ground that a separable controversy is involved, where petition states a prima facie case of joint and concurrent liability. Southern Ry. Co. v. Sewell, 90 S. E. 94, 18 Ga. App. 544.

(C) Separate liability or defense

168. Liabilities on different grounds.—Where plaintiff stated right of recovery for injuries in the alternative, alleging in one count employment in interstate commerce and in another omitting such allegation, cause held removable. Bedell v. Baltimore & O. R. Co. (D. C.) 245 F. 788.

A complaint alleging that transaction was one, and that both defendants had concurrent part in it, sets out a joint tort, though defendant railway company is liable under federal Employers' Liability Act, while defendant bridge company is liable under common law. Powell v. Southern Ry. Co. (S. C.) 96 S. E. 292.

170. Separate interests or claims in subject-matter.—Where owner of property destroyed by fire sued in Alabama state court, railroad company, which was Virginia corporation, not only for benefit of himself, but for foreign insurance companies, which had paid part of loss, held that, as recov-

ery of each depended upon railroad company's liability, there was no separable controversy between owner and railroad company, warranting removal to federal court. Webb v. Southern Ry. Co., 248 F. 618, 160 C. C. A. 518, reversing judgment (D. C.) 235 F. 578, and certiorari denied Southern R. Co. v. Webb, 38 S. Ct. 582, 247 U. S. 518, 62 L. Ed. 1245.

(E) Allegations in pleadings

185. General rules.—Whether an action against two defendants is separable, so as to entitle one, who is a nonresident, to remove the cause as to him, must be determined from the allegations of the plaintiff's pleading as construed by the court. Hough v. Société Electrique Westinghouse de Russie (D. C.) 232 F. 635.

Where there is suit against two or more parties, and only one is nonresident, and he seeks to remove cause, question whether there is such separable and distinct controversy as to warrant removal is determined by state of plaintiff's declaration at time cause is removed. Puckett v. Columbus Power Co. (D. C.) 248 F. 353.

VI. REMOVAL ON GROUND OF PREJUDICE AND LOCAL INFLUENCE

(C) Procedure for removal on ground of prejudice and local influence

187. Nature of prejudice or influence.—Const. U. S. art. 3, § 2, and Judicial Code, § 28, authorizing removal of causes were intended to secure for controversies between citizens of different states a tribunal independent of local influences and surroundings. In re Sherwood, 103 A. 42, 259 Pa. 254, L. R. A. 1918D, 447.

Right of removal to federal court on ground of local prejudice is not confined to prejudice which may affect a jury, but extends to those which may influence a judge. Id.

196. Procedure for removal in general.—Statement of attorney for nonresident defendant, on motion to remand cases to court of common pleas after his removal of cases to federal District Court under Judicial Code, § 28, that "the five judges of Luzerne court are so prejudiced that the defendant, could not get a fair trial in our courts," was privileged and his suspension for six months would be reversed. In re Sherwood, 103 A. 42, 259 Pa. 254, L. R. A. 1918D, 447. See, also, notes under § 1011.

VII. AMOUNT IN CONTROVERSY

See, also, notes under § 991.

222. Amount or value claimed or involved.—Where fraudulent reduction of amount of claim to prevent removal to federal court was claimed, plaintiff held not bound by statements of his assignor in a prior action for a larger amount. Harley v. Firemen's Fund Ins. Co. (D. C.) 245 F. 471.

Though plaintiff's pleading shows more than $3,000 due him, he may waive the excess of federal jurisdiction, and sue for a less sum, thereby preventing removal. Id.

Where plaintiff, after filing petition claiming $10,000 damages, filed amended petition reducing claim to $3,000, nonresident defendants' application for removal to federal court was properly denied, although property attached under original petition was appraised at $10,000. Skelton & Wear v. Wolfe (Tex. Civ. App.) 200 S. W. 901.

Where the payee sued on notes and against the guarantor for the interest accrued and attorney's fees, prior to the due date of the notes, the amount in controversy, for purpose of removal to federal court was not the amount of the notes, though the guarantor denied its liability and the judgment might be pleaded as res judicata in any future action against the guarantor. Parlin & Orendorff Implement Co. v. Frey (Tex. Civ. App.) 200 S. W. 1143.

223. Allegations and prayers in pleadings.—In case where original petition prayed $10,000 damages, held, that amended petition asking $3,000 became effective against defendants' right to removal under petition filed thereafter, but before service of notice of amendment; notice of amendment being given within five days required by Vernon's Sayles' Ann. Civ. St. Tex. 1914, art. 1824. Skelton & Wear v. Wolfe (Tex. Civ. App.) 200 S. W. 901.

224. Increase or reduction by amendment.—Error cannot be assigned on the ground of fraud upon the federal court by permitting amendment increasing damages alleged from $2,999 to $10,000, if, upon such amendment, defendant might have had the cause removed. Martin v. Richmond Cotton Oil Co. (Mo. App.) 184 S. W. 127.

Where action was removed to federal court, and its judgment for plaintiff was reversed by Circuit Court of Appeals, and cause remanded, and federal court on plaintiff's motion dismissed it without prejudice, he may reduce amount of claim, and prevent another removal. Bancroft Drainage Dist. v. Chicago, St. P., M. & O. Ry. Co. (Neb.) 167 N. W. 731.

VIII. EFFECT OF REMAND AND REVIEW THEREOF

(A) Effect of remand

226. Proceedings in state court.—Where, before limitations had run on an Illinois contract, complainant, defendant in a previous suit, removed it to the federal court and filed a cross-bill, held that, under section 25 of the Illinois statute, complainant might,

within one year after remand to state court, begin new action. Moloney v. Cressler, 236 F. 636, 149 C. C. A. 632.

228. Removal after remand.—After remand of a cause removed on the grounds of separable controversy and fraudulent joinder of a citizen, a second petition for removal for the same grounds, filed while the citizen was still a party, is ineffective. Key v. West Kentucky Coal Co. (D. C.) 237 F. 258.

A second petition for removal cannot be filed, except where, before trial on the merits, the suit is changed by plaintiff's act, so as to be for the first time brought within the removal statute. Id.

A case cannot be removed on a motion made in a state court, particularly after the motion to remand has been sustained by the federal court, but a petition conforming to the statutory requirements at the time must be filed. Nelson v. Black Diamond Mining Co. (D. C.) 237 F. 264.

A petition for removal after remand was properly denied, where it contained nothing more than a mere amplification of allegations of first petition, and stated no facts occurring subsequently which changed the status of the parties. West Kentucky Coal Co. v. Key, 198 S. W. 724, 178 Ky. 220.

Where, after remand, a local defendant's motion for peremptory instruction was properly overruled, nonresident defendant's motion to remove the cause because of insufficiency of evidence as to local defendant's liability was properly denied. Id.

Where a cause was removed to federal court upon first petition therefor, asserting diversity of citizenship, and was remanded to the state court, the state court correctly denied a second petition, which was simply an enlarged edition of the first, in deference to the order of the federal court. Malloy v. Marshall-Wells Hardware Co. (Or.) 176 P. 589.

(B) Review of order remanding cause

231. Prohibition of appeal or writ of error.—An order of a federal District Court remanding a cause to a state court is not reviewable by the federal Supreme Court. Pacific Live Stock Co. v. Lewis, 36 S. Ct. 637, 241 U. S. 440, 60 L. Ed. 1084, affirming decree (D. C.) 217 F. 95.

Where District Court remanded cause to state court because jurisdictional amount was not involved, order of appellate state court affirming judgment denying motion to set aside removal to federal court is not subject to review in federal Supreme Court, being an attempt to review, contrary to Judicial Code, § 28, order of federal court remanding cause. Yankaus v. Feltenstein, 37 S. Ct. 567, 244 U. S. 127, 61 L. Ed. 1036.

232. Review by state court.—Where a cause was removed to the federal court and remanded to the state court under Judicial Code, § 28, the propriety of the remanding order cannot be reviewed by the state courts. Kansas City Southern Ry. Co. v. Wade (Ark.) 201 S. W. 787.

CITED WITHOUT DEFINITE APPLICATION

Pacific Live Stock Co. v. Lewis, 36 S. Ct. 637, 60 L. Ed. 1084; Brady v. J. B. McCrary Co. (D. C.) 244 F. 602.

§ 1011. (Jud. Code, § 29.) Procedure for removal.

I. VALIDITY AND CONSTRUCTION IN GENERAL

3. "Proper district" to which cause may be removed.—Judicial Code (Act March 3, 1911, c. 231) § 28, 36 Stat. 1094 (Comp. St. 1916, § 1010), authorizes the removal from state courts of suits of which the United States District Courts are given original jurisdiction. Section 29 (section 1011) provides that the party entitled to remove such a suit, except suits removable on the ground of prejudice or local influence, may file a petition for the removal in the District Court in the district where such suit is pending. Held that, where the only ground of jurisdiction was a diversity of citizenship, an action brought by a Maine corporation against a New Jersey corporation and a West Virginia corporation in a court of Ohio, where both defendants were doing business, and where the cause of action arose, could not be removed by the West Virginia corporation to the District Court for one of the districts of West Virginia, as the "proper district" within section 28 is the district in which the suit is pending, especially as the clerk of the state court would not be within the territorial jurisdiction of any other District Court and could not be reached by its process. New York Coal Co. v. Sunday Creek Co. (D. C.) 230 F. 295.

Under this section a federal court in a district other than the district including the forum where such suit was brought is without jurisdiction on removal. Stewart v. Cybur Lumber Co. (Miss.) 72 So. 276.

II. PROCEEDINGS FOR REMOVAL

(A) Parties

5. Parties to cause for purpose of removal.—Where purported duly appointed executors of nonresident were not made parties by any order of court, and made no showing entitling them to be recognized as parties, they could not ask for removal of cause to federal

court. First Nat. Bank v. Pancake (N. C.) 90 S. E. 515.

Denial of petition for removal to federal court of cause by one sought to be impleaded as defendant held not error, where petitioner was not correctly named so as to become defendant. Andrews v. Rice (Tex. Civ. App.) 198 S. W. 666.

6. Parties to petition.—Any motion for removal to a federal court of an action for a joint tort must have been made by both defendants. Powell v. Southern Ry. Co. (S. C.) 96 S. E. 292.

(B) Time for taking proceedings

20. Nature and operation of limitations in general.—It is imperative that the application for removal of a cause from a state court be made within the time fixed by Judicial Code, § 29. Waverly Stone & Gravel Co. v. Waterloo, C. F. & N. Ry. Co. (D. C.) 239 F. 561.

Petition for removal of cause from state to federal court should regularly be filed on return day of writ. Williams v. Miller (D. C.) 249 F. 495.

A petition for removal of a cause from a state to a federal court, on the ground of diversity of citizenship, made after trial, in the absence of fraud, collusion, or inequitable conduct, came too late. Supreme Lodge of the World, Loyal Order of Moose, v. Gustin (Ala.) 80 So. 84.

22. Time for defense in general.—Under Act Cong. March 3, 1887, as amended by Act Aug. 13, 1888, defendant should file his petition for removal at or before the time when he is required to make any defense, whether by plea of abatement or any other form of dilatory plea, or to the merits. Elms v. Crane (Me.) 105 A. 385.

30. Time to plead under statutes or rules of particular states—Massachusetts.—Under Judicial Code, § 29, as to time for filing petition for removal, Superior Court Common-Law Rules 1915, rule 7, as to time for answering, and Rev. Laws Mass. c. 167, § 34, and chapter 170, § 6, providing for service of precept upon nonresident defendant, where no service was made on a nonresident defendant, and he had not appeared voluntarily before filing petition for removal, such petition was not filed too late; it being immaterial whether he had actual knowledge of the suit against him. Dunbar v. Rosenbloom, 119 N. E. 829, 230 Mass. 176.

Pursuant to Judicial Code, § 29, defendant, at his option, might appear at earlier time than that limited for filing answer by common-law rule of superior court 1915, No. 7, to file his petition for removal to federal court. Id.

34½. —— Oklahoma.—A petition for the removal of a cause to the federal court, not made and filed until after expiration of the answer day, was too late to comply with the requirement of federal Judicial Code, § 29. Dickinson v. Foot (Okl.) 173 P. 522.

38½. —— Washington.—In condemnation proceedings under Rem. & Bal. Code Wash. §§ 7768, 7770, 7772, 7774, held in view of section 222, subd. 2, and section 411, subd. 2, that defendant, by failing to file petition for removal within 20 days after summons, lost right to remove cause to federal court under Judicial Code, § 28, on ground of diversity of citizenship. In re City of Seattle (D. C.) 237 F. 100.

39. Effect of entering appearance or filing pleading.—Defendant, which contemporaneously with filing of petition for removal, or subsequently and before removal, filed a cross-complaint, held not entitled to removal, under Judicial Code, § 28. Hansen v. Pacific Coast Asphalt Cement Co. (D. C.) 243 F. 283.

43. Extension of time to answer or plead.—Under this section an order of the Supreme Court of New Jersey, authorized by Rule 217 of that court extending the time for defendant to answer over the 20 days set by rule 76 of that court, did not extend the time within which the cause could be removed to the federal District Court. Pilgrim v. Ætna Life Ins. Co. (D. C.) 234 F. 958.

Under Judicial Code, § 29, a petition for removal from the Iowa district court, not filed before the time fixed by Code Iowa 1897, § 3550, for answer, demurrer, or motion, is too late, though filed within the extended time given by the court. Waverly Stone & Gravel Co. v. Waterloo, C. F. & N. Ry. Co. (D. C.) 239 F. 561.

Under this section a stipulation extending defendant's time to answer, but not to demur or otherwise plead, does not extend the time to remove the cause. Solomon v. Pennsylvania R. Co. (D. C.) 240 F. 231.

Under Code Civ. Proc. Cal. § 585, subd. 1, requiring defendant to answer within the time specified in the summons, "or such further time as may have been granted," an extension may be granted by stipulation of counsel, and at any time within such extension defendant may file a petition for removal. Citizens' Trust & Savings Bank v. Hobbs (D. C.) 253 F. 479.

Where defendant made no objection to order extending time for filing pleadings, petition for removal of cause, not filed until after expiration of time for filing answer had it not been extended, comes too late and should be overruled. Patterson v. Champion Lumber Co. (N. C.) 94 S. E. 692.

Under this section defendant, who acquiesced in order extending time for filing of pleadings, loses his right to remove cause to federal court on

ground of diversity of citizenship upon petition filed after expiration of time for filing answer fixed by law, though order was one usually made in such cases without request by parties. Dills v. Champion Fiber Co. (N. C.) 94 S. E. 694.

Under Act Cong. Aug. 13, 1888, the time for filing a petition for removal of a cause to federal court, based on diversity of citizenship, expires on the date defendant is required by law or state court rule to answer, notwithstanding the time to answer may have been extended by stipulation or court order. Malloy v. Marshall-Wells Hardware Co. (Or.) 173 P. 267, judgment affirmed on rehearing 175 P. 659.

47. Effect of amendment of declaration or complaint.—If a petition for removal is filed promptly after the plaintiff by amendment first brings the cause within the removal statute, it is in time. Key v. West Kentucky Coal Co. (D. C.) 237 F. 258.

Where plaintiff, instead of proceeding under Gen. Code Ohio, § 11360, obtained leave to amend and sued out new summons, defendant held entitled to remove any time before the day specified in the new summons. Bedell v. Baltimore & O. R. Co. (D. C.) 245 F. 788.

(C) *Effect of delay and objections thereto*

51. Effect of delay in general.—It is essential to the removal of a cause that the petition provided for by the statute be filed with the state court within the time fixed by statute, unless the time be in some manner waived. Southern Pac. Co. v. Stewart, 38 S. Ct. 130, 245 U. S. 359, 62 L. Ed. 345, dismissing writ of error 233 F. 956, 147 C. C. A. 630.

Plaintiff held not estopped from complaining of defendant's delay in not filing his petition to remove the cause until after the answer day, too late to comply with federal Judicial Code, § 29. Dickinson v. Foot (Okl.) 173 P. 522.

55. Waiver of objections to delay.—Though defendant did not actually file his petition for removal at or before the time fixed for answering by the Kentucky Statutes, as required by this section, yet, as plaintiffs' counsel agreed that the petition should be treated as filed, and time for answering had expired, any objection is waived. Bryan v. Barriger (D. C.) 251 F. 328.

(D) *Notice*

58. Sufficiency of notice.—Notice of intention to file petition and bond for removal of cause from state to federal court is sufficient, though it does not specify time and place when it is to be presented. Hinman v. Barrett (D. C.) 244 F. 621.

(E) *Petition*

58½. Motion or petition.—A foreign corporation, jointly sued with a citizen of the same state as plaintiff, is not entitled to removal on a motion, instead of a statutory petition, after a trial at which the verdict was in favor of plaintiff against the foreign corporation only. Key v. West Kentucky Coal Co. (D. C.) 237 F. 258.

59. Averments in general.—Petition of foreign corporation for removal to federal court of action against it need not allege its permit to do business in state. Kruegel v. Standard Savings & Loan Ass'n (Tex. Civ. App.) 196 S. W. 283.

State courts are not bound to surrender jurisdiction of cause on petition for removal, unless petition shows on its face right of petitioner to transfer. Andrews v. Rice (Tex. Civ. App.) 198 S. W. 666.

60. —— Grounds for removal.—The right to removal of a cause to the federal court turns upon the allegation of sufficient facts upon which to predicate it. Hollifield v. Southern Bell Telephone & Telegraph Co. (N. C.) 90 S. E. 996.

65. Citizenship of parties in general.—Petition for removal of cause for diversity of citizenship which fails to allege that parties are citizens of different states, but alleges plaintiff is a resident of one state, and defendant a resident of another state, in which the action is brought, is defective. Hinman v. Barrett (D. C.) 244 F. 621.

Refusal to transfer cause to federal court, on motion showing that there was no diversity of citizenship and failing to show sufficient reason for removal, was proper. United Brothers of Friendship and Sisters of the Mysterious Ten of Oklahoma v. Delancy (Okl.) 157 P. 1150.

68. —— Citizenship of corporations.—Allegation that defendant corporation was citizen of a state other than that of plaintiff's citizenship, residing in that state, with no allegation that it was organized under laws of that state, is insufficient to sustain the federal court's jurisdiction after removal. Fentress Coal & Coke Co. v. Elmore, 240 F. 328, 153 C. C. A. 254.

73. Fraudulent joinder to prevent removal.—Nonresident defendant, seeking removal of an action in which resident was joined as defendant, must allege facts showing joinder was fraudulent, unless that is apparent on the face of complaint. Martin v. Matson Nav. Co. (D. C.) 239 F. 188.

Denial of removal for diversity of citizenship, where petition alleged

fraudulent joinder to prevent removal, held justified by affidavit of plaintiff's counsel fully explaining reason of joinder and showing good faith. J. C. Carland & Co. v. Burke (Ala.) 73 So. 10.

In an action for death of a railroad brakeman, where charge of negligence in complaint stated a cause of action against employés who committed negligent act, a petition for removal to the federal courts held not to state a case of fraudulent misjoinder authorizing removal. Lusk v. Osborne, 191 S. W. 944, 127 Ark. 170.

Pleading showing a joint cause of action, a petition for removal, merely denying allegations upon which liability of resident defendant was rested, accompanied by statement of fraudulent joinder, and not stating facts sufficient to compel such conclusion, was insufficient. West Kentucky Coal Co. v. Key, 198 S. W. 724, 178 Ky. 220.

In action for personal injuries by employé of telephone company against company and its foreman, plaintiff's son, petition for removal to federal court on ground of fraud in joinder of son as resident defendant held insufficient. Hollifield v. Southern Bell Telephone & Telegraph Co. (N. C.) 90 S. E. 996.

Mere allegation of conspiracy to prevent removal of cause to federal court by joining resident defendant is of no consequence without statement of matter showing that conspiracy existed. Id.

Petition for removal of cause to federal court on ground of diversity of citizenship, which alleged fraudulent joinder of defendants, is insufficient where essential facts were not stated so that court could see there had been such joinder. Patterson v. Champion Lumber Co. (N. C.) 94 S. E. 692.

On application for removal of cause to federal court, issue of fraudulent joinder of parties is not presented by stating facts showing right to removal, accompanied by general averment of fraud or bad faith, but there must be a complete statement of the facts constituting the fraud. Fore v. Sylva Tanning Co., 96 S. E. 48, 175 N. C. 583.

Where complaint in servant's action for injuries against foreign corporate employer and local superior employé and officers stated duties and connection of latter with the work and the injury and charged their negligence, motion for removal to federal courts, merely denying their negligence and liability and generally alleging their fraudulent joinder, was insufficient to require removal. Id.

75. Amount in controversy.—Where no issue was taken to averment, in petition for removal of action to federal court, that amount in controversy exceeded $3,000, such averment must be considered conceded. Port of Seattle v. Oregon & W. R. Co. (D. C.) 242 F. 986.

79. Verification.—Under Judicial Code, §§ 28, 29, petition for removal from state court of suit by postmaster against post office inspector, verified by one signing as United States attorney, is verification, otherwise being good, sufficient, notwithstanding it was signed by attorney as United States attorney. Porter v. Coble, 246 F. 244, 158 C. C. A. 404.

81. Counter affidavits or reply and proof.—A defendant, seeking removal of an action for diversity of citizenship has the burden of establishing that fact. Atlantic Coast Line R. Co. v. Woods, 238 F. 917, 151 C. C. A. 651.

Where there is no denial of the allegations of the petition for removal, they must be taken as true. Nelson v. Black Diamond Mining Co. (D. C.) 237 F. 264.

When fraudulent joinder of parties defendant to prevent removal is relied upon to support petition for removal, the alleged fraud must be clearly proven. J. C. Carland & Co. v. Burke (Ala.) 73 So. 10.

A state court need not surrender its jurisdiction on petition for removal until a case has been made which on its face shows petitioner's right to a removal. St. Louis & S. F. R. Co. v. Hodge (Okl.) 157 P. 60.

(F) Bond

83. Form.—A bond for removal held sufficient in the absence of any objection to its validity prior to its approval by the judge of the state court. Brady v. J. B. McCrary Co. (D. C.) 244 F. 602.

84. Condition.—Under this section a removal bond conditioned upon the filing of the record either in the District Court for the district wherein the action was begun or in the District Court for another district is insufficient, and does not authorize removal. Webb v. Southern Ry. Co., 248 F. 618, 160 C. C. A. 518, reversing judgment (D. C.) 235 F. 578, and certiorari denied Southern R. Co. v. Webb, 38 S. Ct. 582, 247 U. S. 518, 62 L. Ed. 1245.

86. Parties and execution.—The fact that a bond for removal executed by a foreign corporation did not show that such corporation had complied with the laws of the state to entitle it to do business therein held not to invalidate it. Brady v. J. B. McCrary Co. (D. C.) 244 F. 602.

(G) Filing petition and bond

90. Filing in state court.—The filing of a sufficient petition and bond for removal removes the cause automatically, and it is immaterial whether the clerk marks the papers filed or wheth-

er the judge of the state court acts upon them before a pleading is due from defendant. Brady v. J. B. McCrary Co. (D. C.) 244 F. 602.

Neither petition for removal of cause nor amendment thereof by leave is a general appearance, so as to give the court jurisdiction. Macario v. Alaska Gastineau Mining Co. (Wash.) 165 P. 73.

(H) Order for removal

91. Necessity.—When a sufficient petition for removal is filed in the state court, and the proper bond given and approved, the cause is ipso facto removed, and no order of the state court is necessary. Webb v. Southern Ry. Co. (D. C.) 235 F. 578; Nelson v. Black Diamond Mining Co. (D. C.) 237 F. 264.

(I) Filing copy of record in United States court

97. Time and place for filing.—A transcript not filed in the United States court within 30 days after filing the petition and bond for removal in the state court, as required by this section is too late, though the state court took no action on the petition at the time it was filed. Waverly Stone & Gravel Co. v. Waterloo, C. F. & N. Ry. Co. (D. C.) 239 F. 561.

(J) Defects in proceedings, objections, amendments and waiver

100½. Mode of objection.—Neither insufficiency of bond for removal of case to federal court, nor insufficiency of verification of bond could be raised by general demurrer to petition, but only by specific objections. Herron's Adm'r v. Bates & Rogers Const. Co., 203 S. W. 719, 180 Ky. 851.

102. Amendment of petition.—Where defendant's petition to remove action by attorney's error alleged diverse residence instead of diverse citizenship of parties, his motion to amend to allege diverse citizenship will be granted, if such granting will not delay trial. Hinman v. Barrett (D. C.) 244 F. 621.

104. Waiver of objections.—The objection that a suit between citizens of different states, neither of whom was a resident of the state, cannot be removed to the United States court, is waived by defendant's petition to remove, and by plaintiff's appearance to contest a motion to set aside service of process. American Oil & Supply Co. v. Western Gas Const. Co., 239 F. 505, 152 C. C. A. 383.

Where plaintiff simply demurred to petition for removal to federal court and made no specific objections pointing out wherein removal bond was defective, any defect in bond will be deemed waived on appeal. Herron's Adm'r v. Bates & Rogers Const. Co., 203 S. W. 719, 180 Ky. 851.

III. DETERMINATION OF RIGHT TO REMOVE AND TRANSFER OF JURISDICTION

(A) Determination of right to remove

105. Jurisdiction of state and United States courts in general.—The question whether a defendant was fraudulently joined to prevent removal is a question for the federal court alone. Hough v. Société Electrique Westinghouse de Russie (D. C.) 231 F. 341.

In determining right of defendant, charged with joint tort, to remove cause to federal court, on ground that joinder with his codefendant was fraudulent, questions of defendant's liability or sufficiency of pleadings to show liability cannot be decided; such matters being for trial court, and not affecting right of removal. Deutsch v. Alaska Gastineau Mining Co. (D. C.) 237 F. 215.

Where petition of foreign railroad corporation for removal of action from state court to United States District Court on ground of diverse citizenship, was deemed by state court to be insufficient because of joinder of resident defendants, that court properly retained jurisdiction. Landers v. Tracy, 188 S. W. 763, 171 Ky. 657.

106. Determination of issues of law.—Questions of law on application to remove causes to federal courts, such as sufficiency of petition, etc., are for decision by state court, while questions of fact are for federal court. Patterson v. Champion Lumber Co. (N. C.) 94 S. E. 692.

107. Determination of issues of fact.—Only question presented on petition for removal is whether, as matter of law, case for removal is made on face of record, and, if any issues of fact are raised, they must be determined in federal, and not in state court. E. H. Emery & Co. v. Chicago, B. & Q. R. Co. (Iowa) 170 N. W. 540; Dunbar v. Rosenbloom, 119 N. E. 829, 230 Mass. 176.

All issues of fact made on a petition for removal must be tried in the federal district court, but the state court may determine for itself whether on the face of the record a removal has been effected. St. Louis & S. F. R. Co. v. Hodge (Okl.) 157 P. 60.

On petition to remove cause to federal court for fraud in joinder of resident defendant, state court does not hear proof of fraud, and pass on issue, which is left for other court, but this rule applies only as to such issues of fact as control and determine right of removal. Hollifield v. Southern Bell Telephone & Telegraph Co. (N. C.) 90 S. E. 996.

When a verified petition for removal is filed, accompanied by a proper bond, and contains facts sufficient to require a removal jurisdiction of the state

court ends and it cannot decide issues of fact so raised, but it may only consider and determine the sufficiency of the petition and the bond. Fore v. Sylva Tanning Co., 96 S. E. 48, 175 N. C. 583.

110. Review by state court.—The finding of a federal court as to whether a cause removed to it from a state court was removable is final, and, if jurisdiction is assumed thereof, is binding on the state court until reversed. E. H. Emery & Co. v. Chicago, B. & Q. R. Co. (Iowa) 170 N. W. 540.

Writ of review to superior court to review order denying relators transfer to United States District Court of trial of question of public necessity for condemning and damages to be paid for appropriation of land for army post denied; remedy by appeal (Laws Wash. 1917, pp. 11, 12) being ample. State v. Superior Court of Pierce County, 167 P. 1089, 98 Wash. 377.

112. Review by United States supreme court.—Under Judicial Code, § 28, as amended by Act Jan. 20, 1914, and sections 29, 128 and 241 where action for damages to interstate shipment was removed on sole ground of diversity of citizenship, judgment of Circuit Court of Appeals held final. Southern Pac. Co. v. Stewart, 38 S. Ct. 130, 245 U. S. 359, 62 L. Ed. 345, dismissing writ of error 233 F. 956, 147 C. C. A. 630.

(C) Effect of removal

119. Proceedings in state court after removal.—When cause has been removed to federal court that court may restrain further proceedings in the state court, notwithstanding statute prohibiting injunction against proceedings of state courts. McCabe v. Guaranty Trust Co. of New York, 243 F. 845, 156 C. C. A. 357.

Where, pending ancillary suit for injunction to restrain further proceedings in state court, such court granted motion to remove, injunction held properly denied without prejudice. Id.

After defendant filed its petition to remove a cause to the federal court, plaintiff filed his declaration without notice to defendant, and such declaration was included in a copy of the record. Defendant having failed to answer the same, default was entered against it; the same being set aside on the express condition that defendant should file its pleas within five days thereafter. Held, that such consent on the part of defendant was an election to treat the declaration as properly filed, and a waiver of its right to make defense thereto otherwise than by filing pleas as specified. Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712.

Where action pending in state court is removed to a national court, any attempted subsequent action therein by first tribunal is beyond its jurisdiction. Ex parte City Bank & Trust Co. (Ala.) 76 So. 372.

Though the state court, if the cause were removable, had no right to permit amendment of allegation as to value, after petition for removal was filed with bond, its order allowing amendment and denying removal, when not appealed from was conclusive on state courts, and further application for removal was properly denied. Powell v. Watkins (N. C.) 90 S. E. 207.

Under this section when sufficient petition and bond are filed, and bond is approved, state court has no authority further than to enter order of removal. Kruegel v. Standard Savings & Loan Ass'n (Tex. Civ. App.) 196 S. W. 283.

122. Unauthorized or improper removal—Costs.—Judicial Code, § 29, as to bond for paying costs for wrongful or improper removal, does not give, but assumes and recognizes, power in the District Court to award costs in removal cases. Devost v. Twin State Gas & Electric Co., 252 F. 125, 164 C. C. A. 237.

§ 1012. (Jud. Code, § 30.) Suits under grants of land from different states.

Cited without definite application, Equitable Trust Co. of New York v. Denver & R. G. R. Co. (C. C. A.) 250 F. 327.

§ 1015. (Jud. Code, § 33, as amended, Act Aug. 23, 1916, c. 399.) Suits and prosecutions against revenue officers, etc.

14. Petition.—The petition of a United States revenue officer for removal of a prosecution for grand larceny instituted against him in state court held sufficient under this section, as it alleged that petitioner was a revenue officer, and that the prosecution arose out of a transaction in which he was discharging his official duties, though the petitioner denied he was guilty of any larceny, etc. State of Alabama v. Peak (D. C.) 252 F. 306.

Cited without definite application, U. S. v. Gradwell, 37 S. Ct. 407, 61 L. Ed. 857.

§ 1016. (Jud. Code, § 34.) Removal of suits by aliens.

Cited without definite application, Jackson v. William Kenefick Co. (D. C.) 233 F. 130.

§ 1019. (Jud. Code, § 37.) Suits improperly in district court may be dismissed or remanded.

I. THE STATUTE IN GENERAL

1. In general.—Latest decisions of Supreme Court and Circuit Court of Appeals on question of remanding or dismissing suits in federal court pursuant to Act March 3, 1875, § 5 (Judicial Code, § 37), are binding precedents which district court must follow. Jellison v. Krell Piano Co. (D. C.) 246 F. 509.

II. DISMISSAL OF CAUSE

(A) Power and duty to dismiss and grounds for dismissal

3. In general.—See Solomon v. Penn. Ry. Co. (D. C.) 240 F. 231.

4. Want of jurisdiction.—See Spencer v. Babylon R. Co. (C. C. A.) 250 F. 24.

5. —— Amount involved.—As only compensatory damages are collectible, action on constable's bond in federal court for levy of wrongful execution will under Judicial Code, § 37, be dismissed, where property levied on was of value much less than $3,000, the jurisdictional amount in District Court. Sclarenco v. Chicago Bonding Co. (D. C.) 236 F. 592.

6. —— Federal question.—See City of Cincinnati v. Cincinnati & Hamilton Traction Co., 38 S. Ct. 153, 62 L. Ed. 389.

9. Fraudulent or collusive acts to confer jurisdiction.—Judicial Code, § 37, does not deprive a federal court of jurisdiction over a suit against an interstate telephone company to compel it to furnish service, though the parties are friendly antagonists and the company was willing to have the controversy submitted to the federal court. Stephens v. Ohio State Telephone Co. (D. C.) 240 F. 759.

Though complainant had control of stock of Ohio corporation, which manufactured articles for it, held, that suit by complainant, a New Jersey corporation, against Ohio corporation and a union, brought in federal court could not be dismissed under Judicial Code, § 37, on ground that making complainant party was collusive. Niles-Bement-Pond Co. v. Iron Molders' Union, Local No. 68 (D. C.) 246 F. 851.

11. Waiver of right to dismissal.—On appeal from a decree dismissing on the merits a suit over which the District Court had no jurisdiction, the Circuit Court of Appeals should, under Judicial Code, § 37, dismiss it for want of jurisdiction, though the question was not raised by defendant. Weyman-Bruton Co. v. Ladd, 231 F. 898, 146 C. C. A. 94.

Under Bankruptcy Act, § 2, the limitation of jurisdiction to persons residing or having their business in the district, affects the subject-matter, and under Judicial Code, § 37, is not waived by the appearance of the bankrupt. Finn v. Carolina Portland Cement Co., 232 F. 815, 147 C. C. A. 9.

A defendant who removed an action to the federal court and answered, waives objection to the maintenance of the action in the United States court. Roman v. Lehigh Valley Coal Co. (D. C.) 241 F. 595.

A defendant, who removed an action to the federal court and answered, waives objection to the service of process. Id.

Defendant, removing case on allegation that plaintiff was citizen of state in which action was brought, held not entitled, on learning that he was an alien, to object to a trial of the case in that district. Sawickas v. Singer Mfg. Co. (D. C.) 241 F. 600.

(C) Proceedings for dismissal

13. Objections—Manner of raising.—If, in the absence of a special plea to the jurisdiction, the court can see by the proof that there is a jurisdictional question as to the citizenship of the parties, it must, under the fifth section of the judiciary act of 1875, direct an issue to be made by the pleadings, try that question, and dismiss the suit if there be no jurisdiction; and therefore an application by the defendant to amend his pleadings in order to raise the question will and must be granted, even after the trial has commenced. Imperial Refining Co. v. Wyman (C. C.) 38 F. 574, 3 L. R. A. 503.

15. —— Dismissal by court on its own motion.—See Gaines v. Baltimore & C. S. S. Co. (D. C.) 234 F. 786.

Under Judicial Code, § 37, the federal District Court may, when led to believe or suspect that it has not jurisdiction of the action, itself raise question of jurisdiction. Sclarenco v. Chicago Bonding Co. (D. C.) 236 F. 592.

When no real or colorable, but only a fraudulent and fictitious, federal question is stated, the jurisdiction of a federal court does not attach for any purpose, and it is duty of court of its motion to refrain from exercising jurisdiction. Columbus Ry., Power & Light Co. v. City of Columbus, Ohio (D. C.) 253 F. 499.

21. Determination and scope of inquiry.—Under Judicial Code, § 37, the District Court, where led to believe that it has not jurisdiction, may itself find the specific facts relating to the question, or submit the evidence to the jury. Sclarenco v. Chicago Bonding Co. (D. C.) 236 F. 592.

III. REMAND OF CAUSE

(A) Power and duty to remand

25. In general.—That a state court granted a petition for removal of an

action for injury to a railroad employé does not affect the duty of the federal court to remand the cause, where it appears that it is one arising under the federal Employers' Liability Act (Comp. St. 1916, §§ 8657–8665), and not removable. Deuel v. Chicago, B. & Q. R. Co. (D. C.) 253 F. 857.

If the United States District Court finds that a cause removed from a state court to it was not removable, it will, in the interest of justice remand the same to the state court. E. H. Emery & Co. v. Chicago, B. & Q. R. Co. (Iowa) 170 N. W. 540.

26. Time of remand.—Under Judicial Code, § 37, the District Court's jurisdiction of a cause removed from a state court may be challenged at any time: Harley v. Firemen's Fund Ins. Co. (D. C.) 245 F. 471.

(B) Grounds for remand

30. Want of jurisdiction or of cause for removal.—See Union Timber Products Co. v. United States Shipping Board Emergency Fleet Corporation (D. C.) 252 F. 320.

A cause removed from state court will not, eight years later on appeal, be remanded on the ground that the amount in controversy was less than $2,000, unless it is certain that the maximum limit of possible recovery at the date of commencing suit, and under any theory which plaintiff had fairly entertained, was less than the jurisdictional amount. Chesbrough v. Woodworth (C. C. A.) 251 F. 881.

Although, in view of Pierce's Code Wash. 1905, § 1408, proceeding, though nominally one for mandamus, really called for equitable powers of court to compel street railway company to furnish service as required by its franchise, cause would not be remanded, after removal, on ground that federal court had no jurisdiction. State of Washington v. Tacoma Ry. & Power Co. (C. C.) 244 F. 989.

31. —— Diversity of citizenship.—Where defendant has a right to removal, federal court will not remand, though plaintiff in state court in good faith joined as a party defendant one not necessary to disposition of case. City of Seattle v. Great Northern Ry. Co. (D. C.) 239 F. 1009.

34. —— Want of jurisdiction to give relief.—Under Judicial Code, § 37, it is improper, suit to recover $2,900 for services and to secure injunction having been removed to federal court, to remand such suit, the cause of action for injunction having been dismissed, though that left amount in controversy less than $3.000. Jellison v. Krell Piano Co. (D. C.) 246 F. 509.

36. Jurisdiction on removal doubtful.—It is the duty of a federal court, where doubt exists as to jurisdiction, to remand a cause removed from a state court to such state court. In re Mississippi River Power Co. (D. C.) 241 F. 194; Orr v. Baltimore & O. R. Co. (D. C.) 242 F. 608; Hansen v. Pacific Coast Asphalt Cement Co. (D. C.) 243 F. 283; Harley v. Firemen's Fund Ins. Co. (D. C.) 245 F. 471.

37. Defects in proceedings for removal.—Petition for removal, defective because not alleging organization of corporation, may be amended after judgment for plaintiff, and such judgment will be reversed, with directions that it be re-entered, if the plaintiff amends his declaration, so as to cure the defect. Fentress Coal & Coke Co. v. Elmore, 240 F. 328, 153 C. C. A. 254.

The United States court may and should remand to the state court upon its own motion a case which, though removable, was not properly removed. Waverly Stone & Gravel Co. v. Waterloo, C. F. & N. Ry. Co. (D. C.) 239 F. 561.

(D) Waiver of right to remand

43. Waiver by appearance.—Where action between citizens of different states is removed to a federal court, which would not have had jurisdiction, under Judicial Code, § 51, objection to court's want of jurisdiction is waived, whenever party objecting to removal appears for any purpose, except to object to jurisdiction over his person. Keating v. Pennsylvania Co. (D. C.) 245 F. 155.

45. Waiver by conduct, pleading, or obtaining relief.—If general federal jurisdiction exists, the want of local jurisdiction or venue in the particular court to which a cause has been removed may be waived by plaintiff by affirmative acts recognizing such jurisdiction by failing to move for remand. General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

Where, after removal of cause to federal court, plaintiff specially appeared and moved to remand, plaintiff's subsequent amendment of complaint, motion to remand having been denied, was not waiver of its rights. Guaranty Trust Co. of New York v. McCabe (C. C. A.) 250 F. 699.

(E) Procedure for remand and review thereof

46. Remand by court on its own motion.—Where, after removal to federal court on ground of diversity of citizenship, a demurrer was sustained to one cause of action, and remaining cause of action was for less than jurisdictional amount, federal court will of its own motion remand case to state courts. Jones v. Western Union Telegraph Co. (D. C.) 233 F. 301.

As the jurisdiction of the federal District Court is limited, and lack of jurisdiction will defeat an action whenever discovered, the court may, on its own motion, raise the question of juris-

diction and remand the action to the state court whenever it appears it is without jurisdiction.—Charroin v. Romort Mfg. Co. (D. C.) 236 F. 1011.

As the venue in the federal court, on removal from a state court on the ground of diversity of citizenship, is not jurisdictional in the sense that it cannot be waived, the court may not remand the cause of its own motion because neither of the parties is a citizen of the state and district; no objections to the removal having been made. Fitzhugh v. Reid (D. C.) 252 F. 234.

50. Pleading to jurisdiction or in abatement.—Plaintiff may, on a motion filed in the United States court, have a case removed from the state court remanded if the petition does not state a cause for removal, or he may plead to the jurisdiction of the court, and have a hearing on the issues of fact presented. E. H. Emery & Co. v. Chicago. B. & Q. R. Co. (Iowa) 170 N. W. 540.

51. Trial, determination, and scope of inquiry.—Where a cause removed on the grounds of separable controversy and collusive joinder is remanded. the federal court cannot review the testimony presented to the jury in the state court, or act upon it, even if it establishes either of the grounds urged for removal. Key v. West Kentucky Coal Co. (D. C.) 237 F. 258.

52. —— Jurisdiction.—Where a suit, begun in state court and removed to the federal court, is found to be without the jurisdiction of that tribunal, so that it must be remanded, the federal court has no jurisdiction to dispose of motions to quash service of summons. Bryan v. Barriger (D. C.) 251 F. 328.

55. Record, pleadings, and effect thereof on inquiry—Record.—An allegation in the petition for removal of a rule of the state district court allowing defendant to plead or answer 15 days after the time fixed by statute, where no such rule appears in the record, or any showing of authority to adopt it, does not prevent a remand. Waverly Stone & Gravel Co. v. Waterloo, C. F. & N. Ry. Co. (D. C.) 239 F. 561.

56. —— Pleadings.—After removal of servant's action based on common law, held, that evidence showing action was governed by federal Employers' Liability Act was admissible, though facts showing applicability of such statute were not pleaded. Atlantic Coast Line R. Co. v. Woods, 238 F. 917, 151 C. C. A. 651.

Where the petition for removal of suits to cancel disclaimers to land alleged that the actual value of the property, exclusive of costs, etc., was in excess of $3,000, and such averments were not challenged, complainants' petition to remand must be denied; the petition for removal furnishing the basis of jurisdiction. Woodall v. Clark (C. C. A.) 254 F. 526.

57. Amendment of record or petition to prevent remand.—Where delay in filing the copy of the record resulted from plaintiff's proceeding in the state court, and the motion to remand was not grounded on the delay, the court will exercise its discretion to permit the transcript to be filed at the hearing of the motion to remand. Nelson v. Black Diamond Mining Co. (D. C.) 237 F. 264.

58. —— Amendment of petition.—Leave to file an amended petition for removal cannot be sustained at the hearing of the motion to remand. Key v. West Kentucky Coal Co. (D. C.) 237 F. 258.

A petition for removal may be allowed to be amended in the federal court to show the citizenship of the plaintiff's assignor where he sues as assignee. Brady v. J. B. McCrary Co. (D. C.) 244 F. 602.

59. Evidence.—Where removal depended on which defendant employed decedent. court held to have duty, on motion to remand, of determining facts from affidavits or evidence. Martin v. New York, N. H. & H. R. Co. (D. C.) 241 F. 696.

60. —— Affidavits.—In disposing of a motion to remand where its decision depends upon facts not apparent of record, affidavits may be considered. City of Seattle v. Great Northern Ry. Co. (D. C.) 239 F. 1009.

On motion to remand involving disputed fact, defendant held required to serve affidavits, to which plaintiff might serve counter affidavits, and to produce affiants for cross-examination if desired by plaintiff. Martin v. New York, N. H. & H. R. Co. (D. C.) 241 F. 696.

63. Order on application for remand.—That clerk of United States court, contrary to his custom, did not notify attorney that motion, of which party had notice, to remand case to state court had been granted, did not excuse party's failure to answer or plead in time after remand. Western Coal & Mining Co. v. Green (Okl.) 166 P. 154.

64. Review of order remanding cause.—See notes under § 1010.

67. Costs on remand.—Where plaintiff, in order to get jurisdiction in federal court against citizen of same state, impleaded latter after having brought action in first instance against corporation of another state, Circuit Court of Appeals, in reversing judgment of District Court and dismissing action for lack of jurisdiction, may direct latter court to enter judgment, under Judicial Code, § 37 (Comp. St. 1916, § 1019), for costs of both courts

against plaintiff. Devost v. Twin State Gas & Electric Co. (C. C. A.) 252 F. 125.

Cited without definite application, Connecticut General Life Ins. Co. v. Weldon (D. C.) 246 F. 265.

§ 1020. (Jud. Code, § 38.) Proceedings in suits removed.

II. JURISDICTION ON REMOVAL

4. Process.—On removal of a cause, the sufficiency of the service made under the state law is to be tested by the requirements of service to give jurisdiction, if the suit had been brought in the federal court. Vitkus v. Clyde S. S. Co. (D. C.) 232 F. 288.

Where under 1 Comp. St. N. J. 1910, p. 414, §§ 12–18, a chancery court acquired jurisdiction of a suit against a nonresident defendant, the federal District Court will not, on removal, set aside the service because it was not authorized by Judicial Code, § 57, which is limited to federal courts. Hudson Nav. Co. v. Murray (D. C.) 236 F. 419.

Where after substituted service has been made, a cause is removed to the federal court, plaintiff need not obtain another order from the federal court for substituted service. Id.

8. Removal as waiver of jurisdictional objections.—All jurisdictional objections may be made after removal to the federal court of cause begun in state court. Philadelphia & R. Ry. Co. v. Sherman, 230 F. 814, 145 C. C. A. 124; General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160; Beach v. Kerr Turbine Co. (D. C.) 243 F. 706; Cleveland & Western Coal Co. v. J. H. Hillman & Sons Co. (D. C.) 245 F. 200; Partola Mfg. Co. v. Norfolk & W. Ry. Co. (D. C.) 250 F. 273.

III. LEGAL AND EQUITABLE REMEDIES AND PROCEEDINGS

9. Remedies in general.—A proceeding for partition, when removed into a federal court, was properly transferred to the equity calendar. Highland Park Mfg. Co. v. Steele, 232 F. 10, 146 C. C. A. 202, affirming decree Steele v. Highland Park Mfg. Co. (D. C.) 212 F. 972, and decree modified on rehearing Highland Park Mfg. Co. v. Steele (C. C. A.) 235 F. 465.

Bill to collect attorney's fees by attachment on the land, originally filed in the state court, held not to show that the remedy at law was inadequate so that it should, after removal, have been transferred to the law side of the court under Judicial Code, § 38, and equity rule 22 (U. S. Comp. St. 1916, p. 2502). Edward Hines Lumber Co. v. Bowers, 238 F. 782, 151 C. C. A. 632.

Where suit to cancel deed as cloud on title is removed to federal court, such court is bound to enforce equitable rights conferred by state statute, or to remand cause; but, in absence of statute, it is at full liberty to exercise its judgment, uncontrolled by decisions of state tribunals. Williams v. Provident Life & Trust Co. of Philadelphia, 242 F. 417, 155 C. C. A. 193.

IV. PROCEEDINGS AFTER REMOVAL

12. Rules of procedure.—The conformity statute (Rev. St. § 914 [Comp. St. 1916, § 1537]) cannot be invoked to deprive a federal court of its rightful jurisdiction of a cause on removal. Webb v. Southern Ry. Co. (D. C.) 235 F. 578.

12½. Parties.—The widow of an alien killed in Pennsylvania, who had a cause of action for the death under the laws of that state, can be substituted as plaintiff in an action begun in a New York court by the administrator, and removed by defendant to the federal court, and which was still pending and unabated. Roman v. Lehigh Valley Coal Co. (D. C.) 241 F. 595.

12¾. Attachment.—In view of Gen. Code Ohio, §§ 11230, 11231, 11279, 11280, held that, where action begun in Ohio state court by attachment was removed to federal court, and attachment vacated for want of sufficient affidavit, attachment could not be perfected by affidavit in federal court. Cleveland & Western Coal Co. v. J. H. Hillman & Sons Co. (D. C.) 245 F. 200.

15. Pleading—Amendments.—The filing of plaintiff's amended petition on the merits after removal of the cause by defendant does not affect the jurisdiction of the federal court. Nelson v. Black Diamond Mining Co. (D. C.) 237 F. 264.

20. Trial.—Question whether plaintiff, who sued in state court of New York for injuries received in Pennsylvania, had acquired residence in New York, which under Code Civ. Proc. N. Y. § 1780, was condition of maintaining suit therein, held one of fact for jury; case having been removed to federal court. Philadelphia & R. Ry. Co. v. Skerman, 247 F. 269, 159 C. C. A. 363.

24. Judgment.—Where action between parties residents of different states was brought in state court, and neither plaintiff nor defendant were residents of such state, a default judgment of the federal District Court to which removal was attempted was void for want of jurisdiction especially where notice was given to appear in the proper district which was in Mississippi, while judgment was rendered by Alabama District Court. Stewart v. Cybur Lumber Co. (Miss.) 72 So. 276.

§ 1021. (Jud. Code, § 39.) Time for filing record; return of record, how enforced.

See New York Coal Co. v. Sunday Creek Co. (D. C.) 230 F. 295.

Necessity of showing of grounds for renewal.—Under Judicial Code, c. 3, §§ 28, 39, specifying certain grounds for removal, the right of removal is statutory, and suit commenced in state court must remain there until cause is shown for its transfer under an act of Congress. Great Northern Ry. Co. v. Alexander, 38 S. Ct. 237, 246 U. S. 276, 62 L. Ed. 713, dismissing writ of error Alexander v. Great Northern Ry. Co., 154 P. 914, 51 Mont. 565.

CHAPTER FOUR—DISTRICT COURTS—MISCELLANEOUS PROVISIONS

Sec.
1023. Offenses on the high seas, etc., where triable.
1024. Offenses begun in one district and completed in another.
1025. Suits for penalties and forfeitures, where brought.
1030. Jurisdiction in patent cases.
1031. Proceedings to enjoin Comptroller of the Currency.
1032. When a part of several defendants cannot be served.
1033. Civil suits; where to be brought.
1034. Suits in States containing more than one district.
1035. Districts containing more than one division; where suit to be brought; transfer of criminal cases.
1036. Suits of a local nature, where brought.
1037. When property lies in different districts.
1038. When property lies in different States in same circuit; jurisdiction of receiver.
1039. Absent defendants in suits to enforce liens, remove clouds on titles, etc.
1047. Receivers to manage property according to State laws.
1048. Suits against receiver.

§ 1023. (Jud. Code, § 41.) Offenses on the high seas, etc., where triable.

6. Jurisdiction of courts.—Under Judicial Code, § 41, persons arrested for taking fish from a pound on the high seas off the coast of New Jersey and brought ashore within that state held properly tried in the District Court for New Jersey. Miller v. U. S., 242 F. 907, 155 C. C. A. 495, certiorari denied 38 S. Ct. 61, 245 U. S. 660, 62 L. Ed. 535.

§ 1024. (Jud. Code, § 42.) Offenses begun in one district and completed in another.

2. Place of bringing prosecution in general.—In view of Act Jan. 22, 1901, establishing the Northern district of West Virginia, where offense was shown to have been committed at Parkersburg, held, that there was sufficient proof that it was committed within that district. Younge v. U. S., 242 F. 788, 156 C. C. A. 376, certiorari denied 38 S. Ct. 13, 245 U. S. 656, 62 L. Ed. 533.

Venue, like any other fact, may be shown by evidence, direct, indirect, or circumstantial. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

6. —— Conspiracy to commit any offense against the United States or to defraud the United States.—Drafts given in effecting a conspiracy to defraud the Panama Railroad Company, a government owned corporation, held property of banks presenting them for collection in New York; therefore, under Judicial Code, § 42, no overt act in performance in conspiracy was committed in New York, and District Court for that district is without jurisdiction of prosecution. Salas v. U. S., 234 F. 842, 148 C. C. A. 440, reversing judgment U. S. v. Burke (D. C.) 221 F. 1014.

The District Court for Ohio held to have jurisdiction under Cr. Code, § 37, formerly Rev. St. § 5440 (Comp. St. 1916, § 10201), and Rev. St. § 731, of a prosecution for a conspiracy to use mails to defraud where some of the overt acts occurred in Ohio and others in Michigan. Shea v. United States, 236 F. 97, 149 C. C. A. 307.

Court for federal district wherein a conspiracy was entered into to prepare a military expedition against a country with which the United States was at peace, in violation of Penal Code, § 13 (U. S. Comp. St. 1916, § 10177), has jurisdiction of prosecution, though supplies for expedition were shipped and stored outside district. De Orozco v. U. S. (C. C. A.) 237 F. 1008.

District Court for district within

which bankruptcy petition was filed held to have jurisdiction of prosecution for conspiracy to conceal assets, though assets were concealed in a different district. Gretsch v. U. S., 242 F. 897, 155 C. C. A. 485, certiorari denied 38 S. Ct. 12, 245 U. S. 654, 62 L. Ed. 532.

An indictment found in the Southern District of New York against defendants, who manufactured oleomargarine in Rhode Island, charging them with conspiracy to defraud the federal internal revenue laws, held to charge an offense of which the District Court of New York had jurisdiction, alleging commission of overt acts in the district. Tillinghast v. Richards (D. C.) 233 F. 710.

Where, pursuant to conspiracy to defraud the United States of internal revenue, overt acts were committed within a federal district, the court for that district has jurisdiction, regardless of where the conspiracy was entered into. Id.

It is not necessary in prosecution under Cr. Code, § 37, for conspiracy to commit offense against United States, that overt act should have been done in same jurisdiction in which conspiracy was entered into. U. S. v. Baker (D. C.) 243 F. 741.

8. —— **Embezzlement.**—Violation of Criminal Code, § 36, by an applicant for enlistment, is committed where the application was made and the subsistence furnished, not at the recruiting depot where his enlistment was rejected. U. S. v. Buchanan (D. C.) 238 F. 877.

11. —— **Food and Drugs Act, violations.**—In prosecution for conspiring to violate and violating the Harrison Drug Act, evidence held sufficient to establish the venue in the district laid in the indictment. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

14. —— **Importation of aliens for immoral purposes.**—Violations of Act June 25, 1910 (U. S. Comp. St. 1916, § 4247), making it a crime for harborer of alien prostitute to fail to file with Commissioner General of Immigration statement concerning such alien, held committed in the District of Columbia where that official has his office, and not justiciable elsewhere on theory that failure to deposit statement in the mail is the beginning of the offense which, under Judicial Code, § 42, may be prosecuted in district where begun or completed. U. S. v. Lombardo, 36 S. Ct. 508, 241 U. S. 73, 60 L. Ed. 897, affirming order (D. C.) 228 F. 980.

15. —— **Interstate Commerce Act, violations.**—The offense of misrepresenting the weight of interstate shipments of lumber to obtain a lower rate condemned by Act Feb. 4, 1887, § 10, as amended by Act June 18, 1910 (Comp. St. 1916, § 8574), when committed by the consignee, may be prosecuted in the federal district at the place of destination as having been "fully or in part committed." U. S. v. Union Mfg. Co., 36 S. Ct. 420, 240 U. S. 605, 60 L. Ed. 822.

17. —— **Larceny.**—On trial for entering railroad car and stealing shoes therefrom, evidence, if insufficient to show that entry was within the district, held sufficient to sustain conviction for larceny; the stolen shoes having been brought within such district. Morris v. U. S., 229 F. 516, 143 C. C. A. 584.

19½. —— **National banking law.**—Under Judicial Code, § 42, prosecution based on unlawful issuance of certificate of deposit held maintainable in Idaho, where certificate was signed in blank, though it was filled in and negotiated outside that state. Simpson v. U. S., 229 F. 940, 144 C. C. A. 222, certiorari denied 36 S. Ct. 552, 241 U. S. 668, 60 L. Ed. 1229.

§ 1025. (Jud. Code, § 43.) Suits for penalties and forfeitures, where brought.

District in which action may or must be brought.—An action to recover the penalty provided by section 5 of the Immigration Act of February 20, 1907 (Comp. St. 1916, § 4250), amended March 26, 1910 (Comp. St. 1916, §§ 4244, 4247), is not governed by Judicial Code, § 51, but may, under Rev. St. § 732 (this section), be brought in the district where the imported alien was to perform labor for a foreign corporation. Tomkins v. Paterson (D. C.) 238 F. 879.

§ 1030. (Jud. Code, § 48.) Jurisdiction in patent cases.

2. **Applicability of statute to inhabitants and aliens.**—Aliens are not inhabitants of any district, and the restrictions in Judicial Code, § 51 (Comp. St. 1916, § 1033), do not apply to them; likewise, in patent cases, the restrictions prescribed by section 48 (Comp. St. 1916, § 1030) do not apply, and aliens may be sued in any district within which process can be served on them. Sandusky Foundry & Machine Co. v. De Lavaud (D. C.) 251 F. 631.

3. **Inhabitant within statute.**—See Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162; Champion Spark Plug Co. v. Champion Ignition Co. (D. C.) 247 F. 200.

7. **District in which suit may or must be brought.**—A suit arising under the

patent laws is transitory, and not local in character, and, except for the limitations of Judicial Code, § 48 (Comp. St. 1916, § 1030), might be brought in any district in which the defendant might be served. Sandusky Foundry & Machine Co. v. De Lavaud (D. C.) 251 F. 631.

12. Waiver of limitations as to jurisdiction—Acts constituting waiver.—Where the bill alleged that defendants infringed within the district where suit was brought and elsewhere in the United States, and defendants by their answer to the merits waived any right to object that suit was brought in a district other than that in which they had a place of business, etc., it is open to plaintiffs to show infringement in any place in the United States. Sandusky Foundry & Machine Co. v. De Lavaud (D. C.) 251 F. 631.

Judicial Code, § 48 (Comp. St. 1916, § 1030), prescribing the districts in which suits for patent infringement may be begun, should have the same construction as section 51 (Comp. St. 1916, § 1033); hence, where defendants appeared and answered to the merits before moving to dismiss a suit for patent infringement on the ground that it was begun in a district other than that of their residence, or in which they did business, those objections are waived. Id.

16. Pleading, requisites of bill to show jurisdiction.—In a bill for infringement of a patent, which alleges that certain defendants are nonresidents of the state, an allegation that they "are now doing business" at a designated place within the district is not a sufficient allegation that they have "a regular and established place of business" within the district, to give the court jurisdiction, under this section. Scheuerle v. Onepiece Bifocal Lens Co. (D. C.) 241 F. 270.

18. Order dismissing cause or vacating service of process as appealable.—Where bill for infringement of patent, brought under Judicial Code, § 48, was dismissed, and preliminary injunction denied, on ground defendant was not an inhabitant and had no regular place of business in district wherein suit was brought, Circuit Court of Appeals is, under section 128, without jurisdiction of appeal from order of dismissal, and question being one primarily involving jurisdiction, appeal must, under section 238, be taken to Supreme Court. American Electric Welding Co. v. Lalance & Grosjean Mfg. Co. (C. C. A.) 249 F. 968.

§ 1031. (Jud. Code, § 49.) Proceedings to enjoin Comptroller of the Currency.

Cited without definite application, Barrett Co. v. Ewing (C. C. A.) 242 F. 506.

§ 1032. (Jud. Code, § 50.) When a part of several defendants can not be served.

1. Construction of statute in general.—Under Judicial Code, §§ 50, 51, where jurisdiction depends on diversity of citizenship alone, and there is only one defendant, suit must be brought in either district of his residence or that of plaintiff, but where there are several defendants, court has jurisdiction of all if one or more are residents of district and others are found there. Camp v. Gress, 244 F. 121, 156 C. C. A. 549, certiorari granted 38 S. Ct. 14, 245 U. S. 655, 62 L. Ed. 533.

Even if plea in abatement was good as to one of defendants, joint makers of contract, it could not avail others, in view of this section. Id.

By this section, where there are several defendants, and one or more of them are neither inhabitants of nor found within the district in which the suit is brought, and do not voluntarily appear, the court may entertain jurisdiction and proceed to trial as between the parties properly before it; the decree being without prejudice to those not served nor appearing, the rule particularly applying to parties having an interest in the controversy, but whose interest will not be directly affected by decree in their absence. Brown v. Crawford (D. C.) 252 F. 248.

4. Corporation as inhabitant.—See Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162.

The provision as to proceeding where certain defendants are neither inhabitants nor "found in the district" held not to give jurisdiction, except in special cases, otherwise provided for, over corporations not inhabitants of the district. Harasimowicz v. Pennsylvania R. Co. (D. C.) 232 F. 295.

7. Parties not indispensable or necessary—In particular cases.—A suit in a federal court by minority stockholders against the corporation, which is a corporation of the state, having its property and business therein, and the managing director, who is also a citizen and resident of the state, in which the bill alleges transactions by the directors, who are also the principal stockholders, by which the corporation has been defrauded of property for their individual benefit, should not be dismissed on motion because the other directors are not parties, where by reason of their being out of the jurisdic-

tion they cannot be served, and if brought in their joinder would oust the jurisdiction of the court. In such case, such directors, while proper, are not indispensable, parties even though full relief as to all the transactions alleged cannot be granted without their presence and the court having jurisdiction over the corporation and its property, may and should, under equity rule 39 (Comp. St. 1916, p. 2513), and this section, proceed without them, and grant such relief as the proofs may warrant and as is within its power Krouse v. Brevard Tannin Co., 249 F. 538, 161 C. C. A. 464.

8. Parties not indispensable or necessary to exercise of jurisdiction in general.—See General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

Citizens of another state held to be dispensed with as parties in federal court, if, though necessary parties, the case may be finally decided between the litigants without bringing them before the court. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

The court may not dispense with persons having rights so closely related to the issues between the parties in court that a final decision cannot be made without affecting their rights. Id.

Where the court can do justice without injuring persons not before it, it will do so, shaping its relief so as to preserve the rights of such absent persons, requiring, if necessary, dismissal of the bill as to them. Grigsby v. Miller (D. C.) 231 F. 521.

9. —— In particular cases.—That agreement collateral to railroad mortgage created equitable lien against property of another company having no property within court's jurisdiction held not to defeat trustee's right to foreclose without making it a party. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

Plaintiff, suing for libel, held entitled to dismiss as to one defendant, of which the court did not have jurisdiction. Stultz v. Cousins, 242 F. 794, 155 C. C. A. 382.

In suit by a deceased wife's administrator to set aside a deed given by her and her husband, the husband, though a proper and necessary, was not an "indispensable, party," one so necessary that a decree without his presence would prejudice his rights and leave the case contrary to equity and good conscience, a party whose interest in the subject-matter of the suit and the relief sought is so bound up with that of other parties that his legal presence as a party is an absolute necessity to the court's right to proceed, since, though the husband had an inchoate interest in the cause, in that, if plaintiff succeeded, he would be benefited by the litigation to the extent of having his title to the property potentially established, subject to the right of the administrator to subject it to the payment of the wife's debts, plaintiff administrator could proceed without such husband as a party and obtain all the relief to which he was entitled, without affecting the husband's interests or rights. Grigsby v. Miller (D. C.) 231 F. 521.

In suit to foreclose mortgage securing railroad bonds, where appointment of receiver was prayed, held, under this section and equity rule 39 (Comp. St. 1916, p. 2513), that nonresident trustee was not indispensable party, and suit might be proceeded with, though it was not joined. Lowenthal v. Georgia Coast & P. R. Co. (D. C.) 233 F. 1010.

Under this section and in view of Civ. Code Ga. 1910, §§ 3167, 5596, District Court for Georgia has jurisdiction of suit for breach of partnership contract, though only one of partners resided within district and was served. Calder & Richmond v. E. W. Rosenthal & Co. (D. C.) 250 F. 507.

In a foreclosure suit, if it is apparent that the presence of the owner of the equity of redemption will oust the court of jurisdiction, it may proceed without him, under this section and rule of equity 39 (Comp. St. 1916, p. 2513), as to the absence of persons who would be proper parties. Brown v. Crawford (D. C.) 252 F. 248.

§ 1033. (Jud. Code, § 51.) Civil suits; where to be brought.

I. CONSTRUCTION AND OPERATION OF STATUTE

1. Construction in general.—See Ivanoff v. Mechanical Rubber Co. (D. C.) 232 F. 173.

This section prohibits only the institution of original suits, the text of the section implying that suits may be gotten into court by some other method. M. Hohenberg & Co. v. Mobile Liners (D. C.) 245 F. 169.

2. Effect on statutes conferring exclusive jurisdiction on federal courts.—The statutory provisions as to the particular district in which a suit shall be brought do not affect the general jurisdiction of the federal court over the suit. Champion Spark Plug Co. v. Champion Ignition Co. (D. C.) 247 F. 200.

3. Effect on removal of causes.—See, also, notes under § 1010.

Under Judicial Code, §§ 28, 51, action

by nonresident alien against New Jersey corporation pending in Ohio state court held not removable to District Court for Northern District of Ohio. Ivanoff v. Mechanical Rubber Co. (D. C.) 232 F. 173.

Judicial Code held not to have changed, in respect to removal of causes and venue of federal courts, Judiciary Act of 1887, as amended in 1888, and decisions under that act are as binding as if made under the Judicial Code. Keating v. Pennsylvania Co. (D. C.) 245 F. 155.

Under Judicial Code, § 24 (Comp. St. 1916, § 991), giving District Courts jurisdiction of civil suits between citizens of different states, etc., and the provision of this section that, where jurisdiction is founded on diversity of citizenship, suit shall only be brought in the district of the residence of plaintiff or defendant, a District Court has jurisdiction of a suit between citizens of different states on removal from a state court, although all of the plaintiffs were not citizens of such district. James v. Amarillo City Light & Water Co. (D. C.) 251 F. 337.

Under Judicial Code, § 28 (Comp. St. 1916, § 1010), providing for removal and sections 24, 51 (Comp. St. 1916, §§ 991, 1033), relating to the jurisdiction and venue of suits, a suit begun in the state court may be removed, where there is diversity of citizenship between the parties, though all of the plaintiffs were not residents of the district to which it was removed. Id.

6. "Civil suit" defined.—Contempt proceeding for violation of injunction held civil in nature, so that under this section District Court for Eastern District of Wisconsin could not issue writ to marshal for district of Massachusetts for arrest of the defendants. Mitchell v. Dexter, 244 F. 926, 157 C. C. A. 276.

7. "Citizen," "inhabitant," or "resident" defined.—In the acts of Congress defining the jurisdiction of the federal courts, the words "inhabitant" and "resident" are synonymous, and an allegation that a complainant corporation is a "resident" of another state is sufficient. Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162.

As the official residence of the Commissioner of Patents is in the District of Columbia, suits against him in his official capacity should be commenced in that District. Barrett Co. v. Ewing, 242 F. 506, 155 C. C. A. 282.

A suit against "J. O. B., sheriff of Coahoma county, Miss.," was an action against the individual, and not against the office, so that service obtained while he was out of his own state, where he was not acting as sheriff, would not affect the validity of the service. Tate v. Baugh (D. C.) 252 F. 317.

10. "Original process or proceeding" defined.—A supplemental bill to obtain a personal decree against a nonresident participating in the defense, on the ground that he became bound by the decree, is an original proceeding, not dependent or ancillary, and hence requires original process within the district; mere notice not being sufficient. G. & C. Merriam Co. v. Saalfield, 36 S. Ct. 477, 241 U. S. 22, 60 L. Ed. 868.

Where bill, seeking to enjoin corporation from selling its assets on ground of violation of anti-trust acts, etc., did not make prospective purchaser party because it was nonresident of district, held that, after consummation of transaction, supplemental bill, seeking same relief, did not invoke ancillary jurisdiction of court, and give it jurisdiction of purchaser. Venner v. Pennsylvania Steel Co. of New Jersey (D. C.) 250 F. 292.

II. DISTRICT IN WHICH SUIT MAY OR MUST BE BROUGHT

(A) *Venue dependent on diversity of citizenship or federal question in general*

14. In general.—Under Judicial Code, §§ 50, 51, where jurisdiction depends on diversity of citizenship alone, and there is only one defendant, suit must be brought in either district of his residence or that of plaintiff, but where there are several defendants, court has jurisdiction of all if one or more are residents of district and others are found there. Camp v. Gress, 244 F. 121, 156 C. C. A. 549, certiorari granted 38 S. Ct. 14, 245 U. S. 655, 62 L. Ed. 533.

The federal District Court is without jurisdiction solely on the ground of diversity of citizenship where neither plaintiffs nor defendants are citizens or residents of the forum. Albert v. Bascom (D. C.) 245 F. 149.

(B) *Venue dependent on citizenship, residence or character of parties*

15. Local actions in general.—Rem may not be affected by direct operation of decree where it is beyond territorial jurisdiction of court, but court may, acting in personam, coerce action respecting such property. Vineyard Land & Stock Co. v. Twin Falls Salmon River Land & Water Co., 245 F. 9, 157 C. C. A. 305.

A federal court for one district has no jurisdiction beyond the territorial limits of its district over a party not a resident of the district, unless jurisdiction has been extended thereto by acts of Congress. Rakauskas v. Erie R. Co. (D. C.) 237 F. 495.

18. Aliens—Suits by Aliens.—See Keating v. Pennsylvania Co. (D. C.)

245 F. 155. See, also, notes under § 1010.

Where the testimony showed that plaintiff was born in Austria, she would be considered an alien until the contrary was shown. Lehigh Valley Coal Co. v. Washko, 231 F. 42, 145 C. C. A. 230.

Where plaintiff is an alien, the District Court of a district other than that of defendant's residence has no jurisdiction over the action, unless the parties consent. Lehigh Valley Coal Co. v. Washko, 231 F. 42, 145 C. C. A. 230; Yanuszauckas v. Mallory S. S. Co., 232 F. 132, 146 C. C. A. 324.

An action to recover damages for personal injury is not one of a local nature, and, where plaintiff is an alien, can be brought only in the district whereof defendant is an inhabitant. Kuzma v. Witherbee, Sherman & Co. (D. C.) 232 F. 286; Vitkus v. Clyde S. S. Co. (D. C.) 232 F. 288.

Action by alien must be brought in district where corporation is incorporated, or has an office, or is doing business, if it waives right to be sued in district of its home office. Lukosewicz v. Philadelphia & Reading Coal & Iron Co. (D. C.) 232 F. 292.

A domestic corporation may be sued in the federal courts by an alien in any district where it can be served and where it is doing business, if it does not properly raise the objection against being sued elsewhere than in the district of its residence; the case not being one depending on diversity of citizenship alone. Rakauskas v. Erie R. Co. (D. C.) 237 F. 495.

If alien desires to commence action or bring suit against citizen of United States, he must resort to domicile of defendant to sue; alien not being assumed to reside in the United States, though citizens may sue in either the state of which plaintiff or the defendant is resident. Best v. Great Northern Ry. Co. (D. C.) 243 F. 789.

20. —— Suits by citizens against aliens.—A British corporation can be sued in a United States court only in a district where it can be validly served. Smithson v. Roneo (D. C.) 231 F. 349.

Aliens are not inhabitants of any district, and the restrictions in this section do not apply to them; likewise, in patent cases the restrictions prescribed by section 48 (Comp. St. 1916, § 1030) do not apply, and aliens may be sued in any district within which process can be served on them. Sandusky Foundry & Machine Co. v. De Lavaud (D. C.) 251 F. 631.

21. Citizens of different states.—On removal from state court, see ante, note 3.

Federal court for Southern district of Ohio held to have jurisdiction of suit by resident of that district against corporation, a citizen and resident of Colorado. Twin Lakes Land & Water Co. v. Dohner, 242 F. 399, 155 C. C. A. 175.

Where federal jurisdiction is invoked, founded only on the fact that the action is between citizens of different states, and the suit is brought in the district of the plaintiff's residence, objection thereto on the ground that the suit should have been brought in the district of the defendant's residence presents a question of venue, rather than of jurisdiction; and if in such case the requisite diversity of citizenship appears the objection is not well taken in view of this section and section 991(1). Tate v. Baugh (D. C.) 252 F. 317.

24. Corporations—Federal corporations as affecting venue.—A suit to enforce liability in equity of a Kansas corporation on bonds of a railway company created by an act of Congress involves a federal question, which under this section may not be brought in any other federal district than that of the residence of the Kansas corporation without its consent. Male v. Atchison, T. & S. F. R. Co., 36 S. Ct. 351, 240 U. S. 97, 60 L. Ed. 544.

25. —— Domicile of corporations as affecting venue.—Where a corporation, a resident of the district, was duly served in an unfair competition case, officers and agents of the corporation, who were nonresidents, are not essential parties, as a judgment against the corporation will be binding on its officers and agents. Wm. A. Rogers, Limited, v. H. O. Rogers Silver Co. (D. C.) 237 F. 887.

The federal District Court for New York is without jurisdiction over a suit brought by nonresidents on a cause of action arising in Kentucky against a Maryland corporation, which maintained an agent in New York, on whom process was served. Budris v. Consolidation Coal Co. (D. C.) 251 F. 673.

26. —— Transaction of business as affecting venue.—Foreign railway company, whose road lies wholly outside the state of New York, and whose only business is the sale of customary through coupon passenger tickets by local carriers at the latter's ferry terminal, held not doing business in the Southern district of New York, so that process can be served upon it there. Philadelphia & R. Ry. Co. v. McKibbin, 37 S. Ct. 280, 243 U. S. 264, 61 L. Ed. 710.

Foreign railway company held not doing business within the state, so as to be amenable to process because so-called subsidiary companies are doing business in the state. Id.

The New York Central & Hudson River Railroad Company held not to be doing business in Ohio, and not subject to suit in a court of that state.

General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

Where foreign corporation was not doing business within state when served, the fact that, after service and removal to federal District Court, property and vessels of corporation came within district and attachment was issued, does not give District Court jurisdiction, though it be material on question of doing business in state. Frontier S. S. Co. v. Franklin, S. S. Co. (D. C.) 233 F. 127.

A corporation owning vessel held not to be doing business within the district, so that foreign attachment against its vessel could issue. American Potato Corporation v. Boca Grande S. S. Co. (D. C.) 233 F. 542.

Despite Judicial Code, § 53, held, that action against a foreign corporation should, under section 51, be brought in division of district in which plaintiff resided, suit being based on diversity of citizenship, notwithstanding foreign corporation did business in other division of the district. McCullough v. United Grocers'. Corporation (D. C.) 247 F. 880.

Where Virginia railroad company which maintained no lines in New York solicited passenger and freight business in New York, it was not thereby doing business, as solicitors merely sought to obtain business, received no money for freight, and issued no tickets for transportation of passengers. Partola Mfg. Co. v. Norfolk & W. Ry. Co. (D. C.) 250 F. 273.

27. —— Local laws and compliance therewith as affecting venue.—Constructive agreement by corporation to submit to illegal statute as to service of process held not sustainable on anything less than actual knowledge of the statute. King Tonopah Mining Co. v. Lynch (D. C.) 232 F. 485.

Where a foreign corporation is actually doing business in the state, that it has failed to file a certificate required by state laws, showing such fact, does not preclude service of process upon it within such state. Frontier S. S. Co. v. Franklin S. S. Co. (D. C.) 233 F. 127.

30. Assignment of cause of action.—Assignee of New York firm all members of which were not citizens of Southern district held, under this section, not entitled to sue nonresident defendants in that district, and, cause having been removed from New York court under section 28 (Comp. St. 1916, § 1010) to Southern district, it should be remanded. Guaranty Trust Co. of New York v. McCabe (C. C. A.) 250 F. 699.

31. Allegations in pleadings.—On allegations that plaintiff was a citizen and a resident of New York City, and that defendant was a Pennsylvania corporation, an action was properly brought in the Southern district of New York. Lehigh Valley Coal Co. v. Washko, 231 F. 42, 145 C. C. A. 230.

(C) Venue dependent on nature of subject matter

31½. Transitory actions in general.—A transitory action follows the person, and may be brought wherever defendant can be found, whether it is an action ex delicto or ex contractu. Mauser v. Union Pac. R. Co. (D. C.) 243 F. 274.

34. Anti-Trust Act.—While bill charging violation of Sherman and Clayton Acts presents federal question, justiciable under Judicial Code, § 24 (a), being Comp. St. 1916, § 991(1), in District Court, regardless of citizenship of parties, yet under this section such suit cannot be brought by original process in any other district than that of which defendant is an inhabitant. Venner v. Pennsylvania Steel Co. of New Jersey (D. C.) 250 F. 292.

Suit to set aside transaction whereby one corporation acquired property of competitor on ground that it was in violation of Sherman and Clayton Acts, must be brought in district wherein defendant is inhabitant, as provided by this section; none of venue provisions of these acts being applicable. Id.

35. Attachment.—Service of process may be had on the owner of a steamship by attachment in any federal district in which the owner's property may be found, though his residence and principal place of business be in another district. American Potato Corp. v. Boca Grande S. S. Co. (D. C.) 233 F. 542.

46. Death.—An action under the Virginia statute (Code 1904, § 2902) giving right of action for death resulting from wrongful act, neglect, or default, where, had not death ensued, deceased might have recovered, is transitory; and, statute being remedial, such action can be maintained in federal District Court for district other than that of Virginia. Lauria v. E. I. Du Pont De Nemours & Co. (C. C. A.) 250 F. 353.

50. Injunction.—Injunction may be granted against subordinates of Secretary of Agriculture for attempting to enforce unlawful orders, though Secretary of Agriculture, not being within district, and not appearing, could not have been enjoined. Brougham v. Blanton Mfg. Co., 243 F. 503, 156 C. C. A. 201.

53. Lien or claim on property.—A suit to establish a lien upon or claim to property brought under Judicial Code, § 57 (Comp. St. 1916, § 1039), may be maintained in federal District Court for state where property is situated, though neither plaintiff nor de-

fendant is a resident thereof. Albert v. Bascom (D. C.) 245 F. 149.

Plaintiffs held not entitled under Judicial Code, § 57, to maintain in federal District Court for state in which was located property suit to subject interest of their trustee in such property to lien; neither plaintiffs nor devisees of trustee being residents of state, and plaintiffs having no lien on any particular property. Id.

Suit against devisees and heirs to subject lands of decedent to payment of debts held one in personam, and hence such suit cannot, under Judicial Code, § 57, be maintained in federal District Court for state in which land was located, where neither plaintiffs nor defendants were residents or citizens. Id.

Suit, which was not one to enforce lien or remove cloud from title, must, where basis of jurisdiction was diversity of citizenship be begun in accordance with Judicial Code, § 51, either in district of residence of complainant or defendant, and cannot be instituted in district wherein property of defendant, transfer of which was attacked, was located. Bank of Commerce & Trust of Richmond, Va., v. McArthur (D. C.) 248 F. 138.

60. Penalties and forfeitures.—An action to recover the penalty provided by section 5 of the Immigration Act of February 20, 1907, amended March 26, 1910 (Comp. St. 1916, §§ 4244, 4247, 4250), is not governed by this section, but may, under Rev. St. § 732 (Comp. St. 1916, § 1025), be brought in the district where the imported alien was to perform labor for a foreign corporation. Tomkins v. Paterson (D. C.) 238 F. 879.

61½. Subrogation.—A federal court has jurisdiction of an action at law by sureties to recover the amount they paid under a judgment recovered in the state court of another district. Cooper v. Jewett, 233 F. 618, 147 C. C. A. 426.

Where sureties, having satisfied judgment against their principal in court of foreign state, were subrogated to rights of creditor, a suit in equity to enforce such rights may be maintained in federal District Court of a district not including state where judgment was rendered. Id.

III. WAIVER OF PRIVILEGE TO BE SUED IN PROPER DISTRICT AND OBJECTIONS

See, also, notes under § 1019.

65. Right to waive privilege.—Where jurisdiction of federal court depends upon diversity of citizenship under this section, plaintiff in case of removal has right to insist upon or waive his objection to jurisdiction because district is not proper district. Guaranty Trust Co. of New York v. McCabe (C. C. A.) 250 F. 699.

Under Act March 3, 1887, as amended by Act Aug. 13, 1888, held, that alien's right to object to place of suit or to any defect in service may be waived. Smithson v. Roneo (D. C.) 231 F. 349.

Court of district other than that of defendant's residence held authorized to exercise jurisdiction, where objection is waived and case is within general jurisdiction of federal courts. Tauza v. Pennsylvania R. Co. (D. C.) 232 F. 294.

Where a foreign corporation is sued in a federal court of a district of which it is not a resident, objection to the jurisdiction may be waived. Rakauskas v. Erie R. Co. (D. C.) 237 F. 495.

In an action in the federal court for the Eastern District of New York, held, that service on ticket agent of defendant, a local corporation not doing business in district, pursuant to Code Civ. Proc. N. Y. § 432, was not void, but was sufficient as basis for waiver by defendant of objections to jurisdiction. Id.

The statutory provisions as to the particular district in which a suit shall be brought give to defendant a personal privilege as to the venue, which he may insist upon or waive. Champion Spark Plug Co. v. Champion Ignition Co. (D. C.) 247 F. 200.

66. Manner of waiving privilege in general.—Refusal to dismiss when it appears at trial that defendant did not know averments of citizenship and residence were untrue and that action was brought in wrong district held error. Lehigh Valley Coal Co. v. Washko, 231 F. 42, 145 C. C. A. 230.

Defendant, taking no step to stop further prosecution of suit brought in wrong district, held to waive his right. Id.

The objection to the court's want of jurisdiction, because of the fraud by which defendant was brought into the district for service, is not waived by defendant going to trial on the merits, especially when a bill of exceptions was prepared explicitly covering the refusal of the court to set aside the service. Blandin v. Ostrander, 239 F. 700, 152 C. C. A. 534.

In action against corporation, held that, by coupling other objections with an objection to the method of service, it waived defect in service and objection to being brought into the district. Lukosewicz v. Philadelphia & Reading Coal & Iron Co. (D. C.) 232 F. 292.

The right of a defendant in a federal court to insist upon its privilege of being sued only in the district of its residence held to have been waived by delay in asserting it. Pennsylvania R. Co. v. Swift & Co. (D. C.) 242 F. 92.

68. —— By consent.—Suit in equity to compel issuance of patent under Rev. St. § 4915 (Comp. St. 1916, § 9460), may be brought against the Commissioner of Patents with his consent outside of District of Columbia, when there is no opposing party. Barrett

Co. v. Ewing, 242 F. 506, 155 C. C. A. 282.

69. —— **By appearance.**—See Keating v. Pennsylvania Co. (D. C.) 245 F. 155.

Right of foreign corporation to challenge jurisdiction held not lost by special appearance to object to jurisdiction by motion to vacate service of summons, nor because of continuance, the order for which directed plaintiff to amend, so as to disclose citizenship. Meisukas v. Greenough Red Ash Coal Co., 37 S. Ct. 593, 244 U. S. 54, 61 L. Ed. 987.

Where defendant appeared specially for the purpose of moving to dismiss, and the notice of appearance so stated, defendant's appearance was special, and did not confer jurisdiction on the court. Yanuszauckas v. Mallory S. S. Co., 232 F. 132, 146 C. C. A. 324.

An application for a general order for extension of time to plead did not give the court jurisdiction, by converting the appearance into a general one. Id.

Averments that plaintiff was a citizen by residence are meaningless, as citizenship can be acquired only by birth and naturalization, so rights of defendant, who was sued in the United States District Court, and appeared specially, are not affected by an amendment wherein plaintiff's alienage was set up. Id.

The right to object to being sued in a district other than that of defendant's or plaintiff's residence is a privilege, which may be waived, and which is waived by a general appearance to contest any matter on the merits. Great Lakes & St. Lawrence Transp. Co. v. Scranton Coal Co., 239 F. 603, 152 C. C. A. 437.

The objection that defendant does not reside in the district in which the suit was brought is one which may be waived by defendant, and is waived by his general appearance and by procuring extensions of time to plead, with the agreement that the issue should be of a day certain. Enright v. Heckscher, 240 F. 863, 153 C. C. A. 549.

Where petition for appointment of receiver of foreign corporation was filed in federal District Court for state wherein it was doing its principal business, corporation's voluntary appearance and filing of answer cured any objections on ground of want of jurisdiction of its person. Scattergood v. American Pipe & Construction Co., 249 F. 23, 161 C. C. A. 83, certiorari granted Hitchcock v. Scattergood, 38 S. Ct. 583, 247 U. S. 516, 62 L. Ed. 1244.

A special appearance to challenge jurisdiction held not converted into a general appearance by obtaining an extension of time to plead by an order reciting that it was without prejudice. Kuzma v. Witherbee, Sherman & Co. (D. C.) 232 F. 286.

Defendants, moving to set aside service and asking for stay until determination of the motion, held not to have waived defect in service. Harasimowicz v. Pennsylvania R. Co. (D. C.) 232 F. 295.

That a motion for relief in progress of cause was oral does not qualify appearance thus made. Everett Ry., Light & Power Co. v. U. S. (D. C.) 236 F. 806.

Appearance, which means coming into court as party in proceeding and asking relief in progress of cause, may be made by a party in person or by his agent. Id.

Waiver by general appearance covers merely right to object to the district in which the case should be heard. Sawickas v. Singer Mfg. Co. (D. C.) 241 F. 600.

A defendant does not consent to jurisdiction of federal court of particular district by special appearance, even when coupled with an application for extension of time to answer, if the plea be overruled. Budris v. Consolidation Coal Co. (D. C.) 251 F. 673.

A waiver by any act equivalent to a general appearance will confer jurisdiction upon a federal District Court to hear an action brought by an alien against a domestic corporation in a district other than that in which the corporation was organized and of which it was a citizen. Id.

The interposition in a federal District Court of a special appearance to question jurisdiction over the cause of action or of the person of the defendant waives any defect because of the serving a summons of the court in an adjacent district. Id.

A special appearance in federal court for the purpose of securing dismissal of a particular action, because of lack of jurisdiction over defendant, will not be waived by the mere exercise of the jurisdiction with defendant's consent, necessary to hear the motion. Id.

Where defendant appeared specially in federal court, attacking the jurisdiction, a plea in bar on the ground of prior adjudication may also be interposed, as it is not a consent for the exercise of jurisdiction in the particular case, unless interposed before the making of the special plea, or as a waiver thereof, if subsequently made. Id.

That defendant, who appeared specially, objecting to the jurisdiction of the federal court, prayed costs, which the court could not grant, if without jurisdiction, is not a waiver of objections to the jurisdiction. Id.

72. —— **By pleading to the merits.**—See Sandusky Foundry & Machine Co. v. De Lavaud (D. C.) 251 F. 631.

Objection to jurisdiction that foreign corporation was not doing business within the state held not waived by filing answer to the merits, after motion to vacate service of process had been overruled by federal court, to which cause had been removed. Toledo

Railways & Light Co. v. Hill, 37 S. Ct. 591, 244 U. S. 49, 61 L. Ed. 982.

In action in federal court, defendant, a foreign corporation, by answering to merits and setting up counterclaim, without raising by demurrer question of court's jurisdiction by service on defendant's agent, waived all objections, and cannot thereafter urge them. Moore Filter Co. v. Taugher, 239 F. 105, 151 C. C. A. 279.

In a widow's action to recover for the benefit of herself and her minor children damages provided for by statute for the death of her husband, the defendant appeared generally and answered. Thereafter defendant moved to withdraw its appearance and answer, and file a plea to the jurisdiction on the ground that the District Court, in which suit was had, was without jurisdiction, because defendant resided in another district in a different state and the widow was an alien. Held that, as a plea to the merits waives objections to the jurisdiction, defendant, while entitled to withdraw its answer, could not file a plea to the jurisdiction, and at the same time answer to the merits of the action. Kever v. Philadelphia & Reading Coal & Iron Co. (D. C.) 234 F. 814.

74. —— **By motion to dismiss.**—Defendant held to have waived objection to action by alien in wrong district by moving to dismiss on that ground, and on the further ground that no cause of action had been proved. Lehigh Valley Coal Co. v. Washko, 231 F. 42, 145 C. C. A. 230.

A motion by defendants to dismiss on grounds going to the merits is a waiver of any objection to the venue or jurisdiction of the particular court, where it has general jurisdiction by reason of diversity of citizenship. McLean Lumber Co. v. U. S. (D. C.) 237 F. 460.

76. **Time to raise objection to avoid waiver.**—Defendant, knowing that plaintiff is alien suing in wrong district, may move to dismiss or proceed to trial, but, if not advised of plaintiff's alienage, may raise the point at the trial. Lehigh Valley Coal Co. v. Washko, 231 F. 42, 145 C. C. A. 230.

Where it appears at trial that defendant did not know action was brought in wrong district, right to assign refusal to dismiss as error held not lost by completing the trial. Id.

78. **Determination of objections.**—See Fitzhugh v. Reid (D. C.) 252 F. 234.

Where facts appear indicating that plaintiff is suing in wrong district, held, that trial may be suspended for production of witnesses on issue of defendant's knowledge thereof when it appeared, joined issue, or went to trial. Lehigh Valley Coal Co. v. Washko, 231 F. 42, 145 C. C. A. 230.

Issue as to defendant's knowledge that action is brought in wrong district, when it appeared, joined issue, or went to trial, held determinable by the judge. Id.

IV. PROCESS

79. **District to which process may issue.**—In action against corporation, held, that valid judgment could not be rendered unless defendant was served within the district, or voluntarily appeared, and service on designated agent in another district was not valid. Lukosewicz v. Philadelphia & Reading Coal & Iron Co. (D. C.) 232 F. 292.

The ordinary monition may issue in any district where a shipowner maintains a statutory agent on whom process can be served. American Potato Corporation v. Boca Grande S. S. Co. (D. C.) 233 F. 542.

The federal Circuit Court in controversies cognizable in equity has jurisdiction throughout the limits of the state wherein it sits, and its process runs to any and all federal districts within the state where proper notice and opportunity to be heard was given. Samuel v. Houston Oil Co. of Texas (Tex. Civ. App.) 193 S. W. 246.

80. **Service of process.**—Resident director and vice president of a foreign corporation may not be served with process in action against such corporation not doing business in the state. Toledo Railways & Light Co. v. Hill, 37 S. Ct. 591, 244 U. S. 49, 61 L. Ed. 982.

Finding that superintendent of foreign corporation's mill was not agent or attorney for purpose of service of process held not unsupported by the evidence, and not erroneous. Boultbee v. International Paper Co., 229 F. 951, 144 C. C. A. 233.

Authority of alleged agent of foreign corporation to receive service of process held dependent upon his character, the surrounding facts, and proper inferences therefrom. Id.

A sales agent held not to have been managing agent of foreign corporation, on whom process against the corporation could be served, under Code Civ. Proc. N. Y. § 432, subd. 3. American Oil & Supply Co. v. Western Gas Const. Co., 239 F. 505, 152 C. C. A. 383.

Service upon vice president and general manager of foreign corporation held sufficient, if he was within the district upon corporate business. Twin Lakes Land & Water Co. v. Dohner, 242 F. 399, 155 C. C. A. 175.

In suit against English corporation, which owned stock in New York corporation, service of process on managing director while in the country on pleasure trip, during which he conducted some business negotiations, held not a valid service. Smithson v. Roneo (D. C.) 231 F. 349.

Foreign corporation held not entitled to object to service on officer who, on pleasure trip, exercises official connec-

tion with company in conduct of its ordinary business, and is served in such capacity. Id.

Service of process on corporation's designated agent in another district of the same state held to be set aside. Tauza v. Pennsylvania R. Co. (D. C.) 232 F. 294.

Where corporations had no regular place of business or representative in Eastern district of New York, service on sales agent residing therein, but having office in the Southern district, held insufficient. Harasimowicz v. Pennsylvania R. Co. (D. C.) 232 F. 295.

Where affidavit to quash service of process on vice president of foreign corporation, while in state and district, did not clearly show vice president was not within district on corporate business or that corporation was not doing business therein, question will be referred to a master. Ryan v. Ohmer (D. C.) 233 F. 165.

Where an agent of a foreign corporation was temporarily within the state and federal district upon private business, service upon him is not a binding service upon the corporation. Id.

Where a foreign corporation files a certificate within a state and designates an agent, the corporation does not thus become an actual resident of a federal district within the state wherein it has no place of business, and service of summons on the agent in another district does not confer jurisdiction upon the District Court of the former district. Rakauskas v. Erie R. Co. (D. C.) 237 F. 495.

Notwithstanding this section, in a suit in a federal court in a district of which defendant is not a resident, the court is without jurisdiction to render a personal judgment without personal service on defendant within the district. Dutton v. First Nat. Bank of Waycross, Ga. (D. C.) 244 F. 236; Albert v. Bascom (D. C.) 245 F. 149.

82. —— **Service procured by fraud or force.**—On motion to set aside service of summons for fraud, evidence held to show that defendant was induced by a friend of plaintiff to come into district of plaintiff's residence, so that plaintiff might serve him there, by false representations, that the friend desired to meet defendant on business. Blandin v. Ostrander, 239 F. 700, 152 C. C. A. 534.

Where plaintiff expected a friend to give him assistance in procuring service on defendant in the district of plaintiff's residence, he is responsible for the fraud of the friend in procuring defendant's presence, though he did not know that fraud was employed. Id.

Where federal industrial mediator, resident of Colorado, voluntarily went from California to Hot Springs, Ark., to secure treatment for illness, and there was served with process from Arkansas court by plaintiffs, guilty of no fraud in inducing him to go to Arkansas, though all witnesses were residents of Colorado, Wyoming, and California, plaintiff was properly sued in Arkansas, action being transitory, and it was not abuse of process. Fitzhugh v. Reid (D. C.) 252 F. 234.

Party ordinarily has right to institute and maintain transitory action in any court of competent jurisdiction where personal service can be had on defendant whereby court obtains jurisdiction of person; but if, by sham transfers or trickery, to force payment of unjust claim, suit is instituted in court whose jurisdiction could not have been invoked except by fraud, institution constitutes abuse of process. Id.

84. —— **Return of service.**—An erroneous statement in the return of process cannot prevail against the sworn statement in the petition that defendant surety company is a corporation of Oklahoma, which statement is conclusive on the point against plaintiff. U. S. v. Southern Dredging Co. (D. C.) 251 F. 400.

85. **Privileges and exemptions.**—Under the rule of the federal courts, a witness within a jurisdiction foreign to him to give testimony is protected from service of process while there, and in coming and going. Central Ry. Signal Co. v. Jackson (D. C.) 238 F. 625.

CITED WITHOUT DEFINITE APPLICATION

Arbetter Felling Mach. Co. v. Lewis Blind Stitch Mach. Co. (C. C. A.) 230 F. 992; Ostrom v. Edison (D. C.) 244 F. 228; Champion Spark Plug Co. v. Champion Ignition Co. (D. C.) 247 F. 200.

§ 1034. (Jud. Code, § 52.) Suits in States containing more than one district.

See Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162.

In general.—The residence and citizenship of one necessary defendant in the judicial district and the appropriate division will, at the suit of a citizen of another state, draw to the federal court there the rights of all concerned, if essential to complete determination. Jennings v. Smith (D. C.) 232 F. 921.

Under this section, Judicial Code, § 57 (Comp. St. 1916, § 1039), and equity rule 37 (Comp. St. 1916, p. 2512), where some defendants were residents of Southern district of Georgia and were claiming adversely to plaintiffs, appointment of administrators resid-

ing in Northern district held not to divest jurisdiction of District Court for Southern district. Jennings v. Smith (D. C.) 242 F. 561.

Under this section, suit against several defendants, some of whom resided in Northern and some in Southern district of Florida, though not local, may be maintained in Southern district. Bank of Commerce & Trust of Richmond, Va., v. McArthur (D. C.) 248 F. 138.

District in which suit may or must be brought.—Under Judiciary Act, § 52, suit for negligence and misconduct of national bank directors, living part in one and part in the other of two federal court districts of a state, may be brought in either. Dudley v. Hawkins (D. C.) 239 F. 386.

—— **Waiver of privilege to be sued in proper district.**—Under this section, if there be but one defendant, he may waive being sued in the wrong district, but where there are two or more defendants residing in different districts, then to reach the defendants not residing in the district, suit must be brought as the statute directs, etc. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

§ 1035. (Jud. Code, § 53.) Districts containing more than one division; where suit to be brought; transfer of criminal cases.

See Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162.

Division of district in which suit may be brought.—Despite this section held, that action against a foreign corporation should, under section 51, be brought in division of district in which plaintiff resided, suit being based on diversity of citizenship, notwithstanding foreign corporation did business in other division of the district. McCullough v. United Grocers' Corporation (Ohio) 247 F. 880.

Prosecutions for crimes.—Under this section an indictment cannot be found in a division other than the one in which the offense was committed. U. S. v. Chennault (D. C.) 230 F. 942.

§ 1036. (Jud. Code, § 54.) Suits of a local nature, where brought.

"Inhabitant" and "resident" defined.—See Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162.

Jurisdiction and venue in local actions or suits.—Where the United States Circuit Court for the Eastern District of Tennessee had jurisdiction of a suit to quiet plaintiff's title to land alleged to be in Tennessee, and to cancel defendants' grants from North Carolina, its decree for complainant was conclusive of the rights of parties, and available to the complainant and to those claiming under him, against the defendants and those claiming under them. Ferguson v. Babcock Lumber & Land Co. (C. C. A.) 252 F. 705.

After a decree for complainant in the United States Circuit Court for the Eastern District of Tennessee, in a suit to quiet title to land involving the question of its location in Tennessee or in North Carolina, the Circuit Court's dismissal of a bill of review on the merits, affirmed on appeal to the Circuit Court of Appeals, and on certiorari by the United States Supreme Court, all after discovery of a plat showing that the land was in North Carolina, amounted to an affirmation of the validity of the Circuit Court's original decree. Id.

An adjudication of the United States Supreme Court in a suit between the two states that the land was in North Carolina, made pending the bill of review, did not impair the validity of that decree. Id.

—— **Creditors' suit for appointment of receiver.**—A suit for the appointment of receivers to conserve and protect the assets of a corporation is one of a local nature, within this section, and under section 55 (Comp. St. 1916, § 1037) cannot be maintained in a district wherein the corporation was not domiciled and had no property of a fixed nature. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

Issuance of process.—In a suit of a local nature, where process is served on a defendant residing in a different district in the same state, under this section the summons must issue to the marshal of such district. Kuzma v. Witherbee, Sherman & Co. (D. C.) 232 F. 286; Vitkus v. Clyde S. S. Co. (D. C.) 232 F. 288.

§ 1037. (Jud. Code, § 55.) When property lies in different districts.

Suit of local nature.—A suit for the appointment of receivers to conserve and protect the assets of a corporation is one of a local nature, within Judicial Code, § 54 (Comp. St. 1916, § 1036), and under this section cannot be maintained in a district wherein the corporation was not domiciled and had no property of a fixed nature. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

Property of fixed nature or character.—A lease of real estate for a term of years is "personal property," and is not property of a fixed nature or character, within this section. Primos

Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

Though a corporation which had its domicile and carried on its business in the Northern District of New York admitted the jurisdiction of the District Court of the Southern District, wherein it had a small bank account, and had leased offices, over a suit for the appointment of a receiver, held, that the District Court of the Southern District was without jurisdiction, under this section; the suit being of a local nature, and no property in that district being of a fixed character or nature. Id.

Money deposited becomes the property of the bank, and the relation between the bank and depositor is simply that of debtor and creditor, so a deposit is not "property of a fixed character," within this section. Id.

§ 1038. (Jud. Code, § 56.) When property lies in different States in same circuit; jurisdiction of receiver.

Disapproval of appointment.—Under this section and Judicial Code, § 129 (Comp. St. 1916, § 1121), Circuit Judge or Circuit Court of Appeals in original proceeding held not authorized to disapprove appointment of receiver, but only assumption of control over property outside the district of his appointment. In re Brown, 242 F. 452. 155 C. C. A. 228.

Original proceeding for disapproval of order of District Court under which receiver appointed by it is exercising control over property outside the district held to be dismissed. when order of disapproval was not obtained within 30 days. Id.

Protection of property in hands of receiver.—A national court, which has jurisdiction of a suit in it to foreclose a mortgage upon the property of a public service corporation which is operating in three states under a receiver of its property in one of the states appointed by a state court, and under the same person appointed a receiver of its property in the two other states by the national court, and directed by that court to operate the business and property of the corporation in the three states as a unit, under the direction of the state court until further orders of the national court, has jurisdiction, on the petition of the receiver, to prevent the public utilities commissions of the states from destroying or irreparably injuring the business or property of the receiver and the corporation by making or enforcing unreasonably low and confiscatory rates for the sale of their product (in this case natural gas) to the purchasers from them in those states. Landon v. Public Utilities Commission of Kansas (D. C.) 234 F. 152.

§ 1039. (Jud. Code, § 57.) Absent defendants in suits to enforce liens, remove clouds on titles, etc.

2. Construction of statute in general.—To sustain jurisdiction the court must be able to grant full relief in rem. O'Neil v. Birdseye (D. C.) 244 F. 254.

3. Application and operation of statute in general.—Where a state chancery court acquired jurisdiction against a nonresident defendant the federal District Court, on removal, will not set aside the service as not authorized by this section as it is limited to federal courts. Hudson Nav. Co. v. Murray (D. C.) 236 F. 419.

Under Judicial Code, §§ 52, 57, and equity rule 37 (Comp. St. 1916, p. 2512), where some defendants were residents of Southern district of Georgia and were claiming adversely to plaintiffs, appointment of administrators residing in Northern district held not to divest jurisdiction of District Court for Southern district. Jennings v. Smith (D. C.) 242 F. 561.

5. "Property within the district" within the statute.—See Sherman Nat. Bank of New York v. Shubert Theatrical Co. (D. C.) 238 F. 225.

Cerificates of shares of capital stock of joint-stock association or partnership held valuable property, on which legal process may be levied, when they are within state and substituted service may be had against owner, though he be a nonresident and joint-stock company be also nonresident, having no property in state. Beal v. Carpenter, 235 F. 273, 148 C. C. A. 633.

On a bill in the United States Circuit Court for the Eastern District of Tennessee to quiet title to land, etc., a necessary party defendant, resident in North Carolina, who had been legally served and thereby required to meet the allegations that the land was in Tennessee, by his default admitted that the land was in that state, and brought himself within this section, so as to entitle the court to enter judgment against him. Ferguson v. Babcock Lumber & Land Co. (C. C. A.) 252 F. 705.

In a suit to redeem stock of New York corporation, whose by-laws were not shown to differ from the ordinary by-laws in regard to the transfer of corporate stock, which stock had been sold by the pledgee in violation of the pledgor's rights, a transferee of the stock, not residing in the district in which the suit was brought, to whom the stock had not yet been transferred on the books of the corporation, is a necessary party, and may be joined as

defendant, since, under Stock Corporation Law N. Y. (Consol. Laws, c. 59) § 50, providing that the stock of a corporation shall be transferable in the manner prescribed in that law and in the by-laws of the company, it is the transfer on the books that passes the title, and the court therefore has jurisdiction over the stock under this section. Gideon v. Representative Securities Corporation (D. C.) 232 F. 184.

Bill by a New Jersey corporation to have stock issued to nonresident defendant declared invalid cannot be defeated on the theory that the corporation fraudulently brought the certificates into the state; the stock itself having a situs in the state because of location of corporation. Hudson Nav. Co. v. Murray (D. C.) 236 F. 419.

6. "Lien on or claim to property" within the statute.—A railroad company which had leased some of its cars to a Pennsylvania corporation was adjudged an insolvent after having executed a refunding and extensions mortgage to secure an issue of bonds. Default having been made in payment of the bonds after appointment of the receiver, the mortgage was foreclosed and the property of the railroad company bought in by another corporation, which was not a citizen of Pennsylvania. Complainant, a holder of a number of the bonds, though not a citizen of Pennsylvania, attempted, by suit in a Pennsylvania district, against the lessee and the railroad company and the purchaser, to secure an accounting and to enforce application of the amount due on the lease to payment of its bonds. Held, that this section contemplates the enforcement of a lien on some tangible property, and not the mere enforcement of a chose in action. Therefore complainant, particularly as its rights under the bonds were not adjudicated, could not maintain the suit against the railroad company or its receiver; the Pennsylvania court not having jurisdiction. Wabash R. Co. v. West Side Belt R. Co. (D. C.) 235 F. 645.

Creditor cannot, where he was given no lien by contract, justify maintenance of suit in district other than that of debtor's residence, on ground that it was to enforce lien on specific personal property in district, and within this section, where such creditor had not acquired any lien by levy of execution. Bank of Commerce & Trust of Richmond, Va., v. McArthur (D. C.) 248 F. 138.

7. "Found within district" within the statute.—A party enticed by false representations by plaintiff, or one acting in his behalf, to enter the district for the purpose of making service upon him, cannot be said to be "found within the district." Blandin v. Ostrander, 239 F. 700, 152 C. C. A. 534.

8½. Residence of plaintiff.—See Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162.

A suit to establish a lien upon or claim to property brought under this section, may be maintained in federal District Court for state where property is situated, though neither plaintiff nor defendant is a resident thereof. Albert v. Bascom (D. C.) 245 F. 149.

9. Suit to enforce lien on or claim to property within the statute in general.—Under this section the lien must be a pre-existing one, and not one caused by the institution of the suit itself. Albert v. Bascom (D. C.) 245 F. 149.

Plaintiffs held not entitled under this section to maintain in federal District Court for state in which was located property in suit to subject interest of their trustee in such property to lien; neither plaintiffs nor devisees of trustee being residents of state, and plaintiffs having no lien on any particular property. Id.

A railroad company, against which it was adjudged that dividends paid directly to its stockholders as rental by the lessee of all its property, constituted net income subject to federal corporation tax, brought suit in equity to have such taxes declared an equitable lien upon such dividends in the hands of lessee. Held, that the stockholders were indispensable parties, but that nonresidents could be brought in by publication under this section. Rensselaer & Saratoga R. Co. v. Irwin (D. C.) 252 F. 921.

11. —— Creditors' suit.—Suit against devisees and heirs to subject lands of decedent to payment of debts held one in personam, and hence such suit cannot, under this section, be maintained in federal District Court for state in which land was located, where neither plaintiffs nor defendants were residents or citizens. Albert v. Bascom (D. C.) 245 F. 149.

21. Suit to remove incumbrance, lien or cloud on title—Cancellation of conveyances or instruments.—In a suit to cancel stock certificates on the ground that they were illegally issued and cast a cloud on the title of the plaintiff corporation, it is immaterial, defendant being absent and process being sought under Judicial Code, § 57, whether the certificates are within the district. Hudson Nav. Co. v. Murray (D. C.) 233 F. 466.

Under Judicial Code, § 57, suit cannot be maintained in the district where corporation was organized to set aside illegally issued stock, where the corporation's property was not located in that district. Id.

24. —— Fraudulent conveyances and transfers.—The District Court cannot, under this section, obtain jurisdiction by substituted service over nonresident assignees in a suit by trustee in bankruptcy to set aside as a preference an

assignment of a debt owing to bankrupt by a nonresident. Murphy v. Ford Motor Co. (D. C.) 241 F. 134.

Suit, which was not one to enforce lien or remove cloud from title, must, where basis of jurisdiction was diversity of citizenship be begun in accordance with Judicial Code, § 51, either in district of residence of complainant or defendant, and cannot be instituted in district wherein property of defendant, transfer of which was attacked, was located. Bank of Commerce & Trust of Richmond, Va., v. McArthur (D. C.) 248 F. 138.

Under this section, suit to set aside transfers of personalty by debtor, and to have property declared that of debtor and subjected to payment of his debts, is not one to remove cloud from title to property, so as to be maintainable in district wherein property was located, where neither complainant nor debtor resided therein. Id.

38. Person on whom substituted service may be made.—Default judgment rendered by District Court for Eastern District of Tennessee against defendant, upon whom substituted service was made in North Carolina, held binding upon such defendant. Babcock Lumber & Land Co. v. Ferguson (D. C.) 243 F. 623.

Cited without definite application, Sherman Nat. Bank v. Shubert Theatrical Co. (C. C. A.) 247 F. 256; General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160; Dutton v. First Nat. Bank of Waycross, Ga. (D. C.) 244 F. 236.

§ 1047. (Jud. Code, § 65.) Receivers to manage property according to State laws.

I. CONSTRUCTION AND OPERATION OF STATUTE

2. Applicability of state statutes and practice in general.—In view of the power exercised by Pennsylvania state courts, federal District Court for Pennsylvania held to have authority to appoint temporary receiver for New Jersey corporation in financial difficulties, where its principal business was being carried on in Pennsylvania. Scattergood v. American Pipe & Construction Co., 249 F. 23, 161 C. C. A. 83, certiorari granted Hitchcock v. Scattergood, 38 S. Ct. 583, 247 U. S. 516, 62 L. Ed. 1244.

II. NATURE AND GROUNDS OF RECEIVERSHIP

(A) Nature and subjects of remedy

3. Nature and purpose of remedy.—Equity is sedulous to prevent use of preliminary injunction or appointment of receiver to perform function of ejectment. Folk v. U. S., 233 F. 177, 147 C. C. A. 183.

Where appointment is not for specific purpose and there are no controlling state statutes or decisions, appointment of receiver of property by federal court is to protect and preserve all rights and interests therein. Equitable Trust Co. of New York v. Great Shoshone & Twin Falls Water Power Co., 245 F. 697, 158 C. C. A. 99, affirming decree (D. C.) 228 F. 516.

Appointing of receiver is ordinarily a harsh remedy, and such relief will only be granted in clear case. U. S. v. Honolulu Consol. Oil Co. (D. C.) 249 F. 167.

7. Discretion of court.—One complaining of the denial of his motion for appointment of a receiver pending suit, in order to prevail, must show a right to the appointment of the receiver as a matter of law, and that the trial court grossly abused its discretion in denying the motion. American Manganese Steel Co. v. Alaska Mines Corp. (C. C. A.) 250 F. 614.

8. Persons entitled to appointment.—A federal court of equity held without jurisdiction to appoint a receiver of the assets of an individual debtor, and to enjoin prosecution of actions against him, at suit of a mere contract creditor without lien or security. Davis v. Hayden, 238 F. 734, 151 C. C. A. 584.

Directors of railroad company, acting in good faith, with approval of majority of stockholders, held to have power to initiate proceedings for receivership through friendly suit by bona fide creditor. Intercontinental Rubber Co. v. Boston & M. R. R. (D. C.) 245 F. 122.

(B) Grounds of appointment of receiver

9½. Grounds in general.—A receiver cannot be appointed by the federal court on the theory that the administration was vacant, because temporary administrators appointed pursuant to Georgia practice had no power to carry on the decedent's business. Smith v. Jennings, 238 F. 48, 151 C. C. A. 124, reversing order Jennings v. Smith (D. C.) 232 F. 921.

In action by corporation which had lost its charter for failure to pay tax, held that there was no imperative reason for appointment of receiver. Stark Electric R. Co. v. McGinty Contracting Co., 238 F. 657, 151 C. C. A. 507.

Where defendant was not insolvent, and no irreparable injury could result from refusal, the denial of complainant's motion for appointment of a receiver, to take into custody property which complainant asserted it was entitled to subject to its claim, was not error. American Manganese Steel Co.

v. Alaska Mines Corp. (C. C. A.) 250 F. 614.

In a suit to subject to its claim property in the possession of defendant, etc., the denial of complainant's motion for the appointment of a receiver held proper, on the ground that defendant's assets were considerably in excess of its liabilities, and were not in danger of loss from insolvency, etc. American Manganese Steel Co. v. Alaska Mines Corp. (C. C. A.) 250 F. 614.

A receiver should not be appointed for a corporation, thereby impairing its credit, interfering with its management, and imposing upon the court the onerous duty of corporate management, except in extreme cases. Shera v. Carbon Steel Co. (D. C.) 245 F. 589.

10. Right or interest in property requiring protection.—It is the general rule that a court of equity will not appoint receiver of realty or its proceeds, in possession of defendant holding under regular title during pendency of suit. Folk v. U. S., 233 F. 177, 147 C. C. A. 183.

12. Preservation and protection of property in general.—Where appointment is not for specific purpose and there are no controlling state statutes or decisions, appointment of receiver of property by federal court is to protect and preserve all rights and interests therein. Equitable Trust Co. of New York v. Great Shoshone & Twin Falls Water Power Co., 245 F. 697, 158 C. C. A. 99, affirming decree (D. C.) 228 F. 516.

A court of equity may appoint receiver for private corporation discharging public functions to act as caretaker of its assets and allow corporation to gather its resources to discharge obligations and continue operation. Scattergood v. American Pipe & Const. Co. (D. C.) 247 F. 712.

Though New Jersey corporation doing business in Pennsylvania might under New Jersey laws be subject to dissolution on account of insolvency, etc., held, that federal District Court in Pennsylvania might appoint receiver to act as caretaker, purpose of suit being to enable corporation to continue business. Id.

13. Preservation of property pending litigation in general.—To authorize appointment of receiver of realty in possession of defendant under regular title, there must be clear proof of imminent danger that property will be wasted, that plaintiff will suffer irreparable loss, and that there is a strong probability that plaintiff will ultimately recover. Folk v. U. S., 233 F. 177, 147 C. C. A. 183.

In suit by United States and Creek Tribe of Indians to avoid enrollment, allotment, and patent to defendants, where there was no satisfactory evidence of imminent danger of deterioration, irreparable loss to plaintiffs, or probability of plaintiffs' ultimate recovery, appointment of receiver was erroneous. Id.

An intervener, claiming rights under an oil lease adverse to those in controversy between the original parties, held entitled to protection through a receivership pending determination of the suit. Producers' Oil Co. v. U. S., 245 F. 651, 158 C. C. A. 79.

Bill by the United States, alleging that defendants wrongfully entered into and held possession of mineral and oil lands belonging to the United States, setting up fraud in the entry, but failing to show that any proceeding was pending in land office to determine the right of defendants to the lands, was insufficient to warrant appointment of receiver by the court, pending the determination on the application for patent. Devil's Den Consol. Oil Co. v. U. S. (C. C. A.) 251 F. 548.

The right of a court of chancery, pending outcome of a suit therein, to protect property in issue, as accrued and accruing rents of realty, and preserve its status, by appointment of a receiver, is clear. Ward v. Central Trust Co. of Illinois (C. C. A.) 252 F. 127.

In a suit by the United States as owner to restrain waste on public lands by the extraction and sale of oil therefrom, complainant held entitled to the appointment of a receiver. U. S. v. McCutchen (D. C.) 234 F. 702.

A court may properly appoint a receiver for public oil lands, on application by the government, where oil is being extracted by one in possession under an entry alleged to be fraudulent and unlawful. U. S. v. Devil's Den Consol. Oil Co. (D. C.) 236 F. 973.

14. —— Insolvency or misconduct of party in possession as against claimant.—The appointment of a receiver to hold funds in defendant's possession pending litigation held proper, in view of the charges that he was a trustee ex maleficio, and that in connection with the transaction he had been convicted of using the mails to defraud. Cook v. Flagg, 233 F. 426, 147 C. C. A. 362.

Where railroad corporation is unable to pay currently accruing interest, it is actually insolvent, and its property being insufficient security for mortgage debt, it may be placed in hands of receiver. Lowenthal v. Georgia Coast & P. R. Co. (D. C.) 233 F. 1010.

By "insolvency" of railroad company is meant inability to meet its obligations as they mature in the ordinary course of business, and at same time to carry on its business in proper way, and perform its public duties. Intercontinental Rubber Co. v. Boston & M. R. R. (D. C.) 245 F. 122.

15. Security for payment of demand.—Where temporary administrators had given sufficient bond, and a number of

them were persons of property, a receiver cannot be appointed by the federal court on the ground of waste or dissipation of assets, though administrators were claimed to have exceeded their authority. Smith v. Jennings, 238 F. 48, 151 C. C. A. 124, reversing order Jennings v. Smith (D. C.) 232 F. 921.

Receivership denied in a suit by the United States to recover oil lands, conditioned on the giving of bond by defendants. U. S. v. Dominion Oil Co. (D. C.) 241 F. 425.

17. Defenses and grounds of opposition.—In proceeding against railroad company to foreclose mortgage given to secure bonds, held, that receiver might be appointed, notwithstanding majority of bondholders had agreed that so-called committee should have complete control of railroad as well as right of disposal, etc. Lowenthal v. Georgia Coast & P. R. Co. (D. C.) 233 F. 1016, decree affirmed Georgia Coast & P. R. Co. v. Lowenthal (C. C. A.) 238 F. 795.

Where temporary administrators had given adequate bond, and additional temporary administrators qualified to act had been appointed, right of original administrators cannot be questioned in a suit to secure appointment of receiver by federal court on ground that appointment was result of fraud and irregularities. Smith v. Jennings, 238 F. 48, 151 C. C. A. 124, reversing order Jennings v. Smith (D. C.) 232 F. 921.

III. APPOINTMENT AND QUALIFICATION

19. Jurisdiction and authority of court or judge.—See United Copper Securities Co. v. Amalgamated Copper Co., 37 S. Ct. 509, 244 U. S. 261, 61 L. Ed. 1119, affirming judgment 223 F. 421, 139 C. C. A. 15; Landon v. Public Utilities Commission of Kansas (D. C.) 234 F. 152; Pacific Coast Pipe Co. v. Conrad City Water Co. (D. C.) 237 F. 673.

Federal court in exercise of its general equity jurisdiction has power to appoint a receiver on a stockholder's bill, determine corporation's solvency, and distribute its assets, and no state statute can impair or destroy that power. O'Neil v. Welch, 245 F. 261, 157 C. C. A. 453, reversing decree Welch v. Union Casualty Ins. Co. (D. C.) 238 F. 968.

Bill seeking appointment of corporate receiver should be dismissed by court on its own motion, when it appears that court is without jurisdiction, regardless of how knowledge of that fact may be acquired. Scattergood v. American Pipe & Construction Co., 249 F. 23, 161 C. C. A. 83, certiorari granted Hitchcock v. Scattergood, 38 S. Ct. 583, 247 U. S. 516, 62 L. Ed. 1244.

21. Appointment on consent of parties.—Consent of directors of a corporation to the appointment of receivers held to have been given in good faith, and not through fraud or collusion. Guaranty Trust Co. of New York v. International Steam Pump Co., 231 F. 594, 145 C. C. A. 480.

Where creditors extended time and were given representation on board of directors, a receiver will not be appointed at suit of dissatisfied creditor, though concurred in by president of corporation, unless there is a threatened injury to creditors or stockholders. Bassett v. Bickford Bros. Co. (D. C.) 232 F. 895.

President of corporation, who before it got into difficulties was allowed to conduct its affairs, cannot, after creditors, who extended time for payment, were given representation on board of directors, authorize appointment of receiver to liquidate corporate property. Id.

24. Parties on application.—Where court appointing receiver of financially embarrassed corporation had jurisdiction of subject-matter and corporation, stockholder cannot merely by virtue of his interest as such intervene and attack appointment. Scattergood v. American Pipe & Construction Co., 249 F. 23, 161 C. C. A. 83, certiorari granted Hitchcock v. Scattergood, 38 S. Ct. 583, 247 U. S. 516, 62 L. Ed. 1244.

A majority stockholder held not a necessary party to a suit by a minority stockholder for the appointment of a receiver for stocks of subsidiary companies alleged to be illegally held by the corporation. General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

25. Notice of application.—On showing as to danger of irreparable injury, appointment of receiver for fraternal society without notice, subject to be vacated or modified after hearing, held not an abuse of discretion. Supreme Council of Royal Arcanum v. Hobart, 244 F. 385, 157 C. C. A. 11.

31. Conditions on refusing application.—Receivership denied in a suit by the United States to recover oil lands, conditioned on the giving of bond by defendants. U. S. v. Dominion Oil Co. (D. C.) 241 F. 425.

36. Extension of receivership and subsequent appointments in other actions and proceedings.—Where entire railway system was in possession of receiver for benefit of holders of all liens, and all issues involved would have to be decided by same court, it was not abuse of discretion to extend receivership over that part of railway's property covered by another mortgage, and to refuse to appoint separate receiver thereof. Bankers' Trust Co. v. Missouri, K. & T. Ry. Co. (C. C. A.) 251 F. 789.

That railroad receiver had expressed his views to those engaged in formulating a plan of reorganization held

not sufficient cause for appointing an additional receiver. Central Trust Co. of New York v. Missouri, K. & T. Ry. Co. (D. C.) 246 F. 154.

38. Effect of irregular or invalid appointment.—Under Rev. Codes Mont. § 6698, bill held to give court jurisdiction to appoint receiver for water company, and appointment was not subject to collateral attack, though mechanic's lien alleged was trivial or fictitious, and conditions as to company's finances fanciful or grossly exaggerated. Pacific Coast Pipe Co. v. Conrad City Water Co., 245 F. 846, 158 C. C. A. 186, affirming judgment (D. C.) 237 F. 673.

41. Revocation or modification of appointment.—Though under circumstances apopintment of receiver to carry on business of bankrupt corporation formed to manufacture tractors appeared to have been justified, as necessary for preservation of property and for best interests of estate, trial court is entitled to know all the facts in case, and, where appointment was induced by misrepresentations, receivership may be set aside. In re Veler, 249 F. 633, 161 C. C. A. 543.

Where District Judge, after appointing receiver, became suspicious that he had been imposed upon, two courses were open to him: To direct some procedure for framing of issues by which parties charged with misconduct might know charge and have opportunity to try fact, or to satisfy himself by summary inquiry as to whether such proceeding should be instituted; summary determination that courts had been imposed upon, without framing issues, was improper. Id.

43. Duration and termination of receivership in general.—Under Act March 19, 1889 (Acts 21st Leg. c. 59) § 6, a railroad redelivered by receivers appointed by the federal courts held liable in the state courts in an action begun against the receivers for damages caused by the receivers' acts regardless of the terms of the decree or redelivery. Kansas City, M. & O. Ry. Co. of Texas v. Weaver (Tex. Civ. App.) 191 S. W. 591.

44. Removal.—Fraternal society, which appeared and obtained modifications of decree appointing receiver without notice, held in no position to claim that omission of notice prejudiced its rights. Supreme Council of Royal Arcanum v. Hobart, 244 F. 385, 157 C. C. A. 11.

IV. TITLE TO AND POSSESSION OF PROPERTY

46. Effect of appointment and qualification of receiver.—A receivership does not operate as an attachment or execution, but is no more than a sequestration of property for safe-keeping, leaving the question as to who is entitled thereto for subsequent determination. Johnson v. Garner (D. C.) 233 F. 756.

One securing the appointment of a receiver to take possession of the property of defendant and an injunction against alienation does not for that reason obtain a lien or preference over other interested parties. Id.

47. Property vesting in receiver in general.—Claim for rent falling due after mortgage receiver took possession held to go to him, and not to general creditors, and to pass under his assignment of claims against lessee. Pennsylvania Steel Co. v. New York City Ry. Co., 231 F. 442, 145 C. C. A. 434, 436, modifying decree (D. C.) 225 F. 96.

Such rent held to belong to company, so as to pass to the receivers, and not to its stockholders. Id.

Receivers appointed in foreclosure suit held entitled to custody only of the property subject to the mortgage and involved in the litigation, not including trustee's rights under collateral agreement against third party. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

Despite Code W. Va. 1906, c. 32, § 136 (Code W. Va. 1913, c. 32, § 136 [sec. 1269]); chapter 53, § 59 (Code W. Va. 1913, c. 53, § 59 [sec. 2891]), held that corporation which lost its charter for failure to pay corporate license tax might sue on contract previously entered into. Stark Electric R. Co. v. McGinty Contracting Co., 238 F. 657, 151 C. C. A. 507.

Where corporation loses its charter for failure to pay corporate license taxes, held, on recovery of assets in suit by corporation, such assets constitute a trust fund, to be distributed by directors. Id.

The appointment of a receiver, who took charge of the property of an Ohio manufacturer, including that which had been delivered under a trust receipt, which was neither verified nor filed as required by Gen. Code Ohio, § 8568, fastens the claims of creditors upon it as effectually as though the creditors had seized the same under attachment or levy of execution. In re Bettman-Johnson Co. (C. C. A.) 250 F. 657.

Receiver of a railroad company held to succeed to the right of the company to use an improvement fund created under the provisions of a mortgage. Union Trust Co. of New York v. St. Louis, I. M. & S. Ry. Co. (D. C.) 234 F. 809.

49. Title or right acquired by receiver in general.—If the receiver of a corporation, substantially benefited by the unauthorized acts of its chief owner and manager in operating the business, prefers still to insist on the enforcement of the legal consequences of

such acts, the court can merely administer the law as it is, without regard to considerations beyond its sphere. Wood v. Todd (C. C. A.) 251 F. 530.

53. Protection of possession of receiver in general.—Where receivership for a corporation in difficulties resulted in increased profits, so that indebtedness could be paid and dividends paid on preferred stock, held, that proposed reorganization plan, which would enable preferred stockholders, not entitled to vote, except when dividends were in arrears, to take advantage of the temporary condition and control the corporation, was unfair, so it was proper for the court to stay action at a proposed stockholders' meeting. Graselli Chemical Co. v. Ætna Explosives Co. (C. C. A.) 252 F. 456.

An order appointing receivers places a corporation in the custody and control of the court, and the court, in addition to restraining the corporation and its officers from exercising any privileges or franchises, may restrain the stockholders from meeting and electing new directors, when such action is for the best interests of all concerned. Id.

54. Interference with possession of receiver and possession thereof.—Consent of federal court having jurisdiction of railroad receivership need not first be had that Public Service Commission of state wherein road is located may promulgate orders to road in exercise of state's police power; Public Service Commission Act Mo. § 2, subsec. 8, including receivers of railroads within the scope of the act. State ex rel. Missouri, K. & T. Ry. Co. v. Public Service Commission, 197 S. W. 56, 271 Mo. 270.

55. Set-offs and counterclaims against receiver.—Where, when C. Co. became insolvent, it did not own notes of M. Co., delivered to its receiver long afterwards, the receiver could not offset them against claim of M. Co.'s receiver. Pennsylvania Steel Co. v. New York City Ry. Co., 231 F. 440, 145 C. C. A. 434, 436, modifying decree (D. C.) 217 F. 423.

57. Liens on and adverse claims to property.—A receiver of an insolvent corporation takes the property subject to existing liens; the fact of insolvency and the appointment of the receiver not impairing a valid contract lien. Schmidtman v. Atlantic Phosphate & Oil Corp., 230 F. 769, 145 C. C. A. 79.

A traffic contract between two railroad companies to continue for a stated time held to create no lien on the property or income of one of the parties, but to be terminable by its receiver, subject only to a general claim for damages for breach. Baker v. Central Trust Co. of New York, 235 F. 17, 148 C. C. A. 511.

58. Remedies to establish or enforce liens or claims.—In suit by corporation which had lost its charter for failure to pay corporate license taxes, held that it would be presumed that the purpose of the suit was to collect assets for distribution. Stark Electric R. Co. v. McGinty Contracting Co., 238 F. 657, 151 C. C. A. 507.

Jurisdiction of federal Circuit Court in receivership proceedings wherein title to land was involved held not limited to discovering then existing state of facts as to title. Samuel v. Houston Oil Co. of Texas (Tex. Civ. App.) 193 S. W. 246.

59. Remedies of general creditors as against property.—Where, after receivership pendente lite other creditors of defendant reduced their claims to judgment, held that, on distribution of his estate, the court after his death determining to distribute estate, they are entitled to the priority given by Rev. Laws Nev. § 6052. Johnson v. Garner (D. C.) 233 F. 756.

V. MANAGEMENT AND DISPOSITION OF PROPERTY

(A) *Administration in general*

61. Representation by receiver of court and parties.—A receiver of a corporation is appointed on behalf of all parties interested, and he represents the stockholders, as well as the creditors. Graselli Chemical Co. v. Ætna Explosives Co. (C. C. A.) 252 F. 456.

The general rule that a receiver for a corporation can recover only in the right of the corporation is not universally applicable, but the receiver represents, not only the corporation, but its creditors and stockholders, and is also an instrument of the court, and may be used to establish and protect the equitable rights of all parties in interest. Drennen v. Southern States Fire Ins. Co. (C. C. A.) 252 F. 776.

62. Authority of receiver in general.—Though only small part of corporation stock had been subscribed, held, that there was a de facto corporation and that receiver could collect subscriptions for purpose of paying bona fide creditors. Allen v. Rhodes, 230 F. 321, 144 C. C. A. 463.

64. Custody, use, and care of property.—The real custodian of property in the hands of a receiver is the court appointing him. New York Life Ins. Co. v. Bond Bldg. Co., 47 App. D. C. 253.

66. Incumbrances and charges on property.—Receivers held, under the order appointing them, authorized to execute a redelivery bond in a state court to obtain the release of attached property of the estate. United States Fidelity & Guaranty Co. v. First Nat. Bank, 239 F. 227, 152 C. C. A. 215.

Where the property of a railroad company was operated by receivers, and the corporation, had it been oper-

ating the property, would have been liable for the franchise tax imposed by Laws Ark. 1911, p. 67, the receivers should be directed to pay such taxes accruing during the receivership. Bright v. State of Arkansas (C. C. A.) 249 F. 950.

Where penalty due for nonpayment by railway company of franchise tax imposed by Laws Ark. 1911, p. 67, accrued within less than a month after receivers were appointed, and the state thereafter intervened before the penalty on the tax for the succeeding year had accrued, it is entitled to recover penalties for both years. Id.

Real property of insolvent railway company, taxable under Kirby's Dig. Ark. 6941, 6942, 6945, cannot escape penalties attaching for nonpayment, because entire property of company was in hands of receivers appointed under order of court to take possession of the property for benefit of creditors. Bright v. State of Arkansas (C. C. A.) 249 F. 953.

67. Assumption and performance of obligations.—When a receiver is appointed, he has right to confirm and carry out contracts which are advantageous to the insolvent; hence such contracts continue despite receivership. Texas Co. v. International & G. N. Ry. Co. (C. C. A.) 250 F. 742.

An executory contract made by a corporation is not binding on its subsequent receiver, unless he affirmatively assumes it. Dickinson v. Willis (D. C.) 239 F. 171.

Temporary receiver of railroad company directed to make payment claimed under lease, without prejudice to right of any party in interest to further litigate any question involved. Intercontinental Rubber Co. v. Boston & M. R. R. (D. C.) 245 F. 127.

A contract of a corporation is not binding on its receiver, unless affirmatively adopted by him. Landon v. Public Utilities Commission of Kansas (D. C.) 245 F. 950.

68. Acceptance of lease.—On insolvency of corporation and appointment of receiver, latter may reject lease previously entered into by corporation, and protest to receiver is unnecessary to protect lessor's right of action. In re Mullings Clothing Co., 238 F. 58, 151 C. C. A. 134, reversing decree (D. C.) 230 F. 681.

A receiver may take and retain possession of leasehold property for such reasonable time as will enable him to elect intelligently whether the interest of his trust will be best served by adopting the lease or returning the property to the lessor. Fleming v. Noble (C. C. A.) 250 F. 733.

Receiver held liable for the fair rental value of demised premises during the time he occupied them; it not appearing that his failure to sooner vacate premises was due to the fault of the lessor's agent to conclude lease with tenant interested by receiver. Id.

Where amount claimed was more than fair rental of premises and landlord had first asserted such claim as means of compelling corporation to vacate, held, receivers having been appointed, that receivers were chargeable only for sum corresponding to rent reserved in old lease. Atkinson & Co. v. Aldrich-Clisbee Co. (D. C.) 248 F. 134.

Receivers of corporation are at liberty to occupy leased premises until they elect whether to retain or abandon; for if the lease is assignable, it may be sold like other personal property, and if not, the receivers may at their option abandon the same. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

69. Continuance and conduct of business.—In considering the question of appointment of a receiver for a public utility corporation, the court will assume, unless it otherwise appears, that it can be operated so as not at least further to impair the value of assets, and will direct it to be operated, even by the issue of receiver's certificates, until arrangements can be made to meet the exigencies of its stoppage. Central Bank & Trust Corporation v. Cleveland (C. C. A.) 252 F. 530.

In a suit to foreclose a mortgage and sell the property of an insolvent street railroad company, the court will not authorize its receiver to suspend operation of the road where the franchise is still in force. Boisot v. Amarillo St. Ry. Co. (D. C.) 244 F. 838.

A court cannot authorize its receivers for a street railroad company to charge a higher rate of fare than that fixed as a maximum by the company's franchise. Gas & Electric Securities Co. v. Manhattan & Queens Traction Corporation (D. C.) 253 F. 453.

70. Completion and extension of works.—An order of the court authorizing receivers to extend the railroad along a certain street does not authorize an excavation along that street between the tracks and the abutting property. Kansas City, M. & O. Ry. Co. of Texas v. Weaver (Tex. Civ. App.) 191 S. W. 591.

71. Contracts of receiver in general.—A corporate receiver, unless authorized by court appointing him, is without authority to make any binding agreement as to modification or abrogation of contract between corporation of which he was receiver and a third person. St. Joseph Gas Co. v. Barker (D. C.) 243 F. 206.

72. Attorneys, agents, and employés of receiver.—The general rule that a receiver should not employ counsel for either party has no application to a case in which a receiver is appointed in accordance with the prayer of the bill to

collect assets. McPherson v. U. S., 245 F. 35, 157 C. C. A. 331.

A United States attorney held not ineligible to appointment as counsel for a receiver appointed to collect assets in a suit by the United States. Id.

It is for the court, and not the trustee named in a mortgage, upon whose suit for foreclosure a receiver was appointed, to determine who should be attorney for the receiver, and be compensated under order of court; so the trustee could not select, in place of the attorney appointed, a firm of which the receiver was a member. Empire Trust Co. v. Aubrey (C. C. A.) 254 F. 281.

Merely because it is cheaper, the court, appointing a receiver on mortgage foreclosure, is not required to permit its receiver to employ as his attorney a firm of which he is a member, and which represents one of the parties in the cause, but the court may determine what is for the best interest for all. Id.

The refusal of the court, appointing a receiver on mortgage foreclosure, to grant the request of the trustee under the mortgage that the attorney appointed to represent the receiver be removed, and a firm of which the receiver was a member be substituted, held not an abuse of discretion. Id.

The interests of a federal receiver of a railroad and of the railroad company are not so adverse as to preclude the same person from acting as station agent for the purpose of serving summons upon the railroad company pursuant to the laws while also acting for the receiver. Missouri, K. & T. Ry. Co. v. Hudson (Okl.) 175 P. 743.

75. Expenditures in general.—Though a receiver was appointed on the day the final step in the compromise of a death claim was effected by the representatives of a railroad company, held, that the court might direct the receiver to pay the claim. Harmon v. Blackwell, 232 F. 440, 146 C. C. A. 434.

Under order appointing railroad receivers and authorizing them to pay traffic balances due other railroads, held, that they were authorized to pay compensation received under mail-carrying, contract to another road which did the carrying. Equitable Trust Co. of New York v. Wabash R. Co., 244 F. 66, 156 C. C. A. 494.

77. —— Taxes.—The federal court will order its receiver, in possession of property and conducting the business, to pay the personal property taxes which might have been assessed against him under Comp. Laws Mich. § 3837 (6), regardless of whether the state law makes such taxes a lien on the property superior to the lien of the mortgage. Bear River Paper & Bag Co. v. City of Petoskey, 241 F. 53, 154 C. C. A. 53.

The collection fees and interest on delinquent taxes are merged in an order directing the receiver to pay the taxes, which is in effect a judgment, and the interest rates so specified did not extend beyond the day of the order. Id.

A decision by the state court that a receiver appointed by it need not pay personal property taxes assessed against the property does not prevent the federal court from directing its receiver to pay such taxes in recognition of the benefits received. Id.

(B) *Supervision and instructions of court*

86. Instructions or authority to receiver to act—Subject-matter.—It is the duty of receivers appointed for a corporation in a creditors' suit, on the maturity of interest on a mortgage, a failure to pay which will render the mortgage foreclosable, to apply to the court for instructions. Guaranty Trust Co. of New York v. International Steam Pump Co., 231 F. 594, 145 C. C. A. 480.

Receivers being officers of a court entitled to instructions, they should, if believing tax unlawful, apply for instructions as to whether to pay it. Scott v. Western Pac. R. Co., 246 F. 545, 158 C. C. A. 515, affirming order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 236 F. 813.

Despite Rev. St. § 3224 (Comp. St. 1916, § 5947), prohibiting suit for enjoining assessment or collection of taxes, receivers believing property in their charge or income thereof not to be subject to tax may apply to court appointing them for instructions as to payment. Id.

(C) *Receivers' certificates*

92. Purpose of issue.—Though operation of South Carolina railroad by receiver had been discontinued as dangerous to passengers and crews, held, in view of Civ. Code S. C. 1912, § 3117, receiver should be directed to issue certificates to obtain funds for repair of roadbed and to resume operations, there being much traffic ready for movement by railroad. Central Bank & Trust Co. v. Greenville & Western R. Co. (D. C.) 248 F. 350.

101. Lien and priorities.—A court held not justified in making receivers' certificates issued to make permanent betterments on railroad property a first lien on the net earnings of the receivership, to the displacement of supply claims. Texas Co. v. International & G. N. Ry. Co., 237 F. 921, 150 C. C. A. 571.

Receiver's certificates, given for operation of business of private industrial corporation, cannot be made to displace prior liens, unless holders of such liens have waived them either expressly or impliedly. Smith v. Shenan-

doah Valley Nat. Bank of Winchester, Va., 246 F. 379, 158 C. C. A. 443.

Where holders of lien on corporate property consented to receiver's issuance of certificates, held that, on settlement of estate, corporation having been adjudged bankrupt, it was proper to direct that receiver's certificates first be paid out of assets not subject to deed of trust. Id.

In proceeding for settlement of estate of bankrupt corporation, held, that lienholders who waived priority of deed of trust as to certain receiver's certificates did not impliedly waive lien as to other debts incurred by receiver. Id.

Rights of holders of receivers' certificates depend upon priority given in order providing for issuance of certificates. Order continuing receivership held not to make subsequently issued certificates part of receiver's obligations which would have priority or to make claims of lessors for rent subsequently accruing on leasehold belonging to insolvent corporation prior to such certificates. Ball v. Improved Property Holding Co. of New York, 247 F. 645, 159 C. C. A. 547.

Holders of certificates issued by receiver of insolvent corporation to obtain funds to pay taxes, etc., to prevent forfeiture of leasehold in valuable realty, held not entitled to any priority over claims of lessors for rent subsequently accruing. Id.

Expenses of receivership including allowances to receiver's solicitors are taxable as costs and entitled to priority over receivers' certificates, but allowances to mortgage trustee and its solicitors are entitled to no such priority. Id.

Under order providing for issuance of receivers' certificates, held, that amounts apportioned to certificate holders were subject to allowances to solicitors of mortgage trustees, but amounts apportioned to lessors' claims were not subject to such allowances. Id.

A purchaser of corporate bonds secured by mortgage, who failed to make known his ownership of the bonds until after receivers' certificates were issued on the consent of the other bondholders, and made prior to the lien of the mortgage, could not, after the enterprise as conducted by the receivers had proven a failure, assert that he had not consented to the issuance of certificates, and that his original lien under the mortgage was entitled to priority. Lake v. Mudgett (C. C. A.) 252 F. 365.

(D) Sale and conveyance or redelivery of property

109. Time, manner, and terms of sale.—Where receivers were appointed for a consolidated railroad company, and mortgages foreclosed, held, that property, being susceptible of division into several systems, might be divided for sale, if for the benefit of creditors, and a mortgagee holding a mortgage on the property of that constituent company which had been run at a loss cannot complain of the severance. Metropolitan Trust Co. of City of New York v. Chicago & E. I. R. Co. (C. C. A.) 253 F. 868.

In the separation of a railroad into parcels for sale under the foreclosure of divisional mortgages, a court of equity is not bound by any hard and fast rule to fix the division to correspond absolutely with the several mortgage grants, but the division should be made so as to leave each parcel as nearly as may be in a situation to be operated as a railroad. Id.

The division should be made so that each portion might be operated as a railroad system, and for that purpose the division located in Indiana should be given a line to Chicago, etc. Id.

On division for sale it was proper, other creditors and lienholders being protected, to sell, with one of the constituent parcels, equipment used for the operation of that parcel, though it was not subject to the mortgage on lien. Id.

114. Operation and effect of sale in general.—Sale by trustee in deed of trust, who was also the receiver in the federal District Court of the mortgagor's business and property, made by permission of that court and confirmed by it, under which he executed a trustee's deed, held not a judicial sale, but a sale under the deed of trust. Finger v. Taylor (Miss.) 71 So. 269.

Federal court whose receiver has taken possession of railroad company's property held to have exclusive jurisdiction, and to be entitled to retain jurisdiction over property after it has been sold and delivered by receiver. International & G. N. Ry. Co. v. Concrete Inv. Co. (Tex. Civ. App.) 201 S. W. 718.

118. Reconveyance and redelivery of property on termination of receivership.—An order directing a receiver to redeliver the property of a corporation, when carried into effect, held to divest the court of jurisdiction to adjudicate upon the validity of taxes thereafter levied upon it. Spencer v. Babylon R. Co. (C. C. A.) 250 F. 24.

The holders of railroad bonds loaned to the company to be pledged to secure a debt, which was satisfied during receivership proceedings and the pledged bonds then delivered into court, are entitled to such bonds as they can identify as the identical bonds loaned by them. United States & Mexican Trust Co. v. Kansas City, M. & O. Ry. Co. (D. C.) 240 F. 511.

Bondholders cannot in foreclosure proceedings brought by receiver object to the delivery of other bonds of the

same issue under a contract entered into before the suit was started. Id.

Construction companies who paid interest on railroad bonds under contract entitling them to bonds for the interest paid held entitled in equity and justice to bonds delivered into court in foreclosure proceedings brought by receiver. Id.

Bondholders who loaned bonds to a railroad company to be pledged by it held entitled to bonds delivered into court in receivership proceedings and not claimed by any one else, though they could not identify the bonds as the particular ones loaned. Id.

Where federal court which appointed receiver for railroad ordered property turned back conditionally on railroad's taking all benefits and assuming all obligations, railroad was bound to pay judgment for damages predicated on tort of servant of railroad while in hands of receiver. Beaumont, S. L. & W. Ry. Co. v. Daniels (Tex. Civ. App.) 204 S. W. 481.

VI. ALLOWANCE AND PAYMENT OF CLAIMS

119. Liabilities of property or funds in hands of receiver.—A lessor held not entitled to prove against the estate of the lessee in the hands of a receiver a claim arising under the provisions of the lease after appointment of the receiver. Wm. Filene's Sons Co. v. Weed, 230 F. 31, 144 C. C. A. 329.

Lessors' claim for rent accruing after appointment of receiver held debts of receiver which might be asserted against him in proceedings for settlement of his accounts. Ball v. Improved Property Holding Co. of New York, 247 F. 645, 159 C. C. A. 547.

Contract to supply railroad company with fuel oil contains no implied condition that it should be canceled in event receiver is appointed for company. Texas Co. v. International & G. N. Ry. Co. (C. C. A.) 250 F. 742.

124. Priorities in general.—That bondholders of a railroad company purchased with knowledge of a traffic contract between the mortgagor and another company for their benefit held not to give them an equity which entitled them to priority over subsequent lienholders of the latter company. Baker v. Central Trust Co. of New York, 235 F. 17, 148 C. C. A. 511.

Creditors of an insolvent shipowning corporation, who joined in a suit for a receiver, who sold the property, held to have acquired no right to priority over other lien claimants by subsequently filing libels in admiralty claiming liens. Appeal of James Rees & Sons Co., 237 F. 555, 150 C. C. A. 437.

An order, directing a receiver to sell lumber and pay laborers' wages, held not to preclude a chattel mortgagee of part of the lumber from thereafter intervening and claiming the proceeds of the sale of the lumber covered by the mortgage. Security Trust Co. v. Bank of Bernice, 239 F. 665, 152 C. C. A. 499.

The amount of a mill laborer's lien against lumber covered by a chattel mortgage may be determined between the mortgagee and the mortgagor's receiver by apportioning to that lumber the usual cost of labor in that mill for producing an equal quantity. Id.

Court is not absolutely bound to recognize priorities in receivership case fixed by its order, and that matter is open to equitable readjustment, however conclusive protection order may be to receiver as to payments made under its terms. Ball v. Improved Property Holding Co. of New York, 247 F. 645, 159 C. C. A. 547.

Where holders of receivers' certificates had no priority over claims of lessors for rents becoming due after receivership on property in which insolvent corporation had leasehold interest, general claims and funds for which receiver was to account should be brought into hotchpot and funds distributed pro rata. Id.

Capital stock of a corporation represents the capital on which it is authorized to do business, and it constitutes one of the assets to which all creditors may look for payment of their demands; thus an owner of capital stock cannot share in the assets until all of the debts of the corporation have been paid. Armstrong v. Union Trust & Savings Bank, 248 F. 268, 160 C. C. A. 346.

Preferred stock is merely a particular class of capital stock, being differentiated from the ordinary stock as endowed with some peculiar quality, but as against creditors a holder of preferred stock cannot reach corporate assets. Id.

A bondholder of a corporation, who failed to object to a sale of the property and assets of the corporation, could not object that proceeds of fire insurance policies were applied under orders of court to the obligations of the receivers, instead of towards the payment of the bonds; the loss having occurred after the sale, so that it fell upon the purchaser, and not the seller. Lake v. Mudgett (C. C. A.) 252 F. 365.

A surety on supersedeas bond of public service corporation, having been held liable, is not generally to be deemed a preferred creditor in event of insolvency of corporation. Towle v. Great Shoshone & Twin Falls Water Power Co. (D. C.) 232 F. 733.

Where at time judgment was recovered against it, and a supersedeas bond given, a public service corporation appeared solvent, the surety, which was held liable, is not entitled to be pre-

ferred to other creditors, on theory that giving of such bond entitled the corporation to continue as going concern. Id.

125. **Taxes.**—Payment of taxes by receivers out of the net income of the receivership is not a diversion of earnings as against labor and supply claimants, such payment being for the benefit of all parties interested in the property. Texas Co. v. International & G. N. Ry. Co., 237 F. 921, 150 C. C. A. 571.

Property in hands of receiver is ordinarily bound for payment of taxes, and, in view of paramount lien of taxes it is duty of court to order them paid, no matter how claim may be brought to its attention. Taxes accruing during a receivership are obligations or indebtedness of the receiver. Union Trust Co. v. Great Eastern Lumber Co., 248 F. 46, 160 C. C. A. 186.

A federal court held to have power to determine the validity of taxes claimed against property in the hands of its receiver. Spencer v. Babylon R. Co. (D. C.) 233 F. 803.

Claims for taxes against the property of a railroad company in the hands of a receiver held excessive, and allowed against the estate only in a just amount. Id.

Taxes assessed against a corporation prior to appointment of receivers are debts due from corporation and not receivership, and must be postponed to debts incurred by receivers. Atkinson & Co. v. Aldrich-Clisbee Co. (D. C.) 248 F. 134.

126. **Expenses of receivership.**—Where receivers were appointed who took over property and continued business of corporation, no allowance to counsel for legal services rendered corporation during receivership proceedings can be made until after expenses of receivership have been paid, claim being a charge against funds of corporation instead of against receivership. Atkinson & Co. v. Aldrich-Clisbee Co. (D. C.) 248 F. 134.

129. **Priority of unsecured debts incurred before receivership to pre-existing liens, in general—Purpose for which debt was contracted.**—Where one whose property was fired by an electric line might, under Const. Idaho, art. 11, § 15, and Rev. Codes Idaho, § 2769, as amended by Laws 1909, p. 163, have proceeded against the original corporate builder held, that surety on supersedeas bond of purchaser was entitled to priority out of income received from property so purchased as against other creditors. Towle v. Great Shoshone & Twin Falls Water Power Co. (D. C.) 232 F. 733.

A surety on the supersedeas bonds of an insolvent corporation is not entitled to preference as against the bondholders to the property in the hands of the receiver, without showing that the bondholders procured or acquiesced in execution of the bond, or that the money thereby realized came into the possession of the receivers. Equitable Trust Co. of New York v. Birmingham, E. & B. R. Co. (D. C.) 238 F. 655.

A state Corporation Commission is entitled to a preference over the bondholders of an insolvent railroad for the amounts collected by the railroad in excess of the rates fixed by the Commission pending appeal from the Commission's orders and prior to the appointment of a receiver for the railroad. United States & Mexican Trust Co. v. Kansas City, M. & O. Ry. Co. (D. C.) 240 F. 505.

131. —— **Labor, supplies, and materials furnished.**—Labor Law N. Y., § 9, making claims for wages preferred debts on receivership of partnership or domestic corporation held not to give claims for wages preference over lien of mortgage, and not to apply to receivership in foreclosure suit, though general receivers previously appointed were appointed receivers therein. Schmidtman v. Atlantic Phosphate & Oil Corporation, 230 F. 769, 145 C. C. A. 79.

Where there are net earnings of a railroad receivership instituted at suit of mortgage bondholders, supply claimants who have a preferential equity therein are entitled to have the same applied to their claims, without waiting the final termination of the receivership. Texas Co. v. International & G. N. Ry. Co., 237 F. 921, 150 C. C. A. 571.

Claims for labor or operating supplies furnished within six months prior to the appointment of receivers in foreclosure held entitled to preference of payment from the net income of the receivership. Id.

Rule stated governing the payment by a receiver of claims for supplies furnished to a public service corporation in preference to prior recorded liens. Crane Co. v. Fidelity Trust Co., 238 F. 693, 151 C. C. A. 543.

Claims for articles furnished for extensions to water, gas, or electric light systems, and for additions to or replacement of equipment, held not such as are entitled to preferential payment by a receiver over a prior mortgage debt. Id.

Claim for coal delivered to railroad company before appointment of receivers, and used by receivers in operating railroad under orders of court, should be paid from proceeds of sale in preference to secured bonds, if there are no earnings from which to pay it. United States & Mexican Trust Co. v. Beaty, 240 F. 592, 153 C. C. A. 396, rehearing denied 243 F. 544.

That parties furnishing materials to corporation shortly before receivership expected payment out of current income, held not to entitle them to pref-

erence over mortgage creditors. John A. Roebling's Sons Co. of California v. Idaho Ry., Light & Power Co., 243 F. 527, 156 C. C. A. 225.

Debts incurred by a railroad receiver and claims for materials and supplies for operation furnished within six months prior to his appointment are payable out of the earnings of the receivership, or even in a proper case from the corpus of the company's property, in preference to mortgages foreclosed. New York Trust Co. v. Detroit, T. & I. Ry. Co. (C. C. A.) 251 F. 514.

One furnishing current supplies to a quasi public corporation, an irrigation company, is entitled to priority over other unsecured creditors in funds in receiver's hands earned before receivership. First Nat. Bank v. Campbell (Tex. Civ. App.) 193 S. W. 197.

132. —— **Nature and purpose of labor, supplies, and materials.**—As respected right of priority, machinery furnished railway, light, and power company held for enlargement, and not for repair or maintenance of the company's plant. John A. Roebling's Sons Co. of California v. Idaho Ry., Light & Power Co., 243 F. 527, 156 C. C. A. 225.

Claims for materials for new construction and extraordinary improvements within six months before receivership, held not payable as current operating expenses in preference to claims of mortgage bondholders. Id.

133. —— **Rentals and traffic and mileage balances.**—The holders of bonds secured by a trust deed on railroad property held not to have operated the property during the time that the indebtedness due interline carriers arose, as to give such carriers priority on the ground that the indebtedness was that of the bondholders. First Trust Co. v. Illinois Cent. R. Co. (C. C. A.) 252 F. 965.

In receivership proceedings a bridge company was not entitled to priority against mortgagees of a railroad company for claims for use of its bridge by the railroad; it appearing that credit was extended upon the strength of the railroad company's general credit and that the debt was not a current income debt. Louisville Bridge Co. v. Chicago, I. & L. Ry. Co. (C. C. A.) 253 F. 631.

The bridge company is not entitled to net profits during receivership as against a mortgagee whose lien covered, not only the property of the railroad, but the rents and profits derived therefrom. Id.

Where the contract provided for termination in case of the railroad's default for 30 days in payment, the bridge company is not, as against mortgagees, entitled to priority out of surplus earnings during receivership on claims some of which were more than 6 years old when the receiver was appointed, and all of which arose more than 16 months prior thereto. Id.

A sum due from one railroad company to another for traffic balances, withheld and used by the former in the maintenance of its road, held not recoverable from its receiver as a trust fund. Central Trust Co. of Illinois v. Chicago, A. & N. Ry. Co. (D. C.) 232 F. 936.

Where bondholders were in possession and operating a railroad when traffic balances due another company were withheld and used in paying operating expenses, a claim therefor against the receiver held entitled to preference over the mortgage debt. Id.

134. —— **Diversion of income.**—A court should not, as a settled policy, divert net earnings of a railroad receivership under a second mortgage to the payment of interest on first mortgage bonds, where it will postpone payment of supply claims which are entitled to preference. Texas Co. v. International & G. N. Ry. Co., 237 F. 921, 150 C. C. A. 571.

The payment of interest to bondholders of a corporation, who are entitled to such payment in priority to claims of supply creditors, is not a diversion of income. Crane Co. v. Fidelity Trust Co., 238 F. 693, 151 C. C. A. 543.

Claims for coal used by railroad prior to appointment of receivers are not entitled to preference over bonds, where there had been no revenue above operating expenses diverted from payment for supplies to benefit of bondholders. United States & Mexican Trust Co. v. Beaty, 240 F. 592, 153 C. C. A. 396, rehearing denied 243 F. 544.

That transportation of supplies for subsidiary corporation, whose bonds were pledged to secure payment of bonds of parent corporation, if paid for, would have produced revenue sufficient to pay for coal used by parent company, does not give claim for such coal preference over bonds. Id.

Diversion of income to payment of interest of bonds of subsidiary company held not to entitle claims for materials to priority over company's mortgage bondholders. John A. Roebling's Sons Co. of California v. Idaho Ry., Light & Power Co., 243 F. 527, 156 C. C. A. 225.

Payment of interest on bonds when nothing was due on materials furnished shortly before receivership, held not a diversion of earnings entitling the claim for materials to priority over mortgage bondholders. Id.

Where receivers were appointed at suit of second mortgage bondholders, and net income from operation of road by receivers would have been sufficient to have paid supply claimants, with interest, had no payments been made on first mortgage bond and upon equipment, supply claimants are entitled to payment, with interest. Texas Co. v.

International & G. N. Ry. Co. (C. C. A.) 250 F. 742.

Where no interest was paid on bonds secured by a trust deed on the property of a railroad company during the period when the claims of interveners based on interline freight, etc., arose, interveners are not entitled to priority under the usual six months' rule; there having been no diversion of income. First Trust Co. v. Illinois Cent. R. Co. (C. C. A.) 252 F. 965.

135. **Time of incurring debt.**—A court may in its discretion give preference to a claim for an operating expense against the estate of an insolvent railroad company, although it arose more than six months prior to the receivership. Central Trust Co. of Illinois v. Chicago, A. & N. Ry. Co. (D. C.) 232 F. 936.

138. **Payment.**—Where same persons were general receivers and receivers under mortgages, and claim was assigned to them as mortgage receivers, held, that they were entitled to payment without deduction of consideration for the assignment. Pennsylvania Steel Co. v. New York City Ry. Co., 231 F. 442, 145 C. C. A. 434, 436, modifying decree (D. C.) 225 F. 96.

Under the general principles of equity in the administration of the estate of an insolvent corporation through a receivership, where there are claims of different rank the holders are entitled to interest until the time of payment. Spring Coal Co. v. Keech, 239 F. 48, 152 C. C. A. 98, L. R. A. 1917D, 1152.

Where payment by receivers of the principal of a debt is accepted on condition that right to interest shall not be prejudiced, but shall be determined by the court, the creditor's right to recover interest is not barred. New York Trust Co. v. Detroit, T. & I. Ry. Co. (C. C. A.) 251 F. 514.

Where the property of an insolvent railroad company was converted into cash to satisfy debts whose equitable priority was recognized, and, when so converted, proceeds of sale were insufficient to pay any part of the mortgage debt, interest on six months and receivership claims will not be allowed subsequent to the appointment of the receivers; there being no diversion of income from payment of current debts, and the mortgagees not having delayed the proceedings. Id.

The general rule, which allows interest on six months claims from their maturity to the appointment of receivers, disallows interest thereon after that date, and also on debts incurred by the receivers, as against a fund arising from the sale of the insolvent's property. Id.

Under the general rule that interest on debts of an insolvent corporation in the hands of a receiver will be calculated only to the date of his appointment, holders of six months claims are entitled to interest down to that time. Id.

VII. ACTIONS

139. **Capacity to sue and to be sued.**—It is settled doctrine in federal jurisprudence that a chancery receiver has no authority to sue in the courts of a foreign jurisdiction to recover demands or property situated therein; his functions and authority being confined to the jurisdiction of his appointment, and the practice permitting application for ancillary receivership in a foreign jurisdiction where local assets may be recovered, and, if necessary, administered. Sterrett v. Second Nat. Bank of Cincinatti, Ohio, 39 S. Ct. 27, 63 L. Ed. ——.

In view of Code Ala. 1907, §§ 3509, 3511, 3512, 3560, Alabama receiver of a banking corporation held not vested with title to its assets as assignee or statutory successor so as to authorize him to sue for their recovery in a foreign federal jurisdiction. Id.

The contrary rule having become the settled law of the federal courts, if the powers of chancery receivers are to be enlarged to give them authority to sue beyond the jurisdiction of the appointing court, such extension of authority must come from legislation, not from judicial action. Id.

143. **Rights of action by receiver.**—Receivers of owner of standing timber held entitled to recover, as damages for preventing cutting, expenses of party who was to do the cutting, though they had no direct contract with him. Kirkland v. Knox, 230 F. 806, 145 C. C. A. 116.

A receiver for a corporation held entitled to maintain a bill in the court of his appointment to set aside as fraudulent a judgment recovered against the corporation. Owen v. Clifton, 232 F. 136, 146 C. C. A. 328.

Both under general principles of receiverships and General Corporation Law N. Y. §§ 232, 239, as amended by Laws 1913, c. 766, a receiver may sue for injuries occasioned by the negligence of directors, so a stockholder cannot sue in his own name. Kelly v. Dolan, 233 F. 335, 147 C. C. A. 443, affirming decree (D. C.) 218 F. 966.

A receiver for a railroad company held authorized to maintain a suit to recover property of the company. Vallery v. Denver & R. G. R. Co., 236 F. 176, 149 C. C. A. 366.

A corporation which through stock ownership controlled another held subject to a suit for accounting by the receiver of the latter where fraudulent management was alleged. Id.

One who accepts stock issued to him by a corporation at less than par is liable to a receiver for the benefit of creditors, though the resolution authorizing the issuance was void, because no quorum was present. En-

right v. Heckscher, 240 F. 863, 153 C. C. A. 549.

143½. Stockholder's bill.—Where court appointing receiver refused to allow him to sue for injuries occasioned by directors' negligence, a stockholder, though given permission, cannot maintain a stockholder's bill; no assignment of cause of action having been made. Kelly v. Dolan, 233 F. 635, 147 C. C. A. 443, affirming decree (D. C.) 218 F. 966.

144. Rights of action against receivers.—A trustee in a corporation mortgage held justified in declaring the debt due and foreclosing on default in payment of interest, where the mortgagor was in the hands of receivers. Guaranty Trust Co. of New York v. International Steam Pump Co., 231 F. 594, 145 C. C. A. 480.

146. Defenses by receivers.—Court held justified in directing receiver of corporation to facilitate rendition of judgment in favor of creditor seeking to intervene and contest validity of bonds so as to give it the standing of an unsatisfied judgment creditor. Williamson v. Collins, 243 F. 835, 156 C. C. A. 347.

The general rule that receivers succeed to the right of a corporation to plead the defense of limitation does not apply where, owing to the peculiar circumstances of the case, the receivers do not represent the corporation, its stockholders, or creditors. Stokes v. Williams, 249 F. 114, 161 C. C. A. 166.

Receivers held not entitled to set up the defense of limitation to an otherwise valid claim against a corporation, where it would inure only to the benefit of an outside party. Id.

148. Leave of court to sue receiver, necessity.—Where the federal District Court, through its receivers, was in complete possession of all of the property of a railroad company against which a creditors' bill had been filed, that court, after having granted permission to a party to sue in the state court, may, it appearing that such litigation would not be for the benefit of the res, which was in the possession of the federal court, revoke the permission; there being no question of comity. Investment Registry v. Chicago & M. Electric R. Co. (C. C. A.) 251 F. 510.

Where one claiming to be an unpaid vendor obtained permission from the federal court, in which receivership proceedings against the purchaser corporation were pending, to sue in the state court, held, that revocation of the permission was not an abuse of discretion; it appearing that the alleged unpaid vendor had received bonds from the purchaser and that the validity of such bond was involved in a proceeding consolidated with the receivership. Id.

Rule that action can be brought against receiver only with consent of appointing court held displaced, pro tanto, where surety on bond of public contractor is in receiver's hands, by Act Aug. 13, 1894, as amended by Act Feb. 24, 1905 (Comp. St. 1916, § 6923), providing where action must be brought on bond for benefit of one supplying labor and material. U. S. v. Illinois Surety Co. (D. C.) 238 F. 840.

153. Process and appearance.—See Gursky v. Blair, 112 N. E. 431, 218 N. Y. 41, reversing order (Sup.) 155 N. Y. S. 1111, 170 App. Div. 977.

161. Appeal and error.—Where plans for the reorganization of an insolvent railroad company in the hands of a receiver had been perfected but the receiver had not been discharged and was still prosecuting claims, he has sufficient interest to appeal from the allowance of a claim against the company, as has a trustee for holders of the company's notes whose deficiency judgment on mortgage bonds securing the same was kept alive by the reorganization plans and had been assigned to the company's successor as one of its assets. New York Trust Co. v. Carpenter (C. C. A.) 250 F. 668.

VIII. ACCOUNTING AND COMPENSATION

163. Duty to account.—Where, in creditors' suit, receivers were appointed to take charge of rents and profits of land involved, defendant is, on denial of complainant's claim, entitled in such suit to accounting of rents and profits taken by receivers. Anderson v. Hultberg, 247 F. 273, 159 C. C. A. 367.

164. Charges.—Where landlord, whose premises had been occupied while receivers of corporation continued business, asserted claim for damages, but there was no evidence as to what damage had occurred during receivership and what occurred while premises were in possession of corporation prior thereto, whole item must, as against receivers, be disallowed. Atkinson & Co. v. Aldrich-Clisbee Co. (D. C.) 248 F. 134.

166. Compensation for services.—Receivers are entitled to reasonable compensation, to be fixed by the court appointing them, after considering all the circumstances, and determined on the compensation for similar services in the performance of official duties and the value of the services rendered with reference to that trust. Eames v. H. B. Claflin Co., 231 F. 693, 145 C. C. A. 579.

An allowance by the District Court of $33,000 as compensation to each of two receivers of a large mercantile company held not so small as to show an abuse of discretion. Id.

The compensation allowed a receiver

is within the discretion of the trial court. Id.

The discretion of the trial court allowing compensation to a receiver will not be reversed, in absence of abuse of discretion. Id.

Where receivers at unanimous request of corporate creditors conducted business of corporation knowing that it was being conducted at a loss, they cannot, where funds in their hands were insufficient even to discharge all of bills they incurred, be allowed compensation. Atkinson & Co. v. Aldrich-Clisbee Co. (D. C.) 248 F. 134.

168. Allowance and payment or recovery of compensation and expenses.—Where a state court was without authority to administer any of the assets of a bankrupt, it has no authority to allow its receiver compensation for performing part of that labor. State of Missouri v. Angle, 236 F. 644, 149 C. C. A. 640, affirming order In re Sage (D. C.) 224 F. 525.

Orders allowing receivers compensation are purely administrative, subject to disallowance or change with the development of the administration. Hume v. Myers, 242 F. 827, 155 C. C. A. 415.

173. Settlement of account.—Distribution of the funds of an insolvent corporation shown by the final report of a receiver, without preference, held correctly made under the action and stipulation of the claimants. Appeal of James Rees & Sons Co., 237 F. 555, 150 C. C. A. 437.

IX. FOREIGN AND ANCILLARY RECEIVERSHIPS

176. Ancillary appointment.—Where railroad receivers were appointed in Missouri district and also in Michigan on an ancillary bill, held, that claim growing out of operations in Michigan should be presented there, if that court was independently administering the property in its jurisdiction, but otherwise to the Missouri Court. Equitable Trust Co. of New York v. Wabash R. Co., 244 F. 66, 156 C. C. A. 494.

An order appointing an ancillary receiver of a corporation, with the usual injunction clause, held not to prevent prosecution of suits theretofore instituted by stockholders against the corporation and others. American Steel Foundries v. Chicago, R. I. & P. Ry. Co. (D. C.) 231 F. 1003.

177. Title to and possession of property.—A receiver's power is only coextensive with that of the court which gave him his character, and cannot be asserted as a matter of right beyond the territorial jurisdiction of such court; so a receiver appointed by the District Court for the Southern District of New York has no power to take possession of property of the defendant in the Northern District, etc. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

180. Actions by and against foreign receivers.—In the absence of a conveyance or statute vesting in a receiver title to the property of the debtor, he cannot sue for its recovery in the courts of a foreign jurisdiction. Sterrett v. Second Nat. Bank of Cincinnati, Ohio, 246 F. 753, 159 C. C. A. 55, certiorari granted 38 S. Ct. 345, 246 U. S. 668, 62 L. Ed. 930.

A receiver for an insolvent corporation under Code Ala. 1907, §§ 3509, 3511, as construed by its Supreme Court, is not vested with title to the property of the corporation and cannot maintain an action to recover assets in a foreign jurisdiction. Id.

A statutory receiver, invested with title to the assets of a dissolved corporation, may sue in the courts of a state foreign to the state of his appointment. Hopkins v. Lancaster (D. C.) 254 F. 190.

An intervener, in a suit by the statutory receiver of a foreign insurance company against the treasurer of a state, can only raise the question whether he is a creditor entitled to share in the distribution of funds deposited with the treasurer, etc. Id.

§ 1048. (Jud. Code, § 66.) Suits against receiver.

1. Construction of statute in general.—This section does not give another court jurisdiction of a suit affecting the possession, control, or management of the property by the receiver or the conduct of his business. Dickinson v. Willis (D. C.) 239 F. 171.

9. Jurisdiction of state courts.—Court was not without jurisdiction to declare a lien against the property of defendant railway company pursuant to Kirby's Dig. §§ 6661, 6662, or to render a judgment for damages, although at the time of the trial and of accrual of cause of action the railway was being operated by a receiver appointed by a United States court where receivership was pending in view of Act Cong. March 3, 1887, § 3, as amended by Act Cong. Aug. 13, 1888, § 3, which is now embraced in this section. Bush v. Southern Grocery Co. (Ark.) 208 S. W. 299.

Under this section where, after appeal from judgment for plaintiff in garnishment against federal court receiver, property was sold pursuant to stipulation, the state court had jurisdiction to order distribution of the fund derived therefrom. Lamb v. Whitman (Ga. App.) 90 S. E. 736.

Where, under Act Cong. Aug. 13, 1888, § 3, state court had jurisdiction of suit against receiver of railroad,

brought without leave of federal court appointing receiver, for killing steer on track, subsequent sale of railroad's property and decree therefor did not abate the suit. Hawkins v. St. Louis & San Francisco Ry. Co. (Mo. App.) 202 S. W. 1060.

In a suit to redeem from a sale to pay federal receiver's certificates, in which the mortgagee is not a party, the state court will not determine whether the mortgage will incumber the property after the redemption, but will leave that question to the federal court. Hardin v. Graham (S. D.) 160 N. W. 850, denying rehearing 159 N. W. 895.

17½. **Process.**—Under this section, and Code Civ. Proc. N. Y. § 432, in action for personal injuries against receivers of a railroad of state of Michigan appointed by federal district court in such state, service of summons on agent designated for service of process on the road in New York, was not sufficient service on receivers. Gursky v. Blair, 112 N. E. 431, 218 N. Y. 41, reversing order (Sup.) 155 N. Y. S. 1111, 170 App. Div. 977.

23. **Judgment—Conclusiveness.**—The act of Congress authorizing suits against receivers appointed by federal courts without leave of court makes the judgments therein conclusive, and in a suit against the corporation to subject to such judgment the net earnings of a receivership the corporation is not denied due process of law, in violation of Const. U. S. Amend. 14. § 1, because it cannot defend on the merits. Chicago, R. I. & P. Ry. Co. v. McBride (Ark.) 206 S. W. 149.

CHAPTER FIVE—DISTRICT COURTS—DISTRICTS, AND PROVISIONS APPLICABLE TO PARTICULAR STATES

Sec.
1051. Judicial districts.
1056. Arkansas.
1057a. California; quarters for district court of northern district.
1061. Florida.
1088. Oklahoma.
1088a. Same; term of court at Hugo.
1095a. Texas; additional division in northern district.
1095b. Same; additional terms of court for northern district; clerk.
1095bb. Same; terms of court in Amarillo division of northern district.
1102. Virginia.
1104. West Virginia.

§ 1051. (Jud. Code, § 69.) Judicial districts.

Judicial districts in general.—Under Judicial Code, §§ 69–115 (Comp. St. 1916, §§ 1051–1106) and in view of section 1 (section 968), the jurisdiction of the several District Courts is coextensive with the boundaries of the judicial district, and extends no further, save as Congress has expressly extended it. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

§ 1056. (Jud. Code, § 71.) Arkansas.

Boundaries of district.—In ejectment, held, that the lands in controversy were in Mississippi instead of Arkansas, the old channel of the Mississippi river, which was directly under the Arkansas bank, remaining the boundary between the states, notwithstanding the diversion of the channel into a cut-off; and so the District Court for Arkansas was without jurisdiction. Davis v. Anderson-Tully Co. (C. C. A.) 252 F. 681.

§ 1057a. (Act March 1, 1919, c. 89.) California; quarters for district court of northern district.

That the Secretary of the Treasury of the United States be, and he is hereby, authorized, empowered, and directed to cause to be provided and constructed in the post-office building in the city of Sacramento, California, quarters such as he may deem necessary and proper for the district court of the northern district of California, and its officers, at a cost not to exceed the sum of $60,000. (40 Stat. 1271.)

This section is an act entitled "An act to provide for the fitting up of quarters in the post-office building at the city of Sacramento, California, for the accommodation of the district court of the northern district of California and its officers," cited above.

§ 1061. (Jud. Code, § 76.) Florida.

End of term.—A term of federal District Court, Southern district of Florida, which under Judicial Code, §§ 9–11, 76, must always be open as a court of admiralty and equity, was not brought to an end, so far as criminal business was concerned, so as to prevent granting of new trial, by adjournment in accordance with court rule requiring, pending temporary absence of the judge, the clerk be present for transaction of business under orders of the judge. Abbott v. Brown, 36 S. Ct. 689, 241 U. S. 606, 60 L. Ed. 1199.

§ 1088. (Jud. Code, § 101, as amended, Act Feb. 20, 1917, c. 102, and Act June 13, 1918, c. 98.) Oklahoma.

The State of Oklahoma is divided into two judicial districts, to be known as the eastern and western districts of Oklahoma. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and sixteen, in the counties of Adair, Atoka, Bryan, Craig, Cherokee, Creek, Choctaw, Coal, Carter, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnston, Latimer, Le Flore, Love, McClain, Mayes, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Ottawa, Okmulgee, Okfuskee, Pittsburg, Pushmataha, Pontotoc, Rogers, Stephens, Sequoyah, Seminole, Tulsa, Washington, and Wagoner. Terms of the district court for the eastern district shall be held at Muskogee on the first Monday in January, at Vinita on the first Monday in March, at Tulsa on the first Monday in April, at South McAlester on the first Monday in June, at Ardmore on the first Monday in October, and at Chickasha on the first Monday in November of each year. The western district shall include the territory embraced on the first day of July, nineteen hundred and sixteen, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. Terms of the district court for the western district shall be held at Oklahoma City on the first Monday in January, at Enid on the first Monday in March, at Guthrie on the first Monday in May, at Lawton on the first Monday in September, and at Woodward on the second Monday in November: Provided, That suitable rooms and accommodations for holding court at Woodward are furnished free of expense to the United States. The clerk of the district court for the eastern district shall keep his office at Muskogee and the clerk for the western district at Guthrie, and shall maintain an office in charge of himself or a deputy at Oklahoma City. (39 Stat. 927, 40 Stat. 604.)

§ 1088a. (Res. Feb. 26, 1919, c. 54.) Same; term of court at Hugo.

One term of the United States District Court for the Eastern District of Oklahoma shall be held each year on the second Monday in May at Hugo, in said State and district, and all Acts and parts of Acts not in accordance herewith are hereby modified in accordance with the provisions of this Act: Provided, That suitable quarters for holding said court shall be furnished without expense to the Government. (40 Stat. 1184.)

This section is a resolution entitled a "Joint resolution providing that one term of the United States District Court for the Eastern Judicial District of Oklahoma shall be held annually at Hugo, Oklahoma," cited above.

§ 1095a. (Act Feb. 26, 1917, c. 122, § 1.) Texas; additional division in northern district.

The counties of Archer, Baylor, Clay, Cottle, Foard, Montague, King, Knox, Wichita, Wilbarger, and Young shall constitute a division of the northern judicial district of Texas. (39 Stat. 939.)

This section and the section next following were an act entitled "An act to create a new division of the northern judicial district of Texas, and to provide for terms of court at Wichita Falls, Texas, and for a clerk for said court, and for other purposes," cited above.

§ 1095b. (Act Feb. 26, 1917, c. 122, § 2.) Same; additional terms of court for northern district; clerk.

Terms of the district court of the United States for the said northern district of Texas shall be held twice each year at the city of Wichita Falls, in Wichita County, on the fourth Monday in March and the third Monday in November. The clerk of the court for the northern district of Texas shall maintain an office in charge of himself or a deputy at Wichita Falls, which shall be kept open at all times for the transaction of the business of the court: Provided, That suitable accommodations for holding court at Wichita Falls shall be provided by the county or municipal authorities without expense to the United States. (39 Stat. 939.)

See note to § 1095a, ante.

§ 1095bb. (Act March 1, 1919, c. 87.) Same; terms of court in Amarillo division of northern district.

Hereafter the terms of the district court of the United States in the Amarillo division of the northern district of Texas shall be held at Amarillo, Texas, on the third Monday in April and the second Monday in September of each year. (40 Stat. 1270.)

This section is an act entitled "An act to fix the time of holding court in the Amarillo division of the northern district of Texas," cited above.

§ 1102. (Jud. Code, § 111, as amended, Act June 13, 1918, c. 100.) Virginia.

The State of Virginia is divided into two districts, to be known as the eastern and western districts of Virginia.

The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Accomac, Alexandria, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpeper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York.

Terms of the district court shall be held at Richmond on the first Mondays in April and October; at Norfolk on the first Mondays in May and November; and at Alexandria on the first Mondays in January and July.

The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alleghany, Albemarle, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham,

Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.

Terms of the district court shall be held at Lynchburg on the second Mondays in January and July; at Roanoke on the second Monday in February and the first Monday in August; at Danville on the second Monday in March and the third Monday in September; at Charlottesville on the second Mondays in April and November; at Harrisonburg on the fourth Mondays in April and November; at Big Stone Gap on the third Monday in May and the second Monday in October; and at Abingdon on the second Mondays in June and December.

The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Lynchburg, Roanoke, Danville, Charlottesville, Harrisonburg, Big Stone Gap, and Abingdon, which shall be kept open at all times for the transaction of the business of the court. (40 Stat. 605.)

§ 1104. (Jud. Code, § 113, as amended, Act March 23, 1912, c. 63, and Act Aug. 22, 1914, c. 265.) West Virginia.

Commission of offense within district.—In view of Act Jan. 22, 1901, establishing the Northern district of West Virginia where offense was shown to have been committed at Parkersburg, held, that there was sufficient proof that it was committed within that district. Younge v. U. S., 242 F. 788, 156 C. C. A. 376, certiorari denied 38 S. Ct. 13, 245 U. S. 656, 62 L. Ed. 533.

CHAPTER SIX—CIRCUIT COURTS OF APPEALS

Sec.
1109. Circuit judges.
1114. Seals, forms of process, and rules.
1120. Jurisdiction; when judgment final.
1120a. Judgment final in bankruptcy cases, etc.
1121. Appeals in proceedings for injunctions and receivers.
1122. Appellate and supervisory jurisdiction under the bankrupt act.
1124. Allowance of appeals, etc.
1126a. Writs of error and appeals from supreme courts of Hawaii and Porto Rico.

§ 1109. (Jud. Code, § 118, as amended, Act Jan. 13, 1912, c. 9, and Act Feb. 25, 1919, c. 29, § 2.) Circuit judges.

There shall be in the second, seventh, and eighth circuits, respectively, four circuit judges; in the fourth circuit, two circuit judges; and in each of the other circuits, three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate. All circuit judges shall receive a salary of $8,500 a year each, payable monthly. Each circuit judge shall reside within his circuit. The circuit judges in each circuit shall be judges of the circuit court of appeals in that circuit, and it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law: Provided, That nothing in this section shall be construed to prevent any circuit judge holding district court or otherwise, as provided for and authorized in other sections of this Act. (37 Stat. 52, 40 Stat. 1156.)

This section was again amended by Act Feb. 25, 1919, c. 29, § 2, cited above, to read as set forth above. This amendment consisted in increasing the salaries from $7,000 to $8,500 per annum.

Section 7 of said Act Feb. 25, 1919, c. 29, provides that the act shall take effect and be in force on and after the first day of the month next following its approval.

Section 3 of said Act Feb. 25, 1919, c. 29, provides that "the judges of the Court of Appeals of the District of Columbia shall receive salaries the same

as the salaries provided by this Act to be paid to judges of the circuit court of appeals of the United States, and such salaries shall be paid as now provided by law."

§ 1114. (Jud. Code, § 122.) Seals, forms of process, and rules.

RULES OF CIRCUIT COURTS OF APPEALS

[Since the publication of U. S. Comp. St. 1916, the rules of the Circuit Courts of Appeals for all circuits except the Eighth, have been either revised, or amended. The changes made in the several circuits are indicated or set forth below.]

FIRST CIRCUIT

RULE 24. BRIEFS

7. Every brief of more than twenty pages shall contain on its front fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

This section was added to rule 24 by amendment December 4, 1917.

RULE 37. APPEALS AND WRITS OF ERROR FROM DISTRICT COURT OF PORTO RICO

Appeals and writs of error from and to the District Court of the United States for the District of Porto Rico, and from the Supreme Court of the District of Porto Rico whenever by law they can be taken, shall be taken within six calendar months from the time when the right to such an appeal or writ of error accrues, and not afterwards, by filing a claim for the appeal in the registry of the court appealed from, or by suing out a writ of error from the Court of Appeals, or from the court or judge in Porto Rico, as the case may be. [See 236 F. 719.]

This additional rule was adopted October 19, 1916.

SECOND CIRCUIT

The rules for this circuit were republished October 16, 1918. The changes made thereby are set forth or indicated below.

RULE 5. CLERK

There was added to this rule, as set forth in Comp. St. 1916, p. 1285, a new section numbered 5, which reads as set forth below.

5. He shall carefully preserve in his office one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, and arguments filed therein.

RULE 6. ATTORNEYS AND COUNSELLORS

This rule is the same as former rule 7, as set forth in Comp. St. 1916, p. 1287.

Former rule 6, as set forth in Comp. St. 1916, p. 1286, was omitted from the rules as republished, and the subsequent rules renumbered.

RULE 7. PRACTICE

This rule is the same as former rule 8, as set forth in Comp. St. 1916, p. 1288.

Former rule 7 is now rule 6.

RULE 8. PROCESS

This rule is the same as former rule 9, as set forth in Comp. St. 1916, p. 1289.

Former rule 8 is now rule 7.

RULE 9. BILL OF EXCEPTIONS

This rule is the same as former rule 10, as set forth in Comp. St. 1916, p. 1289. Former rule 9 is now rule 8.

RULE 10. ASSIGNMENT OF ERRORS

This rule was the same as former rule 11, as set forth in Comp. St. 1916, p. 1290, except that, in the first sentence there was substituted, for the clause "with the petition for the writ of error or appeal," the clause "with the writ of error or petition for appeal." Former rule 10 is now rule 9.

RULE 11. OBJECTIONS TO EVIDENCE IN THE RECORD

This rule is the same as former rule 12, as set forth in Comp. St. 1916, p. 1292. Former rule 11 is now rule 10.

RULE 12. SUPERSEDEAS AND COST BONDS

Section 1 of this rule is the same as section 1 of former rule 13, as set forth in Comp. St. 1916, p. 1292. Section 2 of this rule reads as set forth below.

2. Bonds for costs shall be in the sum of $250 unless otherwise ordered by the judge approving the same.

Former rule 12 is now rule 11.

RULE 13. WRITS OF ERROR, APPEALS, RETURN AND RECORD

Section 1 of this rule is the same as section 1 of rule 14, as set forth in Comp. St. 1916, p. 1294, except that there was inserted, between the word "shall" and the words "make a return," the words "on demand of any party and payment of the clerk's fees."

Section 2 of this rule is the same as section 2 of rule 14, as set forth in Comp. St. 1916, p. 1295, except that there was substituted, for the clause "by writ of error or appeal," the clause "by writ of error, appeal or petition to revise."

Section 3 of this rule is the same as section 3 of rule 14, as set forth in Comp. St. 1916, p. 1295.

Section 4 of this rule is the same as section 4 of rule 14, as set forth in Comp. St. 1916, p. 1295, except that the word "presiding," between the words "such" and "judge," was omitted.

Section 5 of this rule is the same as section 5 of rule 14, as set forth in Comp. St. 1916, p. 1295, except that the clause "whether the return day fall in vacation or in term time" was omitted therefrom.

Section 6 of rule 14, as set forth in Comp. St. 1916, p. 1295, was omitted from the rules as republished. Former rule 13 is now rule 12.

RULE 14. DOCKETING CASES

Section 1 of this rule corresponds to section 1 of former rule 16, as set forth in Comp. St. 1916, p. 1303, but was changed to read as set forth below.

1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day. But for good cause shown the justice or any district judge within the district, or any judge of this court, may enlarge the time upon four days' notice of the application served before its expiration on the attorney for the opposite party, the order of enlargement to be filed with the clerk of the District Court and to be transmitted to this court with the transcript of record. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed by the court during the period covered by the sessions, and by the clerk after the sessions are concluded upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

Section 2 of this rule is the same as section 2 of former rule 16, as set forth in Comp. St. 1916, p. 1303. Section 3 of this rule corresponds to no provision of the former rules. It is set forth below.

3. Petitions to revise orders in bankruptcy filed under the provisions of section 24b of the Bankruptcy Act, must be filed and served within ten days after the entry of the order sought to be revised and thereupon docketed, and a transcript of the record of the proceedings in the bankruptcy court of the matter to be revised must be filed within thirty days thereafter, but the judge of the bankruptcy court may for good cause shown enlarge the time for filing and serving the petition or filing the record, the order of enlargement to be made and filed with the clerk of the District Court before the expiration of the times hereby limited for filing and serving the petition and filing the record respectively, and to be transmitted to this court with the transcript of record.

Section 4 of this rule is the same as former section 3 of rule 16, as set forth in Comp. St. 1916, p. 1303, except that there is omitted therefrom the clause "brought up by writ of error or appeal." Former rule 14 is now rule 13.

RULE 15. DOCKET

This rule is the same as former rule 17, as set forth in Comp. St. 1916, p. 1305, except that there is substituted for the words "such docket," before the words "shall be called," the word "they."

Former rule 15 has been omitted from these rules as republished.

RULE 16. CERTIORARI

This rule is the same as former rule 18, as set forth in Comp. St. 1916, p. 1307. Former rule 16 is now rule 14.

RULE 17. DEATH OF A PARTY

This rule is the same as former rule 19, as set forth in Comp. St. 1916, p. 1308, except that in section 1 thereof, there was inserted between the words "defendant in error" and "shall be entitled," the words "or appellee," and, between the words "shall be plaintiff" and the words "or appellant," the words "in error," and there was omitted from section 3 the words "circuit or" wherever they occurred before the words "district court."

Former rule 17 is now rule 15.

RULE 18. DISMISSING CASES

This rule is the same as former rule 20, as set forth in Comp. St. 1916, p. 1312, except that there was inserted, between the words "in an appeal" and the words "shall by their attorneys," the words "or the petitioner and respondent on petitions to revise." Former rule 18 is now rule 16.

RULE 19. MOTIONS

Section 1 of this rule is the same as section 1 of former rule 21, as set forth in Comp. St. 1916, p. 1313, except there is added the sentence, "Four days' notice of the motion shall be given to the adverse party." Section 2 of this rule is the same as section 3 of former rule 21, as set forth in Comp. St. 1916, p. 1373. Provisions limiting oral argument on motions formerly contained in section 2 of rule 21, as set forth in Comp. St. 1916, p. 1313, are now in rule 23, § 3, post. Former rule 19 is now rule 17.

RULE 20. PARTIES NOT READY

This rule corresponds to former rule 22, as set forth in Comp. St. 1916, p. 1314. All of its sections have been changed in wording and now read as set forth below.

1. Where no counsel appears, and no brief has been filed for the party seeking review of the decision below, when the case is called for hearing, the party successful below may have the party seeking review called and the writ of error, appeal or petition to revise dismissed.

2. Where the party successful below fails to appear when the case is called for hearing, the court may proceed to hear an argument on the part of the party seeking review, and to give judgment according to the right of the case.

3. When a case is reached in the regular call of the docket, and

there is no appearance for either party, the case shall be dismissed at the cost of the party seeking review.

Former rule 20 is now rule 18.

RULE 21. PRINTING RECORDS

This rule corresponds to former rule 23, as set forth in Comp. St. 1916, p. 1317. It has been changed in several particulars, so as to read as set forth below.

In cases which fall within the provisions of the act of February 13, 1911 (36 Stat. 901 [Comp. St. 1916, §§ 1656, 1657]), *the plaintiff in error or appellant shall print the record and serve copies thereof in accordance with the provisions of said act. In other cases on the filing of the transcript, the clerk shall forthwith cause fifteen copies of the same to be printed, and shall furnish three copies thereof to each party, and shall file nine copies thereof in his office. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed; but the court may direct the printing of other parts of the record. The clerk shall be entitled to demand the cost of printing the record of the party seeking review before ordering the printing to be done or the said cost may be paid by any other party. If such cost of printing be not advanced within ten days of demand the case shall be dismissed unless otherwise ordered by the court. In case of reversal, affirmance, or dismissal, with costs, the amount paid for printing the record shall be taxed against the party against whom costs are given.*

Former rule 21 is now rule 19.

RULE 22. DAY CALENDAR AND BRIEFS

This rule corresponds to former rule 24, Comp. St. 1916, p. 1326.
Sections 1–3 have been materially changed, so as to read as set forth below.

1. Cases shall be placed by the clerk on the day calendar for argument in their order of docketing, but (unless it be otherwise specially ordered), not until thirty days after the printed record has been filed by one of the parties, or such record has been served on the parties, if the printing be done by the clerk.

The party seeking review of the action of the court below, shall file with the clerk ten copies of a printed brief, and serve two copies thereof on each opposing counsel, within twenty days after the printed record has been filed or served as above provided. Appellees, respondents and defendants in error shall in like manner file and serve their briefs within thirty days after said filing or serving of the printed record.

If when a cause appears on the day calendar briefs shall not have been filed in accordance with this rule, such disposition of the cause shall be made as the court may order.

2. The brief for plaintiff in error, appellants and petitioners to revise shall contain, in order here stated—

(1) A concise abstract, or statement of the case, presenting, succinctly the questions involved, in the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal or petition to revise the specification shall state, as particularly as may be, in what the decree or order is alleged to be erroneous.

(3) A brief of the argument, exhibiting a clear statement of the points of law or facts to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The brief of defendants in error appellees and respondents shall

be of a like character with that required of the party seeking review, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error, or appellant, is controverted.

Section 4 is the same as section 4 of former rule 24.

Section 5 has been materially changed to read as set forth below.

5. Where both parties allege error in the proceedings below, the original plaintiff or petitioner shall be considered appellant for the purposes of this rule.

Former rule 22 is now rule 20.

RULE 23. ORAL ARGUMENTS

Section 1 of this rule is the same as section 1 of former rule 25, as set forth in Comp. St. 1916, p. 1330, except that there is inserted after the word "appellant" the words "or petitioner."

Section 2 is the same as section 2 of former rule 25, except that there is added thereto the words "except by leave of the court."

Section 3 is the same as section 3 of former rule 25, except that there is inserted, between the first word "upon" and the words "appeals from orders," the words "motions and," and the final sentence authorizing apportionment of time is omitted. Former rule 23 is now rule 21.

RULE 24. FORM OF PRINTED RECORDS, ARGUMENTS, AND BRIEFS

This rule is the same as former rule 26, as set forth in Comp. St. 1916, p. 1331. Former rule 24 is now rule 22.

RULE 25. OPINIONS OF THE COURT

This rule is the same as former rule 28, as set forth in Comp. St. 1916, p. 1335. Former rule 25 is now rule 23.

RULE 26. REHEARING

This rule is the same as former rule 29, as set forth in Comp. St. 1916, p. 1337, except that there is substituted for the word "judgment," the two times it occurs in the first clause, the word "decision."

Former rule 26 is now rule 24.

RULE 27. INTEREST

This rule is the same as former rule 30, as set forth in Comp. St. 1916, p. 1339, except that there is inserted between the words "equity" and "unless otherwise ordered," in section 3 thereof, the words "and admiralty," and section 4 is omitted. Former rule 27 is omitted from the rules as republished.

RULE 28. COSTS

Sections 1–3 of this rule correspond to sections 1–3 of former rule 31. They have been changed to read as set forth below.

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the party successful below, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment, decree or order in this court, costs shall be allowed to the party successful below, unless otherwise ordered by the court.

3. In cases of reversal of any judgment, decree or order in this court costs shall be allowed to the party seeking review, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be taxable in this court as part of such costs, and the clerk of the court below shall send to the clerk of this court with the transcript of record a certificate of the cost of such transcript.

Sections 4–6 of this rule are the same as sections 4–6 of former rule 31.

Former rule 28 is now rule 25.

RULE 29. MANDATE

This rule is the same as former rule 32, as set forth in Comp. St. 1916, p. 1343. Former rule 29 is now rule 26.

RULE 30. CUSTODY OF PRISONERS ON HABEAS CORPUS

This rule is the same as former rule 33, as set forth in Comp. St. 1916, p. 1344, except that there is added to section 1 thereof the words "by bail or otherwise."

Former rule 30 is now rule 27.

RULE 31. MODELS, DIAGRAMS AND EXHIBITS OF MATERIAL

This rule is the same as former rule 34, as set forth in Comp. St. 1916, p. 1345, except that in section 1 there is substituted for the words "at least ten days before the case is heard or submitted," at the end thereof, the words "before argument begun," and in section 3 the first sentence, relating to exhibits in customs cases, and the word "other," in the second sentence, between the first word "all" and the word "models," are omitted.

Former rule 31 is now rule 28.

RULE 32. ALLOWANCE OF APPEALS AND WRITS OF ERROR—BAIL

This rule corresponds to former rule 35, as set forth in Comp. St. 1916, p. 1347.

Section 1 thereof has been changed to read as set forth below.

1. An appeal or writ of error may be allowed in term time or vacation by the circuit justice or by any circuit judge within the circuit or by any district judge within his district, and the proper security be taken and the citation be signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

Section 2 of this rule is the same as section 2 of former rule 35.

Former rule 32 is now rule 29.

RULE 33. SECURITY FOR CLERK'S FEES—TAXING COSTS

This rule corresponds to former rule 36, as set forth in Comp. St. 1916, p. 1350.

Section 1 of this rule is the same as section 1 of the former rule.

Section 2 has been changed to read as set forth below.

2. At the expiration of ten days after a case has been decided or at any earlier time if the Court think justice requires it, the order thereon will be entered by the court, and the clerk will thereupon prepare and tax the bill of costs and issue the mandate. Within said time the parties may file with the clerk their proposed orders and bills of costs with proof of service of the same upon the opposing attorneys.

Former rule 33 is now rule 30.

RULE 34. ADDING CASES TO GENERAL CALENDAR

This rule corresponds to former rule 39, as set forth in Comp. St. 1916, p. 1354. It has been changed to read as set forth below.

Thirty days after the record in any cause has been printed and filed with the clerk, he shall add the cause to the general calendar. After the first Monday in March in any term, no cause shall be added to the general calendar for that term without a motion therefor being made in open court.

Former rule 34 is now rule 31, former rule 35 is now rule 32, former rule 36 is now rule 33. Former rules 37 and 38 have been omitted from the rules as republished.

THIRD CIRCUIT

RULE 14. WRITS OF ERROR, APPEALS, RETURNS AND RECORDS

8. A petition to revise an order in bankruptcy may be presented for allowance either to the Circuit Court of Appeals or to one of the circuit judges. It must be presented within thirty days after the entry of the order complained of, and may be presented either by counsel

in person or by mailing the petition to the clerk of this court. Ten days' notice of the time of presentation, accompanied by a copy of the petition, must be given to opposing counsel; but this notice may be waived. Ordinarily no oral argument will be heard, but if counsel desire they may submit briefs in support of the petition or in opposition thereto. If the petition be allowed, the court or the judge will fix a day for argument on the merits and will also make whatever order may seem desirable in reference to the preparation of the record and of the briefs.

This section was added to rule 14 by amendment.

FOURTH CIRCUIT

The rules for this circuit were republished in 1916. The changes made thereby, and by subsequent amendment, are set forth or indicated below.

RULE 3. TERMS

1. There shall be held in the city of Richmond, Virginia, three regular terms of this court; one on the first Tuesday of January, one on the first Tuesday of April, and one on the first Tuesday of October, in each year; and there shall be held in the city of Asheville, North Carolina, one regular term of this court on the first Tuesday of July, in each year.

This section of rule 3 was amended to read as set forth here; the amendment to be in effect after the May term, 1917.

RULE 7. ATTORNEYS AND COUNSELLORS

This rule, as set forth in Comp. St. 1916, p. 1287, was changed by inserting, after the words "District Court of the United States," the words "or in the highest courts of the states to which they respectively belong," and by omitting the words "and on" before the words "subscribing the roll."

RULE 11. ASSIGNMENT OF ERRORS

This rule as set forth in Comp. St. 1916, p. 1290, was changed by substituting for the clause, "When this is not done," at the beginning of the last sentence, the clause, "When this rule is not complied with."

RULE 16. DOCKETING CASES

Section 2 of this rule, as set forth in Comp. St. 1916, p. 1304, was changed by omitting therefrom the words "whether in term time or vacation," which occurred between the words "producing a certificate" and the words "from the clerk," and by inserting the words "the transcript of" between the word "file" and the words "the record," in the last sentence thereof.

RULE 19. DEATH OF A PARTY

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1310, was changed by substituting the word "in" for the word "to," after the words "writ of error or appeal," in the first clause thereof.

RULE 31. COSTS

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1341, was changed by substituting for the word "where," before the words "the dismissal shall be for want of jurisdiction," the word "when."

Section 4 was changed by substituting for the word "are," after the words "United States," the word "is."

APPENDIX

The instructions as to taking appeals, suing out writs of error, making up records, etc., as set forth in Comp. St. 1916, pp. 1358–1361, were changed to read as set forth below.

Instructions as to Taking Appeals, Suing Out Writs of Error, Making Up Records, etc.

METHOD OF TAKING APPEALS

Writs of error and citations are no longer made returnable to the term day of the appellate court, but are made returnable not exceeding forty days from the day of signing the citation, whether that day, which is the return day, fall in vacation or in term time; and the record must be filed in the clerk's office of this court on or before the return day, unless the time be enlarged as provided in section 1 of rule 16, and section 6 of rule 23. In that case the order of enlargement must be filed with the clerk of this court.

Rule 11, entitled "Assignment of Errors," requires the plaintiff in error, or appellant, to file with the court below, with his petition for the writ of error or appeal, an assignment of errors. Appeals and writs of error should be prayed for by petition in writing addressed to the court below, or to the judge in vacation, who allows the writ or the appeal, by an order in writing, approves the appeal or supersedeas bond, and signs the citation.

In cases brought up by writ of error from the district court, the clerk of the district court, or the clerk of this court, issues the writ of error, which writ fixes the return day, and the citation should bear the same return day. But in cases of appeal (in admiralty or in equity), the citation alone fixes the return day.

All appeals, therefore, whether by writ of error or appeal, should hereafter be taken in the following manner:

1. Petition in writing for the appeal, or writ of error, addressed to the court below, or the judge thereof in vacation.

2. The petition must be accompanied with an assignment of errors, and a prayer for reversal.

3. Appeal or writ of error bond, approval thereof, and the signing of the citation by the judge allowing the appeal or writ.

4. Order in writing of the judge allowing the writ of error or appeal.

5. Issuing the writ of error by the clerk of the district court, or of this court.

6. In case it is desired to have the writ of error issued by the clerk of this court, a certified copy of the petition and order allowing the writ, under the seal of the court, with a fee of $5 for issuing it, must be transmitted to the clerk of this court, and the writ will be issued and forwarded to the clerk of the court below.

All of the above papers and proceedings should be filed with the clerk of the lower court. The writ of error and the citation, the originals of which, after having been duly served, must be certified up to this court as required by section 7 of rule 14. (For service of writ of error see section 1007, R. S.)

In cases brought up by petitions to superintend and revise in bankruptcy, see rule 36. The petition should be filed in the clerk's office of this court.

Rules of this court, blank writs of error, appeal and supersedeas bonds, citations, and orders of appearance may be had of the clerks of the lower courts or of the clerk of this court upon application.

MAKING UP RECORDS

In making up a transcript of the record, clerks are requested to make a distinct title or heading to each paper or proceeding copied into the record, with the date of filing the same, or the date of such proceeding, and to write upon but one side of the paper in a clear legible hand.

And a complete index of all the papers and proceedings should be made in their chronological order and attached to the record at the beginning of it. Names of witnesses should be written at top of each page of their testimony.

In order to have uniformity, records should be commenced with the style and the term of the court at which the judgment or decree is entered, after the following form:

"The United States of America,
District of ....., to-wit:

"At a District Court of the United States for the ..... District of ....., begun and held at the court-house in the city of ....., on the first Monday of ....., being the ..... day of the same month, in the year of our Lord one thousand, nine hundred and .....

"Present: The Honorable ....., District Judge, for the ..... District of .....

"Among other were the following proceedings, to-wit:

A. B. v. C. D. } *In Equity (or) In Admiralty (or) At Law.*

"Bill of Complaint (or)
"Libel (or)
"Declaration (or Complaint)
"Filed ....., 191..(date of filing)."

(Copy same with all material indorsements, and any accompanying papers and exhibits, and so on with every paper or proceeding in the case.)

As to the general order of making up a record, the following examples are given:

In Equity.	In Admiralty.	At Law.
1. Style of Court as Above.	1. Style of Court as Above.	1. Style of Court as Above.
2. Bill of Complaint, etc.	2. Libel.	2. Declaration.
3. Process.	3. Process.	3. Process.
4. Marshal's Return.	4. Marshal's Return.	4. Marshal's Return.
5. Answer.	5. Claim.	5. Plea or Demurrer, etc.
6. Replication.	6. Stipulation.	6. Joining of Issue.
7. Testimony and Exhibits for Complainant.	7. Answer.	7. Impaneling Jury.
8. Testimony and Exhibits for Defendant.	8. Testimony and Exhibits for Libellant.	8. Verdict.
9. Testimony and Exhibits in Rebuttal.	9. Testimony and Exhibits for Respondent.	9. Judgment.
10. Opinion.	10. Testimony and Exhibits in Rebuttal.	10. Bill of Exceptions.
11. Decree.	11. Opinion.	11. Assignment of Errors.
12. Assignment of Errors.	12. Decree.	12. Clerk's Certificate.
13. Clerk's Certificate.	13. Assignment of Errors.	
	14. Clerk's Certificate.	

FORM OF MEMORANDUM TO BE INSERTED IN A COMMON-LAW CASE AS PROVIDED BY SECTION 7 OF RULE 14

(1) Petition for writ of error filed ..... day of ....., 19...
(2) Writ of error granted ..... day of ....., 19...
(3) Writ of error issued ..... day of ....., 19...
(4) Copy of writ of error lodged for adverse party ..... day of ....., 19....
(5) Writ of Error Bond: Dated ..... day of ....., 19...
Penalty $.....
Obligors: .....
.....
.....
Conditioned for costs and damages (or for costs).

(6) Citation. Dated ..... day of ....., 19...

Return, dated ..... day of ....., 19... (or waiver of service, dated ..... day of ....., 19...)

Note: Similar memorandum mutatis mutandis to be used in admiralty and equity cases.

The petition for writ of error or appeal, the order granting writ of error or appeal, the writ of error, the appeal bond, the citation, the return of service or waiver of service should not be copied into the record, but the originals thereof shall be sent up and accompany the transcript of the record.

In transcribing bills of exceptions into the record in cases at law, clerks will carefully inspect such bills of exceptions and wherever the words "here insert" occur, the paper or matter called for should be bodily incorporated into the record at that place.

In making up records in admiralty cases the following should be omitted (see rule 52 of the Supreme Court, in Admiralty):

1. The continuances.

2. All motions, rules, and orders not excepted to which are merely preparatory for trial.

3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the district court was founded on some one or more of these; in which case, so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to; and, in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

FORM FOR THE COVER OF A TRANSCRIPT OF THE RECORD

TRANSCRIPT OF THE RECORD

United States Circuit Court of Appeals,
Fourth Circuit.
No. ———

.....

Plaintiff in Error, or Appellant, or Petitioner,
versus

.....

Defendant in Error, or Appellee, or Respondent.

In Error to (or Appeal from or on Petition for Review from) the District Court of the United States for the ..... District of ....., at .....

DOCKETING CASES AND PRINTING RECORDS

Upon a record being filed, the case is docketed and is put upon the calendar for argument at the next term, or adjourned term, occurring thereafter, provided the record has been printed and copies thereof are delivered to opposing counsel twenty days before the said term or adjourned term, as provided in section 2, rule 17.

Clerk or counsel transmitting a record to this court must accompany the same with an order of appearance for the appellant or plaintiff in error, and also with a deposit of $25 for account of his costs to accrue in this court, and the names and addresses of the attorneys on both sides.

The clerk of this court will immediately upon a transcript of the record being filed under rule 23, send to the counsel an estimate of the cost of printing, supervising fees, etc., which amount must be de-

posited, either in cash or by New York exchange, with the clerk within ten days after notice. See rule 23.

It is important that records should be made up and forwarded to this office as promptly as possible after the appeal or writ of error is allowed, and not held until the near approach of the next term.

Defendants in error, appellees, or respondents are required, at the time of entering their appearance by attorney, to make a deposit of $25.00, for account of costs to be incurred by them in this court.

Deposits for costs are required on both sides of a case, and the surplus of such deposits, if any, will be refunded to each side making the deposits when the case is decided and at the time the mandate is transmitted to the lower court. The winning party collects the costs incurred by and adjudged to him, together with his attorney's docket fee, in the lower court upon the mandate and not from this office. The mandate will show the amount the winning party is entitled to so collect.

FIFTH CIRCUIT

The rules for this circuit were republished in 1916. The changes made thereby and by subsequent amendment are set forth or indicated below.

RULE 11. ASSIGNMENT OF ERRORS

This rule, as set forth in Comp. St. 1916, p. 1291, was changed to read the same as rule 11 of the First Circuit, set forth in U. S. Comp. St. 1916, p. 1290.

RULE 13. SUPERSEDEAS AND COST BONDS

Section 2 of this rule, as set forth in Comp. St. 1916, p. 1292, was changed by substituting for the word "his," before the last word "appeal," the word "the."

RULE 16. DOCKETING CASES

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1304, was changed by substituting for the word "the," before the last word "Court," the word "this."

RULE 19. DEATH OF A PARTY

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1308, was changed by substituting for the word "to," between the words "appeal" and "this court," the word "in."

Section 3, as set forth in Comp. St. 1916, p. 1309, was changed by substituting for the word "case," before the words "shall proceed," in the last proviso, the word "suit."

RULE 22. PARTIES NOT READY

Section 1 of this rule, as set forth in U. S. Comp. St. 1916, p. 1314, was changed by substituting for the word "is," between the words "case" and "called for trial," the words "has been."

RULE 24. BRIEFS

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1328, was amended April 12, 1918, to read as set forth below.

1. The counsel for the plaintiff in error, appellant, or petitioner, shall file with the clerk of this court at least fifteen (15) days in ordinary cases, and five (5) days in preference cases, before the case is called for argument, twenty (20) copies of a printed brief, one to be signed in handwriting by an attorney of this court who has entered an appearance in the case; one copy of the brief shall, on application, be furnished to each of the counsel engaged on the opposite side.

In cases arising in the Canal Zone, the brief shall be filed twenty-five (25) days, and in preference cases five (5) days, before the case is called for argument.

RULE 26. FORM OF PRINTED ARGUMENTS AND BRIEFS

This rule, as set forth in Comp. St. 1916, p. 1332, was changed to read as set forth below.

All records, arguments and briefs printed for the use of the court must be in such form and size that they can be conveniently bound together so as to make an ordinary octavo volume; and, as well as all quotations contained therein, and the covers thereof, must be printed in clear type (never smaller than small pica) and on unglazed paper.

RULE 30. INTEREST

Section 4 of this rule, as set forth in Comp. St. 1916, p. 1339, was changed by substituting for the word "in," before the word "admiralty," the word "of."

RULE 34. MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1345, was changed by inserting therein the word "and" before the words "in any case pending."

Section 2, as set forth in Comp. St. 1916, p. 1345, was changed by omitting the word "the" before the words "inspection of the court."

SIXTH CIRCUIT

The changes in and amendments to the rules of this circuit, as set forth in Comp. St. 1916, are set forth or indicated below.

RULE 4. QUORUM

This rule, as set forth in Comp. St. 1916, p. 1285, was changed by substituting, for the word "any," the word "the," before the words "day appointed for holding it," and by substituting the words "time to time" for the words "day to day" before the words "until there is a quorum," in the second sentence.

RULE 6. MARSHAL, CRIER AND OTHER OFFICERS

Section 3 of this rule, as set forth in Comp. St. 1916, p. 1286, was changed so as to make the last clause read "with the number of bailiffs and messengers which the court may from time to time order."

RULE 11. ASSIGNMENTS OF ERROR

This rule, as set forth in Comp. St. 1916, p. 1291, was changed to read as set forth below.

The appellant shall file with the clerk of the District Court at or before the time of filing his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to totidem verbis, whether it be in instructions given or in instructions refused. When this is not done, counsel will not be heard, except at the request of the court, and errors not assigned according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned.

RULE 26. INTEREST AND DAMAGES

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1332, was changed by adding at the end thereof the following sentence:

In all cases to which this clause of this rule applies, the mandate shall be taken to direct the allowance of such interest.

RULE 29. MANDATE

This rule, as set forth in Comp. St. 1916, p. 1338, was changed by inserting before the words "Such mandate," at the beginning of the second paragraph, the words "Unless otherwise ordered."

SEVENTH CIRCUIT

The rules for this circuit were republished October 31, 1916. The changes made thereby are set forth or indicated below.

RULE 3. TERMS

This rule, as set forth in Comp. St. 1916, p. 1283, was changed by substituting for the word "second," before the words "Tuesday in April," the word "last."

RULE 5. CLERK

Section 3 of this rule, as set forth in Comp. St. 1916, p. 1285, was changed by substituting for the word "may," before the last word "direct," the word "shall."

RULE 7. ATTORNEYS AND COUNSELLORS

This rule, as set forth in Comp. St. 1916, p. 1288, was changed by substituting for the word "shall," before the words "become attorneys and counsellors," the word "may."

RULE 10. BILL OF EXCEPTIONS AND TRANSCRIPT

Section 1 of this rule as set forth in Comp. St. 1916, p. 1290, was changed by inserting the word "and" between the words "common law" and the words "upon any general exception," by substituting for the word "such" in the last clause of the first sentence the word "said," and by substituting for the word "such," before the words "charge to which he excepts," the word "the."

RULE 11. ASSIGNMENT OF ERRORS

This rule, as set forth in Comp. St. 1916, p. 1290, was changed to read the same as rule 11 for the Sixth Circuit, as set forth in Comp. St. 1916, p. 1291.

RULE 13. SUPERSEDEAS AND COST BONDS

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1293, was changed by substituting for the word "shall," before the words "prosecute his writ or appeal to effect," in the first sentence, the word "will," and by omitting the word "just," before the word "damages," in the last clause of the section.

RULE 16. DOCKETING CASES

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1305, was changed by omitting the word "time," between the words "term" and "or vacation," in the third sentence, and by substituting for the word "has," between the words "appeal" and "been duly sued out," the word "had."

RULE 19. DEATH OF A PARTY

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1311, was changed by substituting for the word "to," between the words "appeal" and "this court," the word "in," by omitting the word "in" between the words "determined" and "other cases," and by substituting in the proviso for the word "said," before the word "representatives," the word "such."

Section 2 was changed by substituting for the word "are," before the words "taken by the opposite party," the words "shall have been."

Section 3 was changed by omitting the word "in" before the last two words, "other cases."

RULE 21. MOTIONS

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1314, was changed by substituting for the word "objects," before the last three words, "of the motion," the words "the object."

NINTH CIRCUIT

The rules for this circuit were republished as amended December 2, 1918. The changes made thereby are set forth or indicated below.

RULE 10. BILL OF EXCEPTIONS

This rule, as set forth in Comp. St. 1916, p. 1289, was changed by omitting the words "circuit and," before the words "district courts," in the first sentence thereof.

RULE 14. WRITS OF ERROR, APPEALS, RETURN AND RECORD

Section 1 of this rule, as set forth in Comp. St. 1916, p. 1298, was changed by inserting the words "of the court" after the words "opinion or opinions."

Section 2 was changed by inserting the words "in detail" between the words "stating" and "the cost of the record."

RULE 19. DEATH OF A PARTY

This rule, as set forth in Comp. St. 1916, p. 1312, was changed by substituting for the word "to," between the words "appeal" and "this court," the word "in."

RULE 20. DISMISSING CASES BY AGREEMENT

The title of this rule, as set forth in Comp. St. 1916, p. 1312, was changed by adding thereto the words "by agreement."

RULE 23. PRINTING RECORDS

Section 2 of this rule, as set forth in Comp. St. p. 1324, was changed by substituting for the word "sixty," before the words "copies of the record," the word "eighty."

RULE 25. ORAL ARGUMENTS

Section 3 of this rule, as set forth in Comp. St. 1916, p. 1331, was changed to read as follows:

3. Upon appeals from orders granting or refusing a preliminary injunction or appointing a receiver, and upon appeals in habeas corpus matters and upon appeals and petitions to revise in bankruptcy, one-half hour on each side; upon writs of error three-quarters of an hour on each side, and in other cases one hour on each side will be allowed. No more time than above specified will be allowed without special leave of the court granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion, provided always that a fair opening of the case shall be made by the party having the opening and closing argument.

RULE 36. TERMS AND SESSIONS OF THE COURT

Section 3 of this rule, as set forth in Comp. St. 1916, was changed by substituting for the word "second," before the words "Monday in September," in the second sentence thereof, the word "third," by substituting for the clause "beginning upon the third Monday in September," after the words "term at Portland shall be held," the clause "following the adjournment thereof," by substituting for the word "court," before the words "of Alaska," the word "courts," and by adding thereto the following sentence:

All cases assigned for hearing at Seattle and at Portland shall be placed upon a calendar by the clerk to be called on the opening day of the term at Seattle and set for hearing during the Seattle and Portland terms, respectively.

Notes of decisions on rules of Circuit Courts of Appeal

II. APPLICATION AND CONSTRUCTION OF RULES

(A) Assignment of errors

See, also, notes under § 1653, post.

3. First circuit.—Under court rule 11, declaring that plaintiff in error shall file with his petition for writ of error an assignment of errors which shall set out separately and particularly each error asserted, several errors should not be grouped in one assignment. Henna v. Sauri & Subira, 237 F. 145, 150 C. C. A. 291.

Under the express provisions of rule 11, and of rule 24, par. 4, of the

Rules for the First Circuit, the court may, at its option, notice plain errors, though not assigned. Jones v. Pettingill, 245 F. 269, 157 C. C. A. 461, certiorari denied Pettingill v. Jones, 38 S. Ct. 61, 245 U. S. 663, 62 L. Ed. 536.

4. **Second circuit.**—Under Circuit Court of Appeals, Second Circuit, rule 11, error in excluding from jury's consideration a statement of plaintiff's agent, unless it was known to plaintiff, can be noticed without assignment. Swiss Bankverein v. Zimmermann, 240 F. 87, 153 C. C. A. 123.

Claim that charge amounted to a summing up on behalf of the government may be considered under rule 11 of the Second circuit, though no objection or exception was taken. Oppenheim v. U. S., 241 F. 625, 154 C. C. A. 383, reversing judgment U. S. v. Oppenheim (D. C.) 228 F. 220.

5. **Third circuit.**—Under court rule 11 for Circuit Court of Appeals for Third Circuit, plain error may be reviewed by Circuit Court of Appeals on its own motion, without regard to regularity or irregularity of proceeding by which it was brought before court. Letterman v. U. S., 246 F. 940, 159 C. C. A. 212.

6. **Fourth circuit.**—Under rule 11 for Circuit Courts of Appeals, assignments of error to admission of evidence, which point out questions that were propounded, but fail to state several answers sought to be obtained, are insufficient.—R. D. Cole Mfg. Co. v. Mendenhall, 240 F. 641, 153 C. C. A. 439.

An assignment of error complaining of admission of evidence, which does not quote the full substance of the evidence admitted, is insufficient, under rule 11 for Circuit Court of Appeals. City of Grafton v. Gentry Bros.' Shows, 240 F. 646, 153 C. C. A. 444.

7. **Fifth circuit.**—See Bernal v. U. S. (C. C. A.) 241 F. 339.

8. **Sixth circuit.**—See Kalloch v. Hoagland (C. C. A.) 239 F. 252; Eberhard v. Northwestern Mut. Life Ins. Co. (C. C. A.) 241 F. 353.

Error in adjudging party bankrupt on petition of creditors who were estopped to set up act of bankruptcy relied on held to be noticed, though not properly assigned, under rule 11. Ohio Motor Car Co. v. Eiseman Magneto Co., 230 F. 370, 144 C. C. A. 512, certiorari denied National Carbon Co. v. Ohio Motor Car Co., 36 S. Ct. 724, 241 U. S. 673, 60 L. Ed. 1231.

Error not assigned on appeal from an order confirming a sale on mortgage foreclosure, cannot be considered, where the error, if any, did not appear on the record so plainly as to warrant consideration under rule 11. Painter v. Union Trust Co., 246 F. 240, 158 C. C. A. 400.

Where, in action by purchaser for damages on account of vendor's inability to convey title as agreed, there was error in favor of purchaser in assessment of damages, such error, not having been assigned, will not be considered, under rule 11. Crocker v. Ingersoll Engineering & Constructing Co., 249 F. 31, 161 C. C. A. 91.

10. **Eighth circuit.**—Though there was no finding that bankrupt intended to give a preference, held, that court would not exercise option, under rule 11, as to considering errors not assigned, as the omission was evidently an oversight. Wm. Edwards Co. v. La Dow, 230 F. 378, 144 C. C. A. 520, modifying judgment In re Miller (D. C.) 221 F. 471.

Where the portion of the charge alleged to have been erroneous was not set out totidem verbis, as required by rule 11, and no exception was taken to the charge as given, the judgment will not be reversed on an assignment of error to the charge. Fisher Mach. Works Co. v. Dougherty, 231 F. 910, 146 C. C. A. 106.

Under rule 11, Circuit Court of Appeals, Eighth Circuit, an appeal should be dismissed, where the assignment of errors was not filed at the time of the granting of the appeal or the filing of a supersedeas bond, but came nearly a month later. Reed v. Anderson, 236 F. 345, 149 C. C. A. 477.

Assignments of error, framed in disregard of rules of Circuit Court of Appeals, may be disregarded. Bandy v. U. S., 245 F. 98, 157 C. C. A. 394.

Where information charging contempt was not attacked in court below, and there was no assignment of error that it did not state facts sufficient to constitute a contempt, objections to information, which are not plain, but are of a technical character, cannot be considered under rule 11, allowing Circuit Court of Appeals to consider a plain error not assigned. Couts v. U. S., 249 F. 595, 161 C. C. A. 521.

In a suit to set aside deeds because the grantors were incompetent and the grantees exerted undue influence, where the court sustained exceptions to a master's report in favor of defendants and entered a decree for plaintiff reciting that exceptions were sustained and the deeds set aside, etc., defendants' general assignment of error that the court found upon the issues for plaintiff, that it found the deeds were procured by undue influence, and that the grantors were incompetent, held sufficient under rule 11 of the Circuit Court of Appeals. Ludwig v. Bressler (C. C. A.) 253 F. 8.

An assignment of error complaining of the overruling of objections to testimony, which failed to set out the testimony or its substance as required by ccurt rule 11, will be treated as abandoned; it not being discussed in the brief. Kreuzer v. U. S. (C. C. A.) 254 F. 34.

In an action by a trustee in bankrupt-

cy to recover alleged preferential payments made prior to the amendment of 1910, the judgment contained a finding that the bankrupt was hopelessly insolvent at the time of the preferential payments, and the opinion of the District Court stated that the evidence left little doubt but that the transaction was on the part of the bankrupt in conscious fraud of his creditors, and that it operated as a great fraud on other creditors, as well as a preference for the defendants. Held that, though there was no express finding that the bankrupt intended to give a preference, the court would not exercise its option as to considering a plain error not assigned, as such express finding would naturally and presumably have been made, had attention been called to the fact that the alleged preference antedated the amendment of 1910. Wm. Edwards Co. v. La Dow (C. C. A.) 230 F. 378.

11. Ninth circuit.—Under rules 11 and 24, a writ of error will be dismissed, where no assignment of errors was filed in time and no obvious error appeared on the face of the record, though the court may, to prevent miscarriage of justice, notice an obvious error. Willamette & Columbia River Towing Co. v. Hutchison, 236 F. 908, 150 C. C. A. 170.

Rules 11 and 24 for Circuit Courts of Appeals apply to assignment of errors in Circuit Court of Appeals, and do not warrant review in action tried to court of matters not reviewable under Rev. St. § 700 (Comp. St. 1916, § 1668), because not presented below. Maryland Casualty Co. of Baltimore, Md., v. Orchard Land & Timber Co., 240 F. 364, 153 C. C. A. 290.

Under rule 11 of the Circuit Court of Appeals, that court is not required to consider a defense which was not pleaded, nor brought to the attention of the trial court, nor made the subject of any assignment of error. Hart v. Adair, 244 F. 897, 157 C. C. A. 247.

While in equity case specifications of error should state as particularly as may be in what respect decree is alleged to be erroneous, rule should be relaxed in favor of plaintiff, prosecuting appeal in personam pursuant to order allowing him to appeal in forma pauperis. Edwards v. Bodkin, 249 F. 562, 161 C. C. A. 488.

(B) Bail and custody of prisoners

15. Admission to bail.—Term of imprisonment of a convict held not to commence to run at time of his arrest or imprisonment under sentence by another court, at which time error proceedings were pending to reverse his first conviction. Ex parte Lyman (D. C.) 247 F. 611.

Where petitioners, pending appeal in habeas corpus proceedings, were on their own application released, though they failed to enter into recognizance required by court rule 33, subd. 3, such period cannot be counted as part of period of imprisonment, on theory that, as they failed to give recognizance, they were subject to arrest at any time. Morgan v. Ward, 248 F. 691, 160 C. C. A. 591, certiorari denied Ward v. Morgan, 38 S. Ct. 582, 247 U. S. 521, 62 L. Ed. 1246. See notes under §§ 1014–1017, 1674, 1679–1681.

(C) Bill of exceptions

See, also, notes under § 1590, post.

16. First circuit.—An exception to action of court "in giving all instructions requested by plaintiff" is too general to point any error of an instruction on damages in duplicating elements, so as to allow of review. Guerini Stone Co. v. P. J. Carlin Const. C., 39 S. Ct. 102.

16½. Second circuit.—Claim that charge amounted to a summing up on behalf of the government may be considered under rule 11 of the Second circuit, though no objection or exception was taken. Oppenheim v. U. S., 241 F. 625, 154 C. C. A. 383, reversing judgment U. S. v. Oppenheim (D. C.) 228 F. 220.

A general exception to a portion of the court's charge, which did not specifically point out the error relied on, is insufficient to warrant an appellate court in reviewing the same on error. Morse v. Tillotson & Wolcott Co. (C. C. A.) 253 F. 340.

17. Third circuit.—Comp. St. 1916, § 1537, does not make Act Pa. May 11, 1911 (P. L. 279), applicable in the federal courts, notwithstanding rule 10, § 2, of District Court for the Eastern District of Pennsylvania, and rule 10, § 1, of Circuit Court of Appeals, Third Circuit, forbidding general exceptions to the charge. Philadelphia & R. Ry. Co. v. Marland, 239 F. 1, 152 C. C. A. 51.

Error in charge allowing recovery for loss of companionship under the Employers' Liability Act is a plain error, which the court will notice under rule 11 of Circuit Court of Appeals, Third Circuit, though not specially excepted to. Id.

An error in the charge assigned stands as though unassigned, within rule 11 of Circuit Court of Appeals, Third Circuit, where it was improperly assigned because of the lack of specific exception. Id.

Under rule 10, § 2, of Rules of District Court of United States for Eastern District of Pennsylvania, and rule 10, § 1, of Rules of United States Circuit Court of Appeals for Third Circuit, mere general exception to whole charge will not support specifications of error with reference to specific instructions given and omitted. Letterman v. U. S., 246 F. 940, 159 C. C. A. 212.

In view of rule 10, failure of trial

court in defining preferential transfer in suit to set transfer aside under Bankruptcy Act July 1, 1898, § 60b, as amended by Act June 25, 1910, § 11 (Comp. St. 1916, § 9644), to use the word "reasonable," as used in statute, held no ground for objection on appeal; objection to instruction not specifically pointing out defect. Campbell v. Krauss, 249 F. 670, 161 C. C. A. 580.

In view of Circuit Court of Appeals rule 10, § 1, and District Court rule 10, § 2, assignments based on a general exception to the whole charge will not be considered on writ of error. Graboyes v. U. S. (C. C. A.) 250 F. 793.

18. **Fourth circuit.**—In detinue, assignments of error relating to rulings as to ownership cannot be reviewed, where not based upon a bill of exceptions, as required by the court rules. Mound Coal Co. v. Jeffrey Mfg. Co., 233 F. 913, 147 C. C. A. 587, affirming judgment Jeffrey Mfg. Co. v. Mound Coal Co. (D. C.) 215 F. 222. Rehearing granted Mound Coal Co. v. Jeffrey Mfg. Co. (C. C. A.) 240 F. 129, and judgment affirmed on rehearing Id. 412.

An exception, and a bill of exceptions based thereon, containing evidence in narrative form, duly submitted to the trial court before expiration of the term, are necessary to secure review of rulings of the trial court. Id.

Admission of evidence cannot under the rules of the court be reviewed, there having been no objection and saving of that question by bill of exceptions. Vance v. Clark (C. C. A.) 252 F. 495.

19. **Fifth circuit.**—Errors in charge are not available in reviewing court, where court's attention was not directed thereto before jury's retirement. Hunnicutt v. U. S. (C. C. A.) 253 F. 556.

20. **Sixth circuit.**—See Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712.

Refusal to instruct for defendant on certain counts held not reviewable, without exception at the time, or at the trial in open court.—Stultz v. Cousins, 242 F. 794, 155 C. C. A. 382.

22. **Eighth circuit.**—An exception "to the charge to the jury separately and as a whole, to each and every charge to the jury, and also to them in toto," was too general, and could not be considered, where any part of the charge was good; the court's attention not being called to any specific errors alleged to have been committed, so as to give it an opportunity to correct them. McClendon v. U. S. (C. C. A.) 229 F. 523.

An exception to the action and ruling of the court "in giving said instructions and each of them" was no exception at all, as the court's attention was not drawn to any portion of the charge, so that it might be corrected, if necessary. Gardner v. U. S. (C. C. A.) 230 F. 575.

Where the portion of the charge alleged to have been erroneous was not set out totidem verbis, as required by rule 11, and no exception was taken to the charge as given, the judgment will not be reversed on an assignment of error to the charge. Fisher Mach. Works Co. v. Dougherty, 231 F. 910, 146 C. C. A. 106.

An exception to a charge, which is general, and fails to specify the particular part claimed to be erroneous, is insufficient, though where the excerpt quoted showed the contention made, and it was raised by motions for an instructed verdict, it will be considered. Cisco v. Looper, 236 F. 336, 149 C. C. A. 468.

23. **Ninth circuit.**—See Simpson v. U. S. (C. C. A.) 245 F. 278.

Where part of a charge is correct, a general exception to the whole will not bring up for review those portions which are erroneous. Southern Pac. Co. v. Stewart, 233 F. 956, 147 C. C. A. 630.

Exceptions to the charge of the court in a criminal case held sufficiently specific to direct the court's attention to the particular point objected to, when taken in connection with an instruction requested by defendants and refused. Sam Yick v. U. S., 240 F. 60, 153 C. C. A. 96.

Where exceptions to each and every instruction offered on behalf of the prosecution did not show what instructions were given, and if deemed to apply to those given failed to draw the attention of the court to the particular portions objected to, such exceptions raised no question for review. Beyer v. U. S. (C. C. A.) 251 F. 39.

(D) *Briefs and oral arguments*

See, also, notes under § 1653.

25½. **Second circuit.**—Counsel, desiring an examination of cases referred to, should comply with rule 37, requiring citations of Federal Cases to be accompanied by the citation of the original report, and, where citation is made from American Bankruptcy Reports, that citation in the Federal Reporter or in the United States Supreme Court Reports should be given. In re Kerner (C. C. A.) 250 F. 993.

29. **Sixth circuit.**—Errors assigned, but not insisted upon nor argued as required by court rule 20, are treated as waived. Saalfield Pub. Co. v. G. & C. Merriam Co., 238 F. 1, 151 C. C. A. 77.

31. **Eighth circuit.**—See St. Louis Merchants' Bridge Terminal Ry. Co. v. Schuerman (C. C. A.) 237 F. 1; Sanford v. First Nat. Bank of Marysville, Kan. (C. C. A.) 238 F. 298; Cropper v. Davis, 243 F. 310, 156 C. C. A. 90;

Coca-Cola Co. v. Moore (C. C. A.) 246 F. 942.

Assignments of error, not set out in plaintiff in error's brief as required by rule 24, cannot be considered. City of Goldfield, Colo., v. Roger, 249 F. 39, 161 C. C. A. 99; Harris v. U. S., 249 F. 41, 161 C. C. A. 101, certiorari denied 38 S. Ct. 425, 246 U. S. 675, 62 L. Ed. 933.

When a plaintiff in error fails to point out in the argument the page of the transcript on which an error appears, such error will not ordinarily be considered by the appellate court. Colorado Yule Marble Co. v. Collins, 230 F. 78, 144 C. C. A. 376.

Error in permitting accused to be cross-examined beyond the scope of his admission in chief, not specified in the brief as required by Circuit Court of Appeals Rules for the Eighth Circuit, rule 24, will not be reviewed, where defendant's guilt was clear. Kinser v. U. S., 231 F. 856, 146 C. C. A. 52.

Assignments of error complaining of the admission or exclusion of evidence, but not quoting the evidence as required by rule 24, and unsupported by argument or reasons in the brief, will not be considered. Cisco v. Looper, 236 F. 336, 149 C. C. A. 468.

Where neither assignment of errors nor brief of appellants referred to any pleadings or proof in the record which would have sustained the decree they contended should have been rendered, the contention must be overruled on appeal. Broatch v. Boysen, 236 F. 516, 149 C. C. A. 568.

A Circuit Court of Appeals will not review rulings on the admission or rejection of evidence, where the brief of appellant does not, in compliance with its rules, set out the evidence admitted or excluded, nor specify the objections to such rulings. Weiland v. Pioneer Irr. Co., 238 F. 519, 151 C. C. A. 455.

Disregard of rule 24 of the Eighth Circuit, requiring the brief of plaintiff in error to set out the specifications of error relied upon separately, warrant an affirmance of the judgment. Lohman v. Stockyards Loan Co., 243 F. 517, 156 C. C. A. 215, certiorari denied 38 S. Ct. 134, 245 U. S. 668, 62 L. Ed. 539.

Where appellant's brief complied with rule 24 for the Circuit Court of Appeals, save in so far as it failed to set forth the pages of the record where the evidence in support of the argument could be found, the appeal will not be dismissed or the judgment affirmed, as it was necessary for the appellate court to read all of the evidence on the important issues raised in order to decide them. Ludwig v. Bressler (C. C. A.) 253 F. 8.

Brief for plaintiffs in error not containing a specification of errors on which they rely, as required by Circuit Court of Appeals rule 24, judgment must be affirmed. Daly-West Mining Co. v. Savage (C. C. A.) 253 F. 548.

32. Ninth circuit.—See Chan Pong v. U. S., 230 F. 1021, 144 C. C. A. 663; Valentine v. City of Juneau, 232 F. 1023, 146 C. C. A. 668.

Where plaintiff prosecuted appeal in forma pauperis under permission of order of Circuit Court of Appeals, relaxing rules 23 and 24, appeal cannot be dismissed because no printed brief containing concise abstract or statement of case had been filed or served as required by such rules. Edwards v. Bodkin, 249 F. 562, 161 C. C. A. 488.

(F) Docketing cases

37. Fourth circuit.—Under rule 16 for Circuit Court of Appeals, where no assignment of errors accompanied petition in error, and, after notice of motion to dismiss was filed, counsel for plaintiff in error filed certificate of clerk of District Court that assignment of errors was omitted through inadvertence, but suggested no diminution of record, writ will be dismissed. City of Grafton v. Gentry Bros.' Shows, 240 F. 646, 153 C. C. A. 444.

38. Fifth Circuit.—Appeal will not be dismissed, under rule 16, though not returned within time prescribed by original citation, where appellee participated in settlement of record thereafter, and the signing of statement of the evidence was delayed by trial judge. Grafton v. Meikleham, 246 F. 737, 159 C. C. A. 39, reversing decree In re Meikleham (D. C.) 236 F. 401. Certiorari denied Meikleham v. Grafton, 38 S. Ct. 334, 246 U. S. 665, 62 L. Ed. 929.

40. Eighth circuit.—For dismissal of appeal or writ of error for want of prosecution, pursuant to rule 16, see Dwyer v. U. S., 232 F. 1020, 146 C. C. A. 665; Neff v. National Investment & Securities Co., 232 F. 1022, 146 C. C. A. 667.

41. Ninth circuit.—For dismissal of writ of error for noncompliance with rule 16, subd. 1, see Osterman v. Anaconda Copper Mining Co., 230 F. 1023, 144 C. C. A. 664.

(G) Interest, costs, and damages

42½. First circuit.—Rule 30 for Circuit Court of Appeals for First Circuit applies only to decrees which are affirmed, and not to substantially modified, decrees; therefore, where decree in favor of receiver of national bank against president, on account of latter's negligence in failing to guard against peculations of bookkeeper, was substantially reduced on appeal, interest was properly denied. Dresser v. Bates (C. C. A.) 250 F. 525.

43. Second circuit.—A prevailing party in an appeal, which itself prepared a part of the record, held, under

court rule 23, entitled to tax only the actual expense of the work, without any addition for overhead or shop charges. Steffens v. Steiner, 232 F. 862, 147 C. C. A. 56.

Under rule 30 of the Circuit Court of Appeals, judgments and decrees entered upon mandates from that court do not bear interest, unless so directed in the mandate. Consolidated Rubber Tire Co. v. Diamond Rubber Co. of New York (D. C.) 232 F. 508.

44. **Third circuit.**—Under rule 29, par. 3, and rule 23, par. 7, of the Circuit Court of Appeals, when a judgment is reversed, with costs, plaintiff is entitled to costs of the appeal, including actual cost of printing the record, but not including cost of printing briefs, nor cost of transcript, which must be taxed in the District Court as costs in the case. Bailey v. Mississippi Home Telephone Co. (D. C.) 254 F. 358.

46. **Sixth circuit.**—Where the only excuse offered to defeat an action for the death of one run down by defendant's train was obviously insufficient, a penalty of 5 per cent. is properly imposed under rule 26, clause 2, upon affirmance of the judgment on error. Southern Ry. Co. v. Cooper, 245 F. 857, 158 C. C. A. 197.

As court rule 10 provides that evidence in bill of exceptions shall be stated in narrative form, all parts not essential being omitted, defendant, though successful on writ of error, should be allowed only one-half of costs of printing transcript, where bill of exceptions set forth the entire evidence as questions and answers and included much that was redundant. Buckeye Cotton Oil Mill v. Sloan (C. C. A.) 250 F. 712.

(I) *Printing record*

57. **Ninth circuit.**—For dismissal of appeal for failure to print record under rule 23, and file printed brief under rule 24, see Chan Pong v. U. S., 230 F. 1021, 144 C. C. A. 663; Valentine v. City of Juneau, 232 F. 1023, 146 C. C. A. 668.

(K) *Supersedeas and cost bonds*

See, also, notes under §§ 1660, 1666.

65½. **Second circuit.**—Under Rev. St. § 1000 (Comp. St. 1916, § 1660), writ of error, but for Supreme Court rule 29 (Comp. St. 1916, p. 1833), of which rule 13 for Circuit Courts of Appeals is a copy, can be perfected and cause heard without any security at all, except for costs. Rederiaktiebolaget Amie v. Universal Transp. Co., 245 F. 282, 157 C. C. A. 474.

Though no supersedeas bond was given when writ of error was taken, it is, under Rev. St. § 1000 (Comp. St. 1916, § 1660), mere irregularity, and any Circuit Judge or judge of Circuit Court of Appeals may, after expiration of 60-day period prescribed by section 1007 (section 1666), fix amount of supersedeas bond. Id.

In action begun by attachment, where defendant's interest in ship was attached, and same was freed from attachment, and maritime lien by instrument securing plaintiff and lienholder, held, that plaintiff might, on recovery of judgment, issue execution, and supersedeas bond was necessary, under Circuit Court of Appeals rule 13, where defendant sued out writ of error. Id.

72. **Ninth circuit.**—In view of Supreme Court rule 29 (Comp. St. 1916 p. 1833) and Circuit Court of Appeals rule 13, a supersedeas bond covers any money not otherwise secured, awarded by the judgment or decree appealed from, as well as costs or damages on appeal, and so includes costs in the lower court. Pacific Coast Casualty Co. v. Harvey (C. C. A.) 250 F. 952.

(L) *Writs of error, appeals, return, record, and mandate*

74. **First circuit.**—Under Judicial Code, § 244, and Act Jan. 28, 1915, attaching Porto Rico to First circuit, time for perfecting appeals to Circuit Court of Appeals, not being provided for, is to be determined by rule or order of court, and appeal will not be dismissed for more than two years' delay, where there was no rule to contrary. Graham v. O'Ferral, 236 F. 717, 150 C. C. A. 49.

Deposition of one of crew of sailing vessel run down by steamer libeled as to his discovery of presence of steamer held not cumulative within rule 14, par. 7, for Circuit Court of Appeals for First Circuit, though another witness testified to facts deposed. The Sagamore, 247 F. 743, 159 C. C. A. 601.

In view of previous practice in admiralty appeals from District to Circuit Court, and rule 14, pars. 6–10, relating to the record in admiralty causes, Circuit Court of Appeals hears appeal in admiralty case de novo and may increase decree for libelant, though respondent alone appealed. Consolidated Coastwise Co. v. Conley (C. C. A.) 250 F. 679.

75½. **Third circuit.**—Rev. St. § 828 (Comp. St. 1916, § 1383), prescribing the fees of clerks of Circuit and District Courts, prescribes a fee of 15 cents a folio for entering any rule, etc., or making any record, certificate, return, or report, and a fee of 10 cents a folio for making a copy of any entry or record or any paper on file. Rule 14, par. 2, of the Circuit Court of Appeals for the Third Circuit, requires the clerk of the court to which any writ of error may be directed or from which an appeal may be taken,

upon payment or tender of the fees therefor, to make a return thereof by transmitting a true copy of the record, bill of exceptions, etc. Held, that the proper fee for a certified transcript of the record on appeal or writ of error is 10 cents a folio, since the acts for which the higher fee is prescribed are original acts, deriving their origin from no previous record, and requiring original thought and judgment to make it conform precisely to the things done or ordered, while the originality, discretion, or judgment connected with the making of a certified transcript of the record is restricted to the selection of the parts of the record required by the rules to be transcribed, and responsibility in copying such parts is limited to accuracy, and, while the rule designates the transcript a "return," the return is to be made by transmitting a true copy of the record. U. S. v. Oliphant (C. C. A.) 230 F. 1.

81. Ninth circuit.—For dismissal of appeal under rule 20, see Woo Wah Chuck v. U. S., 230 F. 1023, 144 C. C. A. 665.

(M) Revision in bankruptcy

84. Second circuit.—A petition to revise an order of the District Court sitting in bankruptcy, not filed within the ten days prescribed by rule 38, will be dismissed. In re Vanoscope Co., 233 F. 53, 147 C. C. A. 123.

Under rule 38, Second Circuit, petition to revise order in bankruptcy must be filed within 10 days after order sought to be reviewed is entered, and petition thereafter filed will be dismissed. In re Armann, 247 F. 483, 159 C. C. A. 537.

Where an extension of time for filing a petition to revise was obtained, such petition may be considered, though not filed within the 10-day period prescribed by court rule 38. In re Armann, 247 F. 954, 160 C. C. A. 618.

86. Fourth circuit.—A "petition for review," filed in a District Court in a bankruptcy proceeding, is ineffectual to remove the case for any purpose into the Circuit Court of Appeals. Bridgeton Nat. Bank v. Way (C. C. A.) 253 F. 41.

88. Sixth circuit.—Trustee in bankruptcy, under petition to revise, in matters of law only, order of District Court, cannot complain of absence of formal findings of fact by District Judge, contemplated by C. C. A. rule 34, subd. 2, not having asked therefor, or asserted absence of evidence supporting conclusion of fact in judge's opinion. In re Wood, 248 F. 246, 160 C. C. A. 324, certiorari denied Wood v. Kirk Bros., 38 S. Ct. 579, 247 U. S. 512, 62 L. Ed. 1243.

§ 1120. (Jud. Code, § 128, as amended, Act Jan. 28, 1915, c. 22, § 2.) Jurisdiction; when judgment final.

I. JURISDICTION AND POWERS OF CIRCUIT COURTS OF APPEALS IN GENERAL

6. Power to issue writs—Mandamus.—See notes under § 1239.

8. Power to certify questions to supreme court.—See U. S. ex rel. Arant v. Lane, 38 S. Ct. 94. And see notes under § 1216.

13. Appellate jurisdiction in general—Cases involving jurisdiction of lower court.—A decree of a District Court, releasing a vessel from arrest under a libel in rem on the ground that the vessel was employed in the service of a foreign nation and for reasons of comity, does not involve a question of the jurisdiction of the court, and an appeal lies to the Circuit Court of Appeals. The Attualita (C. C. A.) 238 F. 909.

Though question of District Court's jurisdiction was raised, held, that defendant might appeal to the Circuit Court of Appeals from the judgment against it on the merits and have the question certified by that court. Kawin & Co. v. American Colortype Co., 243 F. 317, 156 C. C. A. 97.

Where demurrer was sustained to plaintiff's petition on ground that amount in controversy was below jurisdictional amount for federal courts, Circuit Court of Appeals has no jurisdiction to review question on writ of error. Knisely v. Burt, 248 F. 493, 160 C. C. A. 503.

Where bill for infringement of patent, brought under Judicial Code, § 48, was dismissed, and preliminary injunction denied, on ground defendant was not an inhabitant and had no regular place of business in district wherein suit was brought, Circuit Court of Appeals is, under section 128, without jurisdiction of appeal from order of dismissal, and question being one primarily involving jurisdiction, appeal must, under section 238, be taken to Supreme Court. American Electric Welding Co. v. Lalance & Grosjean Mfg. Co. (C. C. A.) 249 F. 968.

Where suit was dismissed by federal District Court solely on ground of want of jurisdiction over subject-matter, Circuit Court of Appeals is without jurisdiction to review such decree. Great Northern Ry. Co. v. Blaine County, Neb. (C. C. A.) 252 F. 548.

The Circuit Court of Appeals has jurisdiction to review a judgment of the District Court dismissing an action in ejectment on objection that the lands in controversy were not within the territorial jurisdiction of the District Court, as such an objection does not challenge federal jurisdiction. Davis v. Anderson-Tully Co. (C. C. A.) 252 F. 681.

15. —— **Cases involving constitutional questions in general.**—A federal Circuit Court of Appeals has no appellate jurisdiction where the jurisdiction of the District Court was invoked upon the sole ground that the application of the federal constitution was involved. Carolina Glass Co. v. State of South Carolina, 36 S. Ct. 293, 240 U. S. 305, 60 L. Ed. 658, affirming judgments 69 S. E. 391, 87 S. C. 270, and Same v. Murray (D. C.) 197 F. 392, reversing judgment 206 F. 635, 124 C. C. A. 423.

Contention in suit between citizens of different states that orders of state court on which defendant relied as justifying custody of plaintiff's property were entered without due process of law gives federal Supreme Court jurisdiction to review whole case. Chaloner v. Sherman, 37 S. Ct. 136, 242 U. S. 455, 61 L. Ed. 427, affirming judgment 215 F. 867, 132 C. C. A. 96.

Where the jurisdiction of the federal court rests, not solely upon the constitutionality of an act, but also upon diversity of citizenship, the Circuit Court of Appeals has jurisdiction. Crescent Mfg. Co. v. Wilson, 242 F. 462, 155 C. C. A. 238, dismissing appeal (D. C.) 233 F. 282.

In appeals from final decrees, under this section and section 238 of the Judicial Code (Comp. St. 1916, § 1215), where the jurisdiction of the District Court as set out in the bill is based solely on a constitutional question, the appeal lies to the Supreme Court, and cannot be taken to a Court of Appeals. Supreme Council of Royal Arcanum v. Hobart (C. C. A.) 244 F. 385.

23. —— **Habeas corpus cases.**—Under Judicial Code, §§ 128, 129, and in view of failure of any statute to confer on Circuit Court of Appeals jurisdiction similar to that conferred on Circuit Court by Rev. St. § 763 (Comp. St. 1916, p. 2144), held, that Circuit Court of Appeals is without jurisdiction of appeal from order of District Judge in vacation on habeas corpus. Hoskins v. Funk, 239 F. 278, 152 C. C. A. 266.

30½. **Security for costs.**—See American Surety Co. v. U. S., 239 F. 680, 152 C. C. A. 514.

II. NATURE AND FORM OF REMEDY BY APPEAL OR WRIT OF ERROR

31. **Right of review by appeal or writ of error.**—The right to an appellate review of a conviction in a criminal case does not exist, except by virtue of a statute conferring it, and the exercise of the right is dependent on the compliance with the statutory requirements prescribed therefor. American Surety Co. v. U. S., 239 F. 680, 152 C. C. A. 514. See, also, notes under § 1124.

33. **Mode of review—Appeal.**—Appeal of a defendant in a water rights suit, from a decree finding him guilty of contempt in violating the injunction of a prior final decree of the District Court in such suit, can be reviewed in the Circuit Court of Appeals by appeal. Hanley v. Pacific Live Stock Co., 234 F. 522, 148 C. C. A. 288.

An order entered in a suit in equity brought by a receiver, vacating a previous order made on settlement of a compromise decree allowing fees to counsel for the receiver, held properly reviewable by appeal. McPherson v. U. S., 245 F. 35, 157 C. C. A. 331.

34. —— **Writ of error.**—Actions by a trustee in bankruptcy to recover alleged preferential payments were actions at law, and properly so brought, and review could be had only upon writ of error, and not by appeal. Wm. Edwards Co. v. La Dow (C. C. A.) 230 F. 378.

In an action at law, known as claim and delivery, under the Code of North Carolina (Revisal 1905, §§ 790–802), judgment having gone against defendant, the Circuit Court of Appeals is without jurisdiction, notwithstanding Rev. St. § 914 (Comp. St. 1916, § 1537), declaring that the pleadings and proceedings, other than in equity and admiralty cases, shall conform to the state practice, of an appeal by defendant, though bond was given and citation issued to plaintiff, for, the action being one at law, the judgment can be reviewed in the federal courts only on writ of error. Smith v. Currie, 230 F. 803, 145 C. C. A. 113.

The decision of the trial tribunal on the facts in a proceeding for contempt is not reviewable on a writ of error. In re Independent Pub. Co., 240 F. 849, 153 C. C. A. 535, affirming judgment (D. C.) 228 F. 787.

Appeal held appropriate procedure to review judgment of Supreme Court of Porto Rico, enjoining operation of railroad and directing removal of same from plaintiffs' land; hence writ of error to judgment will be dismissed. Plazuela Sugar Co. v. Pastoriza, 245 F. 115, 157 C. C. A. 411.

Where, after entry, plaintiff filed motion to reconsider and enlarge the judgment, and such motion was denied, and exceptions taken, the motion, being practically a motion for new trial, cannot be reviewed on writ of error. City of Goldfield, Colo., v. Roger, 249 F. 39, 161 C. C. A. 99.

36. **Right to different remedies in same case.**—Circuit Court of Appeals may not require plaintiff in error to elect under penalty of dismissal which of two writs of error to review conviction, one sued out from the Supreme Court and the other out of the Circuit Court of Appeals, he would pursue. Lamar v. U. S., 36 S. Ct. 535, 241 U.

S. 103, 60 L. Ed. 912, affirming judgment 227 F. 1019, 141 C. C. A. 668.

III. DECISIONS REVIEWABLE

(A) *Finality of determination*

37. Necessity of final determination.—The Circuit Court of Appeals can only review final judgments other than injunction orders. Crooker v. Knudsen, 232 F. 857, 147 C. C. A. 51.

39. Final decisions, judgments, decrees, or orders in general.—Failure of a District Judge to follow the prior rulings of another judge, who sat in the same case, does not affect the power of the appellate court to review the final judgment. Friederichsen v. Renard, 231 F. 882, 146 C. C. A. 78.

40. —— Nature of action.—A proceeding to set aside default judgment on the theory that no jurisdiction was acquired over corporate defendant by service of process as amended by the court's order is in effect an independent action and the judgment final and reviewable in the Court of Appeals. Stevirmac Oil & Gas Co. v. Dittman, 38 S. Ct. 116, 245 U. S. 210, 62 L. Ed. 248.

41. —— Nature of decision.—In a suit to restrain infringement of two copyrights, a decree dismissing the bill as to one is final as to that matter, and an appeal may be taken at any time within six months. Historical Pub. Co. v. Jones Bros. Pub. Co., 231 F. 784, 145 C. C. A. 655, dismissing motion for reargument 231 F. 638, 145 C. C. A. 524.

A decree of a federal court, directing its receiver in a foreclosure suit against a corporation to turn over the mortgaged property to a receiver of a state court, made on application of the latter, is final and appealable. Empire Trust Co. v. Brooks, 232 F. 641, 146 C. C. A. 567.

An order denying a motion to vacate an order of arrest is not a final judgment disposing of the case on the merits, and cannot be reviewed on writ of error. Crooker v. Knudsen, 232 F. 857, 147 C. C. A. 51.

In suit to set aside transfer of stock of another company by corporation, interlocutory decree declaring transfer fraudulent and providing for an accounting held in no sense final, so that appeal therefrom must be dismissed. Cutting v. Woodward, 234 F. 307, 148 C. C. A. 209.

An order permitting a defendant to amend the answer, by dismissing without prejudice a counterclaim pleaded therein, is interlocutory, and not appealable. Economy Fuse & Mfg. Co. v. Killark Electric Mfg. Co., 235 F. 120, 148 C. C. A. 614.

Orders authorizing the issuance of receivers' certificates, and making them a first lien on earnings to the displacement of supply claims, held appealable, as final orders. Texas Co. v. International & G. N. Ry. Co., 237 F. 921, 150 C. C. A. 571.

Order sustaining demurrer to plea in recoupment, where issues raised by a plea denying plaintiff's claim were not disposed of, is not a final judgment, within Judicial Code, § 128, and a writ of error to review same will be dismissed. Treadwell v. Corker & Smith, 245 F. 348, 157 C. C. A. 540.

Appeal from order suspending interlocutory injunction decree pending appeal should be dismissed, order not being final. H. Ward Leonard, Inc., v. Maxwell Motor Sales Co., 246 F. 945, 159 C. C. A. 217.

Judgment of nonsuit entered over protest of defendant is a final one, reviewable at instance of defendant, though not adjudication of merits of controversy. Cybur Lumber Co. v. Erkhart, 247 F. 284, 159 C. C. A. 378.

Decree in admiralty in favor of libelant and against charterer of vessel, but in favor of impleaded respondent, who executed charter party as managing owner, held final decree, from which charterer might appeal. Cuneo Importing Co. v. American Importing & Transportation Co., 247 F. 413, 159 C. C. A. 467, affirming decree (D. C.) 241 F. 421.

In view of Act Jan. 28, 1915, § 2, and Rev. St. & Codes Porto Rico, § 5350, a judgment of the Supreme Court of Porto Rico, reversing a judgment of the court below and remanding the cause for a new trial, held not a "final judgment," reviewable on writ of error by the Circuit Court of Appeals. Caballero v. Succession of Criado (C. C. A.) 250 F. 345.

That portion of court's order adjudging that acceptance of benefit of consolidation or extension of receivership should be deemed a consent to all administrative orders theretofore made in consolidated causes would completely deprive appellant, whose mortgage foreclosure suit was consolidated, of substantial right, and was therefore a "final decision" from which appeal would lie under this section. Bankers' Trust Co. v. Missouri, K. & T. Ry. Co. (C. C. A.) 251 F. 789.

42. —— Finality as to parties.—Judgment adjudging persons not parties to equity suit to be in contempt for violating injunction held final as to them, so that they could procure review by appeal or error. Shuler v. Raton Waterworks Co., 247 F. 634, 160 C. C. A. 44.

Where the owner of a vessel, which had capsized and sunk after contracting with appellant to raise the same, filed a petition for limitation of liability, and appellant's petition therein for a preferred lien was denied, held, that the decree was final as to appellant, and appealable. Great Lakes Towing Co. v. St. Joseph-Chicago S. S. Co. (C. C. A.) 253 F. 635.

43. —— **Adjudication of controversy.**—A decree in a suit in rem, which releases the vessel, leaving nothing upon which the court can take further action, is in effect a final decree, and appealable. The Attualita, 238 F. 909, 152 C. C. A. 43.

An order denying a motion to dismiss plaintiff's petition, not followed by decree disposing of the case, is not appealable. Oklahoma, K. & M. I. Ry. Co. v. Bowling, 249 F. 592, 161 C. C. A. 518.

44. **Orders after judgment.**—In action for partnership settlement, held, that it was doubtful whether decree determining main controversy was final for purposes of appeal, and hence appeal from subsequent decree after sale of property, etc., would not be dismissed. Halfpenny v. Miller, 232 F. 113, 146 C. C. A. 305.

Order of trial court, declining to modify a decree according to stipulation presented by the government in a suit to cancel a patent for coal lands, and by the purchasers under a deed of trust entitled to a deed, held appealable. U. S. v. Trogler, 237 F. 181, 150 C. C. A. 327.

In view of citation and petition for appeal, held, that appeal in a proceeding for foreclosure of a mortgage could not be dismissed, on theory that it was taken from order overruling appellant's application to set aside a former decree of sale, and order confirming same; but appeal should be considered as taken from decree of sale and order confirming same. Painter v. Union Trust Co., 246 F. 240, 158 C. C. A. 400.

An appeal from order overruling application to set aside a former decree of foreclosure sale, and order confirming same, which was not an appeal in any sense, either from decree of sale, or from order confirming sale, must be dismissed. Id.

46. **Interlocutory and intermediate decisions.**—Orders sustaining demurrers to complaint, which necessitated plaintiff's pleading anew, will be reviewed on writ of error after judgment dismissing the complaint. United Copper Securities Co. v. Amalgamated Copper Co., 232 F. 574, 146 C. C. A. 532.

(B) Nature, scope, and effect of decision

48. **Discretionary action.**—Scope of review of discretionary action, see notes under § 1670.

A final disposition of a discretionary matter is appealable, where an abuse of discretion is charged. Central Trust Co. of New York v. United States Light & Heating Co., 233 F. 420, 147 C. C. A. 356.

49. **Decisions relating to parties or process.**—Where a petitioner claims a lien upon or interest in specific property, subject to the exclusive disposition of a court, his right to intervene in the proceeding is absolute, and its denial is subject to review. Swift v. Black Panther Oil & Gas Co., 244 F. 20, 156 C. C. A. 448.

53. **On motion for new trial.**—In the federal courts, the ruling on a motion for new trial is not reviewable. Chautauqua Institution v. Zimmerman. 233 F. 371, 147 C. C. A. 307; Fisher Mach. Works Co. v. Dougherty, 231 F. 910, 146 C. C. A. 106; Lohman v. Stockyards Loan Co., 243 F. 517, 156 C. C. A. 215, certiorari denied 38 S. Ct. 134, 245 U. S. 668, 62 L. Ed. 539; Mutual Coal Co. v. Angelo, 246 F. 124, 158 C. C. A. 350.

Denial of motion for new trial and overruling of motion in arrest cannot be assigned as error. Northern Central Coal Co. v. Barrowman, 246 F. 906, 159 C. C. A. 178; Clark v. U. S., 245 F. 112, 157 C. C. A. 408; Hughes v. U. S., 231 F. 50, 145 C. C. A. 238; Cordingly v. Kennedy, 239 F. 645, 152 C. C. A. 479; Wolf v. Edmunson, 240 F. 53, 153 C. C. A. 89; Cooper v. U. S., 247 F. 45, 159 C. C. A. 263; Le More v. U. S. (C. C. A.) 253 F. 887; American Trading Co. v. North Alaska Salmon Co., 248 F. 665, 160 C. C. A. 565, certiorari denied 38 S. Ct. 581, 247 U. S. 518, 62 L. Ed. 1245.

In prosecution for conspiring to violate law of United States by returning another to condition of peonage, held that Circuit Court of Appeals, error determinative of questions involved being apparent on face of record, will consider same on error though trial court refused to grant new trial. Taylor v. U. S., 244 F. 321, 156 C. C. A. 607.

Where defendant insisted, on motion for new trial, that he did not have a fair trial, and that one of the jurors had knowledge of the facts of the case before he was chosen, and the trial court, in disposing of the motion, heard affidavits, etc., the denial of the motion cannot be reviewed on error. Linn v. U. S. (C. C. A.) 251 F. 476.

56. **Costs.**—In a creditors' suit, an order finally adjudicating the right of complainant's counsel to allowance of fees and payment of disbursements is appealable, though the principal action may not have proceeded to final decree. Central Trust Co. of New York v. United States Light & Heating Co., 233 F. 420, 147 C. C. A. 356.

While an appeal to the Circuit Court of Appeals does not lie from the taxation of costs by the clerk of a District Court, a decree permitting a complainant to dismiss at the costs of the defendant involves a broader question and is appealable. Pomona Fruit Growers' Exch. v. Stebler, 241 F. 123, 154 C. C. A. 123.

A decree in equity relating to costs alone is not ordinarily reviewable, but may be reviewed by an appellate court where it involves the construction of a statute or questions arising in carrying

out a decree and mandate of the appellate court. Stallo v. Wagner, 245 F. 636, 158 C. C. A. 64.

IV. CONCLUSIVENESS OF DECISIONS OF CIRCUIT COURTS OF APPEALS AND REVIEW BY SUPREME COURT

See, also, notes under § 1218, post.

58. Jurisdiction dependent on diverse citizenship.—Where federal jurisdiction was invoked solely upon the ground of diversity of citizenship, a judgment of the Circuit Court of Appeals was not reviewable by appeal. Eagle Glass & Mfg. Co. v. Rowe, 38 S. Ct. 80, 245 U. S. 275, 62 L. Ed. 286, reversing decree Hill v. Eagle Glass & Mfg. Co., 219 F. 719, 135 C. C. A. 417.

Under Judicial Code, § 28, as amended by Act Jan. 20, 1914, and sections 29, 128 and 241, where action for damages to interstate shipment was removed on sole ground of diversity of citizenship, judgment of Circuit Court of Appeals held final. Southern Pac. Co. v. Stewart, 38 S. Ct. 130, 245 U. S. 359, 62 L. Ed. 345, dismissing writ of error 233 F. 956, 147 C. C. A. 630.

59. —— Ancillary or supplemental suit.—Where, though bill showed diversity of citizenship, jurisdiction was invoked as dependent and ancillary to pending actions under a law of the United States, judgment of Circuit Court of Appeals held reviewable, under Judicial Code, §§ 128, 241. Eichel v. United States Fidelity & Guaranty Co., 38 S. Ct. 47, 245 U. S. 102, 62 L. Ed. 177, affirming decree United States Fidelity & Guaranty Co. v. Eichel, 241 F. 357, 154 C. C. A. 237.

76. Review by supreme court.—Under this section, as amended by Act Jan. 28, 1915, § 2, where plaintiff in trademark infringement suit was allowed appeal from. decree of Circuit Court of Appeals, and brought certiorari, and, pursuant to stipulation, transcript of record filed for purposes of appeal was treated as return to writ, appeal must be dismissed, and cause will be determined on writ of certiorari. United Drug Co. v. Theodore Rectanus Co., 39 S. Ct. 48, 63 L. Ed. —.

CITED WITHOUT DEFINITE APPLICATION

Glasgow Nav. Co. v. Munson S. S. Line, 38 S. Ct. 315. 62 L. Ed. 919; Deschutes R. Co. v. Eastern Oregon Land Co., 39 S. Ct. 18; Western Union Tel. Co. v. Louisville & N. R. Co., 39 S. Ct. 18, 63 L. Ed. —; Ferguson v. Babcock Lumber & Land Co., 39 S. Ct. 132, 63 L. Ed. —; Western Union Tel. Co. v. Nashville, C. & St. L. R. Co., 39 S. Ct. 134, 63 L. Ed. —.

§ 1120a. (Act Jan. 28, 1915, c. 22, § 4, as amended, Act Sept. 6, 1916, c. 448, § 3.) Judgment final in bankruptcy cases, etc.

Operation in general.—No appeal lies from Circuit Court of Appeals to Supreme Court in suit by trustee in bankruptcy under the Bankr. Act, § 60b (Comp. St. 1916, § 9644), to set aside a fraudulent conveyance, since passage of this section. William R. Staats Co. v. Security Trust & Savings Bank, 37 S. Ct. 336, 243 U. S. 121, 61 L. Ed. 632, dismissing appeal Security Trust & Savings Bank v. Wm. R. Staats Co., 233 F. 514, 147 C. C. A. 400.

Cited without definite application, Schmitt v. Shadrach, 39 S. Ct. 67, 63 L. Ed. —.

§ 1121. (Jud. Code, § 129.) Appeals in proceedings for injunctions and receivers.

See Wagner v. Meccano (C. C. A.) 239 F. 901.

2½. Effect of calling in other judges.—Under Judicial Code, § 266, held, that a litigant denied temporary injunction by the court, where the District Judge had called to his assistance a Circuit Judge and another District Judge, must appeal to the Supreme Court, and cannot, under section 129, appeal to the Circuit Court of Appeals. Jackson v. Cravens, 238 F. 117, 151 C. C. A. 193, dismissing appeal (D. C.) 235 F. 212.

4. "Interlocutory order or decree" within statute.—Under this section complainant in a suit to restrain the infringement of two copyrights can appeal from a dismissal of his bill as to one copyright. Historical Pub. Co. v. Jones Bros. Pub. Co., 231 F. 638, 145 C. C. A. 524, motion for reargument dismissed 231 F. 784, 145 C. C. A. 655.

A decree in a suit for unfair competition, ordering a reference for accounting, held interlocutory, so that an appeal could not be taken therefrom more than 30 days after it was entered. Puritan Cordage Mills v. Sampson Cordage Works, 232 F. 138, 146 C. C. A. 330.

5. Orders granting injunctions.—While a temporary restraining order, granted without a hearing, is not ordinarily appealable, where, after a subsequent hearing on a motion for a preliminary injunction and counter motions to vacate and dismiss, an order is entered refusing to dissolve and in terms continuing the restraining order in force, such order is in effect one

granting a preliminary injunction, and is appealable. Davis v. Hayden (C. C. A.) 238 F. 734.

8. Orders appointing receivers.—Order denying motion to vacate appointment of receiver, and to dissolve injunctions and mandatory orders in connection with that appointment, is not appealable, where there is appeal pending from order appointing receiver, which latter order is appealable. Guardian Trust Co. v. Shedd, 240 F. 689, 153 C. C. A. 487.

12. Supersedeas.—Pending appeal from interlocutory decree ordering assignment of patents and enjoining use of inventions, injunction held not to be stayed. Chadeloid Chemical Co. v. H. B. Chalmers Co., 242 F. 71, 155 C. C. A. 15.

Under this section, judge of Circuit Court of Appeals may, on appeal from order granting injunction pendente lite, stay operation of same. Masses Pub. Co. v. Patten, 245 F. 102, 157 C. C. A. 398.

On appeal from order granting temporary injunction against enforcement of order of Post Office Department excluding plaintiff's publication from mails, held, that judge of Circuit Court of Appeals should, during pendency of appeal, stay operation of injunction. Id.

Plaintiff's publication held so close to being a violation of Act June 15, 1917 (post, § 10212c), that injunction restraining postmaster from giving effect to order excluding it from mails should be stayed on appeal. Id.

14. Time for hearing of appeal.—Original proceeding for disapproval of order of District Court under which receiver appointed by it is exercising control over property outside the district held to be dismissed, when order of disapproval was not obtained within 30 days. In re Brown, 242 F. 452, 155 C. C. A. 228.

15. Scope and extent of review in general.—Under the provision of this section authorizing an appeal from an interlocutory decree granting or refusing an injunction the complainant in an infringement suit in which an injunction is prayed for may appeal from an interlocutory decree, which dismisses the bill as to certain of the claims sued on, either on the ground of invalidity or noninfringement; but such appeal brings up for review only that part of the decree relating to such claims and specified as error, and defendant can have the other parts of the decree reviewed only by a cross-appeal. Ward Baking Co. v. Weber Bros. (C. C. A.) 230 F. 142.

On appeal under this section from interlocutory decree granting an injunction and directing an accounting, held that the propriety of ordering an accounting could not be reviewed. Chadeloid Chemical Co. v. H. B. Chalmers Co., 243 F. 606, 156 C. C. A. 304.

On appeal from an interlocutory order or decree granting or continuing injunction, appointing receiver, etc., under this section, the Circuit Court of Appeals may pass upon the jurisdiction of the District Court. Supreme Council of Royal Arcanum v. Hobart, 244 F. 385, 157 C. C. A. 11.

The appeal being from an interlocutory decree under this section the Circuit Court of Appeals is authorized to determine whether the District Court had jurisdiction. Soler v. Scoville (C. C. A.) 253 F. 932.

17. —— Causes not reviewable on the merits.—Circuit Court of Appeals held without power to determine the merits on appeal from order on application for temporary injunction, unless on the face of the bill there was no ground for equitable relief. Eagle Glass & Mfg. Co. v. Rowe, 38 S. Ct. 80, 245 U. S. 275, 62 L. Ed. 286, reversing decree Hill v. Eagle Glass & Mfg. Co., 219 F. 719, 135 C. C. A. 417.

18. —— Discretion of lower court.—Where trial court has not departed from principles and rules of equity, its order appointing receivers and issuing injunctions will not be reversed, in absence of abuse of discretion; but where court had departed from principles of equity, such order may be reviewable, without proof of abuse of discretion. Folk v. U. S., 233 F. 177, 147 C. C. A. 183.

Interlocutory decree ordering issuance of preliminary injunction will not be disturbed, where no abuse of discretion was shown, and it did not appear injunction would cause any substantial injury to defendant, though complainant failed to prevail in suit on the merits. City Council of Augusta v. Postal Telegraph-Cable Co., 246 F. 440, 158 C. C. A. 504, affirming decree Postal Telegraph Cable Co. v. City Council of Augusta (D. C.) 242 F. 538.

Order of trial court, on a bill to foreclose a mortgage, directing appointment of recover and the operation of property, will not be disturbed on appeal, unless so improvident and improper as to be an abuse of power. First Nat. Bank of San Francisco v. Detroit Trust Co., 248 F. 16, 160 C. C. A. 156, certiorari denied 38 S. Ct. 579, 247 U. S. 513, 62 L. Ed. 1243.

A pendente lite injunctional order will not be reversed, unless there is an abuse of discretion, which can only appear from an obvious misunderstanding of the facts, or the probable misapplication of well-settled rules of law by the trial judge. City of Chica-

go v. Fox Film Corporation (C. C. A.) 251 F. 883.

The appellate court will overrule or reverse an order granting a preliminary injunction only when satisfied that there was error of law in the action of the trial court, or that upon the facts there was no reasonable field for discretionary action. Louisville & N. R. Co. v. Western Union Telegraph Co., 252 F. 29.

Action of chancery court, in appointing receiver to protect property pending suit, involves its discretion, and its action will not be disturbed, unless the discretion is abused. Ward v. Central Trust Co. of Illinois (C. C. A.) 252 F. 127.

Discretion of court in granting temporary injunction pending final hearing will not be reviewed, unless abuse is shown. Thompson v. Balke, 245 F. 841, 158 C. C. A. 181; City of Amarillo v. Southwestern Telegraph & Telephone Co. (C. C. A.) 253 F. 638.

19. —— Presumptions.—The burden held on one appealing more than 30 days after the decree was entered to show respect in which the decree was final. Puritan Cordage Mills v. Sampson Cordage Works, 232 F. 138, 146 C. C. A. 330.

20. Disposition of cause on appeal.—On the general affirmance on appeal of an interlocutory decree in a patent case, sustaining the patent, finding infringement, and awarding an injunction, such issues were conclusively settled; but so much of decree as relates to the accounting remains purely interlocutory, and subject to modification by the District Court until final decree. Racine Engine & Machinery Co. v. Confectioners' Machinery & Mfg. Co. (C. C. A.) 234 F. 876.

Under Judicial Code, §§ 56, 129, Circuit Judge or Circuit Court of Appeals in original proceeding held not authorized to disapprove appointment of receiver, but only to disapprove his assumption of control over property outside the district of his appointment. In re Brown, 242 F. 452, 155 C. C. A. 228.

Where, pending appeal from order enjoining sale of land under statutory foreclosure proceeding in state court, purchaser from mortgagor and his grantee contracted for extension with mortgagees, who recognized such purchaser as obligor in entire transaction, appeal will be dismissed; all questions other than costs having become moot. Clark v. Fairbanks, 249 F. 431, 161 C. C. A. 405.

Where by reason of settlement questions involved in appeal from injunction order have become moot, costs must be assessed against appellant in sustaining motion to dismiss. Id.

Where, pending appeal from order enjoining sale under statutory foreclosure proceedings in state court, settlement was effected, question of costs in state court will be left for that tribunal on dismissal of the appeal. Id.

An order granting a preliminary injunction, and appointing receivers in connection with the proceedings for reorganization of an insolvent corporation, affirmed as modified. Federal Coal Co. v. Ballard (C. C. A.) 250 F. 233.

An appellate court, on an appeal from an order granting a preliminary injunction, cannot enter a decree for complainant on the merits, unless it can see that the whole issues can be disposed of at once, without injustice to the parties. Meccano, Limited, v. John Wanamaker, New York (C. C. A.) 250 F. 250.

20½. Permanent injunction.—Plaintiff held entitled to permanent injunction, where evidence was largely the same as evidence on which Circuit Court of Appeals held it entitled to a temporary injunction. Puritan Cordage Mills v. Sampson Cordage Works, 241 F. 671, 154 C. C. A. 429.

21. Review by supreme court.—Supreme Court has no jurisdiction to entertain appeal from decree of Circuit Court of Appeals affirming an interlocutory order denying temporary injunction. Union Pac. R. Co. v. Board of Com'rs of Weld County, Colo., 38 S. Ct. 510, 247 U. S. 282, 62 L. Ed. 1110, reversing decree 222 F. 651, 138 C. C. A. 175, which denies rehearing 217 F. 540, 133 C. C. A. 392.

Cited without definite application, Hoskins v. Funk, 239 F. 278, 152 C. C. A. 266; Virginia-Carolina Peanut Picker Co. v. Benthall Mach. Co. (C. C. A.) 241 F. 89; Debnam v. Benthall Mach. Co. (C. C. A.) 241 F. 103; Camden Iron Works Co. v. City of Cincinnati (C. C. A.) 241 F. 846.

§ 1122. (Jud. Code, § 130.) Appellate and supervisory jurisdiction under the bankrupt act.

See Horton v. Mendelsohn (C. C. A.) 249 F. 185.

Jurisdiction and power of court.—A proceeding on petition by trustee to sell lands, on theory that warranty deed evidenced equitable mortgage, opposed by grantee, is controversy arising in bankruptcy proceeding, instead of proceeding in bankruptcy, and hence appeal to review judgment therein lies under general appellate jurisdiction of Circuit Court of Appeals; case not being one in which Bankruptcy Act specifically provides for an appeal. Sauve v. M. L. More Inv. Co., 248 F. 642, 160 C. C. A. 542. See, also, notes under § 9608.

§ 1124. (Jud. Code, § 132.) Allowance of appeals, etc.

7. Allowance of appeal or writ of error.—Assignments of error presented for allowance will not be passed upon, where defendant has escaped from custody, until he surrenders himself. U. S. v. Billingsley (D. C.) 242 F. 330.

11. Vacating allowance or dismissal of appeal or writ of error.—See Lamar v. U. S., 36 S. Ct. 535, 241 U. S. 103, 60 L. Ed. 912, affirming judgment 227 F. 1019, 141 C. C. A. 668.

§ 1126a. (Act Jan. 28, 1915, c. 22, § 2.) Writs of error and appeals from supreme courts of Hawaii and Porto Rico.

Mode of review.—In view of Judicial Code, § 274a, added by Act March 3, 1915 (Comp. St. 1916, § 1251a), an appeal from the Supreme Court of Porto Rico in a case turning upon questions of law only, will not be dismissed because review should have been sought by writ of error. Sola v. Cintron & Aboy, 237 F. 61, 150 C. C. A. 263.

Scope of review.—As in case of states, decisions of the Supreme Court of Porto Rico, construing local statutes and concessions will be treated by the federal courts as controlling where they involve no infraction of rights secured by the federal Constitution or laws. Trujillo & Mercado v. Succession of Rodriguez, 233 F. 208, 147 C. C. A. 214.

The decision of the Porto Rico Supreme Court as to matter of local law will not be disturbed by federal Circuit Court of Appeals for First Circuit, unless clearly erroneous. Richardson v. Fajardo Sugar Co., 237 F. 195, 150 C. C. A. 341; Graham v. O'Ferral, 248 F. 10, 160 C. C. A. 150.

Determination by Porto Rico Supreme Court that there was such compliance with provisions of the Porto Rico Mortgage Law of 1893 relating to notice of foreclosure sale that proceedings should not be set aside cannot, because relating to question of local law, be disturbed by the Circuit Court of Appeals for the First Circuit, unless clearly erroneous. Henna v. Sauri & Subira, 237 F. 145, 150 C. C. A. 291.

Determination that plaintiff's action begun in 1908 was barred by prescription under Civ. Code Porto Rico, § 317, held not so clearly erroneous as to warrant disturbance by Circuit Court of Appeals for First Circuit; plaintiffs being over 21, when that age was in 1899 prescribed as age of majority by military government. Graham v. O'Ferral, 248 F. 10, 160 C. C. A. 150.

Determination by Porto Rico Supreme Court that one given power of attorney had authority to represent widow in settlement of her deceased husband's estate, either judicially or extrajudicially, held not clearly erroneous. Id.

Where determination of Supreme Court of Porto Rico, affirming judgment of district court in favor of defendants, was affirmed on merits, question whether appeal should be dismissed, because one of defendants was not made party to appeal, need not be disposed of. Id.

CHAPTER SEVEN—THE COURT OF CLAIMS

Sec.
1127. Judges.
1136. Jurisdiction.
Par. 1. Claims against the United States.
1136a. Jurisdiction not to extend to certain civil war claims, nor to claims barred by law.
1139. Claims referred by departments.
1140. Procedure in cases transmitted by departments.
1141. Judgments in cases transmitted by departments; how paid.
1142. Either House of Congress may refer certain claims to court.
1143. Costs to prevailing party.
1144. Claims growing out of treaties.
1147. All claims to be filed within six years; exceptions.
1148. Rules of practice; contempts.
1150. Petitions and verification.
1153. Claims for proceeds arising from sales of abandoned property.
1154. Commissioners to take testimony.
1155. Power to call upon departments for information.
1156. When testimony not to be taken.
1157. Examination of claimant.
1159. Witnesses before commissioners.
1163. Claims forfeited for fraud.
1168. No interest on claims.
1169. Effect of payment of judgment.

§ 1127. (Jud. Code, § 136, as amended, Act Feb. 25, 1919, c. 29, § 4.) Judges.

The Court of Claims established by Act of February twenty-fourth, eighteen hundred and fifty-five, shall be continued. It shall consist of a Chief Justice and four judges, who shall be appointed

by the President by and with the advice and consent of the Senate, and hold their offices during good behavior. Each of them shall take an oath to support the Constitution of the United States and to discharge faithfully the duties of his office. The Chief Justice shall be entitled to receive an annual salary of $8,000, and each of the other judges an annual salary of $7,500, payable monthly from the Treasury. (40 Stat. 1157.)

This section was amended by Act Feb. 25, 1919, c. 29, § 4, cited above, to read as set forth above. This amendment consisted in increasing the salary of the Chief Justice from $6,500 to $8,000, and the salaries of the judges from $6,000 to $7,500.

Section 7 of said Act Feb. 25, 1919, c. 29, provides that the act shall take effect and be in force on and after the first day of the month next following its approval.

§ 1136. (Jud. Code, § 145.) Jurisdiction.

(1) Claims against the United States.

3. Construction and operation of statute in general.—When a claim or matter pending in a department is included within the numerous subjects of jurisdiction conferred by this section, or the later act relative to patents, to which the United States are a party, it may be transmitted to the court by the head of the department whether barred by the statute of limitations obtaining in this court or not. In re Wright, 50 Ct. Cl. 19.

6. Jurisdiction in general.—Where the head of a department refers, either with or without the consent of the claimant, a claim or matter to the court under section 148 of the Judicial Code, and it appears that it is not against the United States, the court is without jurisdiction in the premises under either section 145 or the proviso to section 148 of the Judicial Code. In re Wright, 50 Ct. Cl. 19.

The original act providing for the Interstate Commerce Commission and amendments thereof provide the course which parties may pursue who feel themselves aggrieved by the decision of the commission, but that course does not lead through the Court of Claims, and this court cannot review the action of the Interstate Commerce Commission directly or indirectly. Denver & Rio Grande R. Co. v. U. S., 50 Ct. Cl. 382.

12. —— Action by congress, officers, or other courts as affecting jurisdiction.—Injunction compelling bridge company's compliance with Act March 3, 1899, § 18 (Comp. St. 1916, § 9970), as to changes in bridge over navigable stream, will not be denied on claim that acts under which bridge was built constituted a contract, or that company was entitled to compensation, for those matters should be presented to Court of Claims, under Judicial Code, § 145, or to Congress. U. S. v. Louisville Bridge Co. (D. C.) 233 F. 270.

14. Claims founded on any law of congress.—Act March 2, 1895, relating to certain losses by persons in the naval service, does not authorize suit for such losses in the Court of Claims. Harllee v. U. S., 51 Ct. Cl. 342.

The Marine Corps is regarded as an adjunct of the Navy, and not a part of the Army, as to claims under Act March 3, 1885. Id.

Act March 2, 1895, does not provide for the payment of claims arising after its enactment, but does provide for a report of losses as ascertained by the accounting officers to the "Speaker of the House" and contemplates further action by Congress. The act does not confer jurisdiction on the Court of Claims; nor has it jurisdiction by virtue of that act under the general grant of jurisdiction of claims "founded upon any law of Congress." Id.

The Court of Claims by virtue of its general jurisdiction of claims "founded upon any law of Congress" has jurisdiction of claims arising under Act March 3, 1885, where (1) the facts are undisputed and the accounting officers misapply the law, or (2) they refuse to act on claims properly presented, or (3) payment by the treasury of their award is refused. Newcomber v. U. S., 51 Ct. Cl. 408.

25. Claims founded on contracts in general.—Whatever jurisdiction the Court of Claims has in the matter of a claim for demurrage by a railroad company against the United States must rest in the provisions of this section. Denver & Rio Grande R. Co. v. U. S., 50 Ct. Cl. 382.

27. —— Implied contracts in general.—Congress having authority to charge the Indian lands involved with the payment for services rendered or expenses incurred in securing their rights, the court can render a judgment upon the principle quantum meruit if from the record there is found the existence of a legal relationship warranting it. Winton v. Amos, 51 Ct. Cl. 284.

A judgment upon the principle quantum meruit presupposes a situation of the parties whereby the court may infer from the circumstances that the defendants as a whole knew of the efforts in their behalf, acquiesced there-

in, and accepted the benefits of such services, and thereby impliedly promised to pay therefor, but cannot extend to a large number of persons who were innocent of any work or labor being done for them. Id.

28. —— **Contracts arising from appropriation or destruction of or injury to property.**—Where the United States seized a vessel as being employed in insurrection and subsequently used the vessel in the service of the United States, there being no implied contract, claimant cannot waive the tort and sue in assumpsit. Castelo v. U. S., 51 Ct. Cl. 221.

29. —— **Contracts arising from use of patented articles.**—An undertaking on the part of the United States to pay the patentee of an improvement for use of his invention can be implied so as to bring the claim within the cognizance of the Court of Claims where the government expressly disclaimed any use of the patented device. Farnham v. U. S., 36 S. Ct. 427, 240 U. S. 537, 60 L. Ed. 786, modifying judgment 49 Ct. Cl. 19.

30. **Claims for damages in cases not sounding in tort.**—This section does not confer jurisdiction to hear and determine actions for damages sounding in tort, but only where the damages do not sound in tort. Thierman & Frost v. U. S., 51 Ct. Cl. 35.

Money judgments against the United States will not be entered on estimated damages. Maryland Casualty Co. v. United States, 53 Ct. Cl. 81.

32. —— **Acts of military authorities.**—Where a vessel is seized during pendency of insurrection and the vessel is subsequently used by the United States, and where nothing is said or done by the officers of the defendant from which the court can imply an obligation to pay for the property so taken, the transaction assumes the status of a tort and the court is without jurisdiction. Castelo v. U. S., 51 Ct. Cl. 221.

38. —— **Patents, infringement of.**—Where jurisdiction rests upon contract, plaintiff cannot waive the tort and sue on implied contract. Curved Electrotype Plate Co. of N. Y. v. U. S., 50 Ct. Cl. 258.

41. **Time of accrual of cause of action.**—A plaintiff must have a cause of action when the suit is brought and cannot supply the want of a valid claim at the commencement of the action by the acquisition of one during the pendency of the action. County Court of Marion County, W. Va., v. U. S., 53 Ct. Cl. 120.

Cited without definite application, E. W. Bliss Co. v. U. S., 53 Ct. Cl. 47; 30 Op. Atty. Gen. 35.

§ 1136a. (Act March 4, 1915, c. 140, § 5.) Jurisdiction not to extend to certain civil war claims, nor to claims barred by law.

See Newman v. Moyers, 47 App. D. C. 102.

Construction and operation in general.—When a claim or matter pending in a department is included within the numerous subjects of jurisdiction conferred by section 145 of the Judicial Code or the later act relative to patents to which the United States are a party, it may be transmitted to the court by the head of the department whether barred by the statute of limitations obtaining in this court or not. In re Wright, 50 Ct. Cl. 19.

The concluding clause of section 5 of the Omnibus Claims Bill bars the jurisdiction of the Court of Claims in any claim referred which at the time of the reference was barred by the statute of limitations applicable to the Court of Claims where suit could have been maintained upon such claim in the court if brought within the time allowed by law. Chase v. U. S., 50 Ct. Cl. 293.

Repeal.—This section repeals pro tanto section 151 of the Judicial Code, which was a substantial re-enactment of the fourteenth section of the Tucker Act, conferring jurisdiction upon the Court of Claims to investigate claims referred by either House of Congress and make report thereon. Chase v. U. S., 50 Ct. Cl. 293.

Claims referred by house of congress.—Section 5 of the Omnibus Claims Bill takes away the jurisdiction of the Court of Claims to investigate and determine facts and report thereon in claims referred by one or the other house of Congress in the classes of claims contemplated by said section 5, and deprives the court of jurisdiction to consider pending cases coming within the purview of said section 5. Chase v. U. S., 50 Ct. Cl. 293.

§ 1139. (Jud. Code, § 148.) Claims referred by departments.

1. **Construction and operation in general.**—A claim or matter pending in a department which involves any controverted questions of fact or law, in order to be transmitted to this court under this section, must be one for the "guidance and action" of said department, and not one that is to be merely advisory. In re Proposed Reference by the Secretary of the Navy, 53 Ct. Cl. 370.

2. **Claims within statute.**—Sections 148 and 149 of the Judicial Code contemplate the reference by a head of a department of a matter in which there is a claimant, to which the United States are defendants, and in which there is a money demand. In re Pro-

posed Reference by the Secretary of Navy, 53 Ct. Cl. 370.

Where plaintiffs entered into a contract with the United States for the construction of certain sections of a sea wall, which contract was wrongfully abrogated by the Secretary of the Navy, the government, in a proceeding for compensation under this section, is liable for damages for unreasonable delays in the work, due to investigations, during which the work was retarded or wholly stopped. P. J. Carlin & Co. v. U. S., 53 Ct. Cl. 376.

7. Authority to refer claims in general—Manner of making reference.—References to the court by the heads of departments under section 148 of the Judicial Code must be for the guidance and action of the departments, and therefore binding upon the latter and not for an advisory opinion. In re Wright, 50 Ct. Cl. 19.

9. Limitations.—When a claim or matter pending in a department is included within the numerous subjects of jurisdiction conferred by section 145 of the Judicial Code or the later act relative to patents to which the United States are a party, it may be transmitted to the court by the head of the department whether barred by the statute of limitations obtaining in this court or not. In re Wright, 50 Ct. Cl. 19.

10. Jurisdiction and power of court.—Where the head of a department refers, either with or without the consent of the claimant, a claim or matter to the court under section 148 of the Judicial Code, and it appears that it is not against the United States, the court is without jurisdiction in the premises, under either section 145 or the proviso to section 148 of the Judicial Code. In re Wright, 50 Ct. Cl. 19.

Under jurisdictional act of April 4. 1910 (36 Stat. 269, 294), requiring the Court of Claims to report a "finding of fact" as between the United States and the plaintiff as to the interest, title, ownership, and right of possession of a tribe of Indians in and to certain described lands where the question of title to lands is entirely one of law, to be determined from the facts as found, the court is without jurisdiction to report on the question. and the report must be limited to the facts as they appear. The Yankton Sioux v. U. S., 53 Ct. Cl. 67.

12. Judgments.—Where a reference is made by the head of a department with the consent of the claimant the proviso to section 148 of the Judicial Code contemplates that the court shall proceed to judgment if under the law it has jurisdiction to do so. In re Wright, 50 Ct. Cl. 19.

Where a claim has been finally disposed of by this court under its general jurisdiction, the same cannot be reopened upon the application of the claimant, nor indirectly presented again for consideration upon the application of some one else. The matter is res judicata. In re Proposed Reference by the Secretary of Navy, 53 Ct. Cl. 370.

13. —— Review.—See Mills v. U. S., 52 Ct. Cl. 452.

§ 1140. (Jud. Code, § 149.) Procedure in cases transmitted by departments.

Nature of claim.—Sections 148 and 149 of the Judicial Code contemplate the reference by a head of a department of a matter in which there is a claimant, to which the United States are defendants, and in which there is a money demand. In re Proposed Reference by the Secretary of Navy, 53 Ct. Cl. 370.

Cited without definite application, In re Wright, 50 Ct. Cl. 19.

§ 1141. (Jud. Code, § 150.) Judgments in cases transmitted by departments; how paid.

See In re Wright, 50 Ct. Cl. 19.

§ 1142. (Jud. Code, § 151.) Either House of Congress may refer certain claims to court.

1. Construction and operation in general.—Act May 29, 1908, § 26, authorizing the Court of Claims to consider, adjudicate, and render judgment as law and equity may require in the matter of a certain claim against the Creek Nation, creates no substantive right against and imposes no liability on, such government. Turner v. U. S. 39 S. Ct. 109, 63 L. Ed. —.

Section 5 of the Omnibus Claims Bill (Comp. St. 1916, § 1136a) repeals pro tanto section 151 of the Judicial Code, which was a substantial re-enactment of the fourteenth section of the Tucker Act, conferring jurisdiction upon the Court of Claims to investigate claims referred by either House of Congress and make report thereon, and takes away the jurisdiction of the Court of Claims to investigate and determine facts and report on such claims, and deprives the court of jurisdiction to consider pending cases coming within the purview of said section 5. Chase v. U. S., 50 Ct. Cl. 293.

6. Jurisdiction and power of court.—Where a proceeding is pending in the court under a congressional reference for findings and conclusions advisory to

Congress, the court will not confine the hearing alone to questions raised by special plea or "cross-bill," but will proceed to hear the issues raised in the record. Atlantic Works v. U. S., 50 Ct. Cl. 16.

Where a special act gave Court of Claims jurisdiction of claims for unlawful seizures by revenue officers and reserved the right to any defense legal or equitable except jurisdiction and limitations, the liability of the government should be determined by the settled principles of law. Thierman v. U. S., 51 Ct. Cl. 35.

The jurisdictional acts having directed adjudication of the claims of plaintiffs for services rendered in "the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation," it was contemplated thereby that the services be to the Mississippi Choctaw Indians as a class and not to certain Indians as individuals. The absence of any provisions for individual defense and representation upon the part of the Indian in the cause manifests an intention on the part of Congress to limit the jurisdiction of the court to the ascertainment of the value of services rendered accruing to the Indians as a band. Winton v. Amos, 51 Ct. Cl. 284.

The term "associates" in the jurisdictional acts must be read in connection with the principle upon which the court is directed to render judgment and cannot be held to cover the services of those employed by the persons who had contracts with the individual Indians. Id.

7. —— **Procedure.**—Where an act of Congress authorizes suit against an Indian nation and fails to prescribe the method of service of process, it is doubtful whether the Court of Claims can direct the necessary or proper service to bring the defendants before the court. Turner v. U. S., 51 Ct. Cl. 125.

13. **Report of court and return of documents and evidence.**—Where the record fails to show the value to the government of the property taken and used, the court will so find and report to Congress. Love v. U. S., 50 Ct. Cl. 65.

14. —— **Effect of report.**—Finding of Court of Claims approving defendant's claim under Omnibus Claims Act, approved March 4, 1915, for property taken by federal forces during Civil War though authorized by this section, was not a judgment, and created no vested rights. Calhoun v. Massie (Va.) 97 S. E. 576.

Cited without definite application, The Yankton Sioux v. U. S., 53 Ct. Cl. 67.

§ 1143. (Jud. Code, § 152.) Costs to prevailing party.

Allowance of costs.—Costs on appeal to federal Supreme Court, in case in which United States is party, should not on reversal be granted to United States because of Supreme Court rule 24, giving costs to prevailing party; it not applying where United States is party. Oregon & C. R. Co. v. U. S., 37 S. Ct. 443, 243 U. S. 549, 61 L. Ed. 890.

Costs may be allowed against United States in a suit against it under Judicial Code, § 24 (20), notwithstanding repeal by section 297 of that Code of Act of March 3, 1887, since provision of section 2 of such act conferring on District Courts jurisdiction concurrent with Court of Claims over claims against the United States is carried into section 24 (20) of the Code, but the provision of section 15 of such act is carried in as section 152 of the Code, and while section 24 (20) is a part of chapter 2 of the Code, and section 152 is a part of chapter 7, it is declared by sections 294 and 295 that the laws revised are to be construed as continuations of existing laws. U. S. v. Cress, 37 S. Ct. 380, 243 U. S. 316, 61 L. Ed. 746.

§ 1144. (Jud. Code, § 153.) Claims growing out of treaties.

The Court of Claims is vested with jurisdiction to hear and determine claims of the Cherokee Nation against the United States for interest alleged to be owing from the United States to said Nation on funds arising from the judgment of said Court of May 18, 1905 (40 Ct. Claims Rep. 252), in favor of said Nation, and in such determination to examine all laws, treaties, or agreements between the United States and said Nation, by Act March 3, 1919, c. 103, 40 Stat. 1316.

Notes of Decisions

Claims growing out of or dependent on treaty stipulations.—Act June 22, 1910, c. 313, does not give the court jurisdiction to inquire into the inequity or impropriety of treaties between the Indians and the United States and does not authorize the court to relieve plaintiffs of the terms of the treaties. Otoe and Missouri Tribes of Indians v. U. S., 52 Ct. Cl. 424.

§ 1147. (Jud. Code, § 156.) All claims to be filed within six years; exceptions.

1. **Construction and operation in general.**—The concluding clause of section 5 of the Omnibus Claims Bill bars the jurisdiction of the Court of Claims in any claim referred which at the time of the reference was barred by the

statute of limitations applicable to the Court of Claims where suit could have been maintained upon such claim in the court if brought within the time allowed by law. Chase v. U. S., 50 Ct. Cl. 293.

9. Accrual of right of action in general.—A cause of action for the value of private property, alleged to have been taken within the scope of the Fifth Amendment to the Constitution by reason of the construction of a dam in aid of navigation, accrues when the dam was completed and put in operation by the filling of the pool. County Court of Marion County, W. Va., v. U. S., 53 Ct. Cl. 120.

16. —— Claims founded on statutory grants or rights.—To authorize suit upon a claim arising under Act March 3, 1885, it must first be presented to the accounting officers within two years from the date of the alleged loss. Newcomber v. U. S., 51 Ct. Cl. 408.

26. Commencement of action in general.—See Mill Creek & Minehill Nav. & R. Co. v. U. S. (D. C.) 246 F. 1013.

Cited without definite application, American R. Co. of Porto Rico v. Coronas (C. C. A.) 230 F. 545.

§ 1148. (Jud. Code, § 157.) Rules of practice; contempts.

2. Rules of practice—Attorneys.—An admission by government counsel of the government's liability is not controlling on the Court of Claims. Hooper v. U. S., 53 Ct. Cl. 90.

4. —— New trial.—The exception in court rule 90 is not intended to permit the filing of innumerable motions, but is solely designed for the purpose of enabling litigants to point out some obvious error or omission which it is believed would affect the decision of the court. Winton's Estate v. Amos, 52 Ct. Cl. 90.

6. Procedure in general.—The rule long obtaining in this court is that where a case has been dismissed for want of prosecution it passes out of the jurisdiction of the court at the end of the term during which the dismissal is made unless a motion be made during that term for its reinstatement. In re Reinstatement of Indian Depredation Cases, 50 Ct. Cl. 395.

7. —— Pleadings.—The Court of Claims is not bound by special rules of pleading, and will take notice of an assignment or transfer of a claim sued upon, whether brought to its attention by a plea in abatement or under the general issue. Seaboard Air Line Ry. v. U. S., 53 Ct. Cl. 107.

7½. —— Evidence.—The possibilities as to additional cost of performance arising from delay attending one transaction are far too contingent and uncertain to compare with accuracy a transaction, although substantially similar, occurring from four to six years later, especially so where a judgment of large amount is made entirely dependent thereon. William Cramp & Sons Ship & Engine Bldg. Co. v. U. S., 50 Ct. Cl. 179.

Where the plaintiff produces the best proof of which the case is susceptible, and it is sufficiently certain to warrant a judgment, the plaintiff is entitled to recover. Id.

Where contracts secured by plaintiffs from individual Indians were invalidated by act of Congress, they cannot be made the basis of a suit wherein a judgment rendered could become enforceable against the Indian property, but the contracts are admissible in evidence to establish knowledge upon the part of the defendants and as evidence of what might constitute a reasonable award for the work performed. Winton v. Amos, 51 Ct. Cl. 284.

Where a claim is made for the value of services in securing legislation beneficial to Indians, the court cannot segregate the services performed by attorneys and the influence exerted by the department in moving Congress to a recognition of the Indians' rights in the absence of some specific showing of the value thereof. Id.

The rules of evidence deduced from the common law govern in the Court of Claims, and where the evidence adduced is merely comparative, it cannot be regarded as competent or of any probative value. Globe Works v. U. S., 53 Ct. Cl. 532.

Cited without definite application, Creekmore v. U. S. (C. C. A.) 237 F. 743.

§ 1150. (Jud. Code, § 159.) Petitions and verification.

Pleadings and procedure in general.—An amendment radically changing the party plaintiff by substituting another is not allowable under the well-settled rule that a new and sole party plaintiff cannot be substituted for the original plaintiff and thereby make a complete change of parties. Askins v. U. S., 50 Ct. Cl. 361.

The rules of the Court of Claims are sufficiently liberal not to require the strict rules of pleading, and all that is necessary in setting out a claim is to so state it that the court is properly advised as to what it is. Denver & R. G. R. Co. v. U. S., 53 Ct. Cl. 155.

A petition seeking to have a suspension by Secretary of the Interior of a contract for the construction of a dam held fraudulent need not be amended to enable plaintiff contractor to question the propriety of charges

against his account for work and materials used by defendants in completing the contract. S. R. H. Robinson & Son Con. Co. v. U. S., 53 Ct. Cl. 536.

§ 1153. (Jud. Code, § 162.) Claims for proceeds arising from sales of abandoned property.

1. **Construction and operation in general.**—The effect of section 162 of the Judicial Code is to revive the abandoned or captured property act so far as the remedies it provided are concerned, and to again provide a forum for the enforcement declared therein. Lincoln v. U. S., 50 Ct. Cl. 70.

The taking possession of one-fourth value of said cotton by the purchasing agent was by authority of section 8, Act July 2, 1864, and it was not "taken" as contemplated by Act March 3, 1863, and does not come within either the letter or spirit of section 162, Judicial Code. O'Pry v. U. S., 51 Ct. Cl. 111.

Section 8, Act July 2, 1864, was in reality supplementary to the captured and abandoned property act of March 3, 1863, and was for the purpose of enabling citizens in insurrectionary territory to dispose of their cotton to the government and thus not be compelled to submit to its seizure. Id.

3. **"Owners" within statute—Proof of ownership.**—Treasury agents' reports concerning ownership of cotton seized are not conclusive against the claim of others that they are the real owners. Basch v. U. S., 52 Ct. Cl. 134.

4. **Jurisdiction.**—Under this section Court of Claims has no jurisdiction to award to claimant proceeds of cotton seized under Act March 3, 1863, where cotton had been sold to Confederate States of America and payment had been made in bonds, though seller retained possession of cotton until seizure, and at that time bonds had become worthless, because of fall of Confederacy. Thompson v. U. S., 38 S. Ct. 349, 246 U. S. 547, 62 L. Ed. 876, affirming judgment 51 Ct. Cl. 510.

This section cannot be deemed to give the Court of Claims jurisdiction to award the proceeds of cotton seized under the Abandoned Property Act, where cotton had been sold to Confederacy and payment in bonds received, on theory that, if not so construed, section would have no effect. Id.

7. **Pleadings and proof.**—Requisites of petitions in suits under this section for proceeds of captured or abandoned property stated. Basch v. U. S., 52 Ct. Cl. 134.

Proof of incorporation of plaintiff corporation in a suit under this section for the proceeds of captured or abandoned property is unnecessary, in the absence of a plea of nul tiel corporation. Id.

Where corporate books were seized and have been in the custody of the United States for over 50 years, they are admissible as ancient documents as a link in the chain proof of ownership in a suit under this section. Id.

8. **Loyalty.**—To sustain a suit under this section for proceeds of captured or abandoned property, brought by an importing company's receiver it is sufficient that the company be one of "those whose cotton was taken," though it may have been a "blockade-running company," but plaintiff must prove ownership at the time of seizure. Basch v. U. S., 52 Ct. Cl. 134.

9. **Relief awarded.**—The net proceeds in the treasury of the sales of cotton must be the limit of recovery, regardless of the number of bales that may have been seized. Basch v. U. S., 52 Ct. Cl. 134.

§ 1154. (Jud. Code, § 163.) Commissioners to take testimony.

See The Pile Driver No. 2 (C. C. A.) 239 F. 489.

§ 1155. (Jud. Code, § 164.) Power to call upon departments for information.

See The Pile Driver No. 2 (C. C. A.) 239 F. 489.

Authority and duty of departmental heads.—Where the official files of a department of the government will throw light on the actions, conduct, and requirements of government agents in their dealings with a government contractor, the documentary evidence ought to be supplied, in order that the court may do justice between the contractor and the government. Robinson v. U. S., 50 Ct. Cl. 159.

It appears throughout the entire existence of this court that it has been deemed necessary by Congress that the court should have power to obtain the essential information from the various departments of the government to enable it intelligently to adjudicate the matters coming before it, and, if the exercise of this power by the court be essential to the proper adjudication of the cases, no less is it important for the various departments to comply with the calls so made. Id.

Experimenting upon the court by withholding evidence called for at the instance of the opposite party, and later produce it when it would be to the

advantage of the party out of whose possession it comes, would have results never contemplated when Congress provided that calls should be made upon the department for matter contained in its official records. Id.

Evidence.—Where a party without just reason, after notice to produce papers given by an opposite party, refuses to produce the necessary documents, secondary evidence of their contents becomes admissible, and it would be the court's duty, under the rules of evidence, to admit secondary evidence upon refusal of officers of the government to furnish original and competent evidence in its possession. Robinson v. U. S., 50 Ct. Cl. 159.

When it was agreed by the respective attorneys that certain papers selected by them from a departmental file should be filed in court, the objection that the papers so filed and printed were not certified under the seal of the Interior Department comes too late after said action in the absence of any question as to their genuineness or any showing that they were filed through improvidence, mistake, or fraud. United States Fidelity & Guaranty Co. v. U. S., 50 Ct. Cl. 316.

§ 1156. (Jud. Code, § 165.) When testimony not to be taken.

Cited without definite application,
E. W. Bliss Co. v. U. S., 53 Ct. Cl. 47.

§ 1157. (Jud. Code, § 166.) Examination of claimant.

Construction and operation in general.—In congressional reference proceeding, regardless of whether the court may, under this section, order examination of parties on its own motion, such section confers a privilege upon the United States, which may be availed of by them. Atlantic Works v. U. S., 50 Ct. Cl. 16.

§ 1159. (Jud. Code, § 168.) Witnesses before commissioners.

Report as to witnesses refusing to answer.—Where a witness refuses to answer a question, unless it comes within the exception of which he may avail himself, the commissioner should report the facts, with the style of the cause and the name and address of the witness, to the court for such action as it may deem appropriate. United States Fidelity & Guaranty Co. v. U. S., 50 Ct. Cl. 316.

§ 1163. (Jud. Code, § 172.) Claims forfeited for fraud.

Cited without definite application,
Atlantic Works v. U. S., 50 Ct. Cl. 16.

§ 1168. (Jud. Code, § 177.) No interest on claims.

Time for and manner of computation of interest.—Under Act June 16, 1880, §§ 1, 5, 6, amendatory Act March 3, 1881, and in view of Rev. St. § 1091 (Comp. St. 1916, § 1168), held that where bonds provided for by Act June 20, 1874, and devoted to satisfaction of claim against District of Columbia were insufficient to fully satisfy judgment, and claim was not based on contract providing for interest, Court of Claims properly directed payment of interest only from rendition of judgment. Sheckels v. District of Columbia, 38 S. Ct. 322, 246 U. S. 338, 62 L. Ed. 761.

§ 1169. (Jud. Code, § 178.) Effect of payment of judgment.

Additional allowance.—Where a claim presented for less than the amount thereof is allowed and accepted, plaintiff cannot thereafter secure an additional allowance, unless there be a valid excuse for not presenting the whole account, as in case of fraud or mistake, or want of jurisdiction in the accounting officers. Baltimore & O. R. Co. v. U. S., 52 Ct. Cl. 468.

Waiving former contention.—Where a railroad originally bases its claim on the contention that the United States was not entitled to a party rate because it did not pay cash, it cannot subsequently waive this contention and sue on the basis of an adjustment rate, nor can an error of counsel as to the issue presented furnish ground for a new trial. Louisville & N. R. Co. v. U. S., 52 Ct. Cl. 299.

CHAPTER EIGHT—THE COURT OF CUSTOMS APPEALS

§ 1179a. (Act Feb. 25, 1919, c. 29, § 5.) Court; judges; salaries. The judges of the United States Court of Customs Appeal shall receive salaries equal in amount to the salaries provided by this Act to be paid judges of the Circuit Court of Appeals of the United States, payable monthly from the Treasury. (40 Stat. 1157.)

This section is § 5 of an act entitled "An act to amend an act entitled 'An act to codify, revise, and amend the laws relating to the judiciary,' approved March third, nineteen hundred and eleven," cited above. Section 7 of said Act provides that the act shall take effect and be in force on and after the first day of the month next following its approval.

For salaries of judges of Circuit Court of Appeals, see ante, § 1109.

§ 1189. (Jud. Code, § 198.) Appeals from Board, etc.

6½. **Presentation of questions before board of appraisers.**—When originating in this court, an objection to the sufficiency of a protest comes too late. U. S. v. Tappenbeck, 7 Ct. Cust. App. 17.

A claim for classification originating in appellant's brief in this court, not specified in the exceptions, and not raised before and presented to the Board of United States General Appraisers, is not entitled to the consideration of this court. U. S. v. McGibbon & Co., 7 Ct. Cust. App. 290.

9. **"Competent evidence" within statute.**—A British tariff regulation, quoted and referred to in brief of counsel, but not offered or received in evidence, cannot be considered as evidence. U. S. v. Monsanto Chemical Co., 7 Ct. Cust. App. 340.

10. **Jurisdiction and power of court in general.**—The Court of Customs Appeals has no jurisdiction to review the action of the Board of General Appraisers in dismissing an appeal to reappraisement on the ground that the appeal was not signed. U. S. v. Loeb & Schoenfeld Co., 7 Ct. Cust. App. 380.

12. **Conclusiveness of decisions of board of general appraisers and review thereof.**—In order to warrant a reversal of a decision of the Board of United States General Appraisers this court must be satisfied that its finding is wholly without evidence to support it or that it was clearly contrary to the weight of the evidence. U. S. v. Mills & Gibb, 7 Ct. Cust. App. 388.

Mandamus to Court of Customs Appeals.—Supreme Court's authority to issue writ of mandamus to Court of Customs Appeals held not broadened by fact that the law made the decision of the Court of Customs Appeals final. Ex parte Park & Tilford, 38 S. Ct. 15, 245 U. S. 82, 62 L. Ed. 164.

Where Court of Customs Appeals had already decided appeal on ground that discretion of Secretary of Treasury under Act Oct. 3, 1913, c. 16, § 3, par. I, could not be reviewed, held, that mandamus would not lie to compel a decision on the merits. Id.

CHAPTER TEN—THE SUPREME COURT

Sec.
1207. Terms.
1210. Original jurisdiction.
1211. Writs of prohibition and mandamus.
1213. Appellate jurisdiction.
1214. Writs of error from judgments and decrees of State courts; certiorari, etc.
1215. Appeals and writs of error from United States district courts.
1216. Circuit court of appeals may certify questions to Supreme Court for instructions.
1217. Certiorari to circuit court of appeals.
1218. Appeals and writs of error in other cases.
1219. Appeals from Court of Claims.
1220. Time and manner of appeals from the Court of Claims.
1221. (Jud. Code, § 244. Repealed.)
1222. Writs of error and appeals from the Supreme Courts of Arizona and New Mexico.
1223. Writs of error and appeals from the Supreme Court of Hawaii and the Supreme Court of Porto Rico.
1225a. Appeals and writs of error from the Supreme Court of the Philippine Islands.
1227. Appeals and writs of error from the Court of Appeals of the District of Columbia.
1228. Certiorari to Court of Appeals, District of Columbia.
1228a. Appellate jurisdiction; time for application.
1229. Appellate jurisdiction under the bankruptcy act.

§ 1207. (Jud. Code, § 230, as amended, Act Sept. 6, 1916, c. 448, § 1.) Terms.

Cited without definite application, Southern Pacific Co. v. Jensen, 37 S. Ct. 524, 61 L. Ed. 1086, L. R. A. 1918C, 451, Ann. Cas. 1917E, 900.

§ 1210. (Jud. Code, § 233.) Original jurisdiction.

7. Actions by or against states.—Elementary rule that judicial power essentially involves right to enforce results of its exertion applies to judgments rendered in suits between states, of which Supreme Court has original jurisdiction. Commonwealth of Virginia v. State of West Virginia, 38 S. Ct. 400, 246 U. S. 565, 62 L. Ed. 883.

On proceedings by commonwealth of Virginia for enforcement against state of West Virginia of judgment requiring payment of money rendered by Supreme Court, authority of court to render judgment is concluded, and cannot be reopened. Id.

Where commonwealth of Virginia, having recovered judgment for money against state of West Virginia, which was unsatisfied, sought its enforcement, Supreme Court, in view of character of parties, having announced its authority to enforce judgment, will not determine appropriate remedy, but will reserve that question. Id.

Leave will be denied a state to file an original bill in the Supreme Court of the United States against another state and others; it not being entitled to the only effective relief sought, to enjoin further administration by the courts of defendant state of the estate of a decedent resident of plaintiff, who died leaving personal property in defendant state, which under its statutes are there subject to probate proceedings and inheritance taxes. State of Iowa v. Slimmer, 39 S. Ct. 33, 63 L. Ed. —.

8. —— Boundaries between states.—Cases involving the location of a boundary between two states had no effect as judicial determinations of the boundary line as against one of the states which was a stranger to the record in both cases. State of Arkansas v. State of Tennessee, 38 S. Ct. 301, 246 U. S. 158, 62 L. Ed. 638, L. R. A. 1918D, 258.

12. Equity jurisdiction — Costs.—See Oregon & C. R. Co. v. U. S., 37 S. Ct. 443, 243 U. S. 549, 61 L. Ed. 890.

§ 1211. (Jud. Code, § 234.) Writs of prohibition and mandamus.

See notes under § 1239.

I. PROHIBITION

10½. Parties.—Parties becoming colibelants in admiralty case pending, by an order beyond the jurisdiction of the judge to make, may not, on failure of judge to make return to rule to show cause why prohibition should not issue, be treated as respondents and permitted to file return. In re Indiana Transp. Co., 37 S. Ct. 126, 242 U. S. 281, 61 L. Ed. 301.

II. MANDAMUS

(A) Jurisdiction to issue writ and nature and grounds in general

13. Jurisdiction and authority to issue writ.—Supreme Court's authority to issue writ of mandamus to Court of Customs Appeals held not broadened by fact that the law made the decision of the Court of Customs Appeals final. —Ex parte Park & Tilford, 38 S. Ct. 15, 245 U. S. 82, 62 L. Ed. 164.

14. Discretion of court in granting writ.—Mandamus is an extraordinary remedial process which is not awarded as a matter of right, but in the exercise of a sound judicial discretion. Duncan Townsite Co. v. Lane, 38 S. Ct. 99, 245 U. S. 308, 62 L. Ed. 309, affirming judgment Lane v. Duncan Townsite Co., 44 App. D. C. 63.

16. Existence and adequacy of other remedy.—Refunding Act of 1878, as to levy and collection of taxes by circuit court or judge when county court fails in its duty, having been held void by Kentucky decisions, it does not afford a remedy which will prevent mandamus to compel levy by county court. Hendrickson v. Apperson, 38 S. Ct. 44, 245 U. S. 105, 62 L. Ed. 178, affirming judgment 238 F. 473, 151 C. C. A. 409; Same v. Creager, 38 S. Ct. 46, 245 U. S. 115, 62 L. Ed. 185, affirming judgment Same v. Apperson, 238 F. 473, 151 C. C. A. 409.

Where a suit is one which may be revived, revivor in the name of the proper party on the death of one of the original parties is a matter of right, and if it be denied, denial may be reviewed and corrected on appeal, so that mandamus will not lie. Ex parte Slater, 38 S. Ct. 265, 246 U. S. 128, 62 L. Ed. 621.

(B) Acts and proceedings of federal courts and judges

17. Exercise of judicial powers in general.—Mandamus is proper remedy where federal district court has exceeded its power by suspending sentence to imprisonment indefinitely during good behavior. Ex parte U. S., 37 S. Ct. 72, 242 U. S. 27, 61 L. Ed. 129, L. R. A. 1917E, 1178, Ann. Cas. 1917B, 355.

Where on conflicting motions for revivor in case in which one of original parties had died, court, after full hearing in regular course, granted one and denied the other, there was an exer-

cise of jurisdiction, and the defeated applicant is not entitled to mandamus to review the same. Ex parte Slater, 38 S. Ct. 265, 246 U. S. 128, 62 L. Ed. 621.

19. Entertaining and proceeding with cause.—As an order transferring to the equity side of the District Court a count in a complaint seeking damages for breach of a contract to bequeath a sum certain may be regarded as a denial of the court's jurisdiction over the cause of action, mandamus is a proper remedy to require the court to proceed and give plaintiff her right to a trial at common law. In re Simons, 38 S. Ct. 497, 247 U. S. 231, 62 L. Ed. 1094.

23. Removal of causes.—Refusal of federal District Court in New York to remand cause removed to that court from state court of New Hampshire may not be reviewed by mandamus. Ex parte Park Square Automobile Station, 37 S. Ct. 732, 244 U. S. 412, 61 L. Ed. 1231.

25. Making up records and entering judgments.—Where Court of Customs Appeals had already decided appeal on ground that discretion of Secretary of Treasury under Act Oct. 3, 1913, c. 16, § 3, par. I, could not be reviewed, held, that mandamus would not lie to compel a decision on the merits. Ex parte Park & Tilford, 38 S. Ct. 15, 245 U. S. 82, 62 L. Ed. 164.

(E) Procedure

32. Parties.—Where, in obedience to direction of court clerk of Circuit Court of Appeals declined, without deposit to secure costs as required, to file record of appeal by seamen from a decree dismissing their libel to enforce payment of wages, and such seamen applied to the Supreme Court for a writ of mandamus against clerk, that tribunal may disregard fact that clerk only was a technical party, and in the exercise of a sound discretion determine propriety of order. In re Abdu, 38 S. Ct. 447, 247 U. S. 27, 62 L. Ed. 966.

§ 1213. (Jud. Code, § 236.) Appellate jurisdiction.

Mode of review.—Appeal, not writ of error, is proper mode in reviewing in federal Supreme Court decree of Supreme Court of Philippine Islands in a suit by a wife for divorce, alimony, and division of property. De La Rama v. De La Rama, 36 S. Ct. 518, 241 U. S. 154, 60 L. Ed. 932.

Appeal is a proper method of reviewing, in federal Supreme Court, under Act July 1, 1902, § 10, a decree of the Supreme Court of the Philippine Islands in equity suit. Montelibano v. La Compania General De Tabacos De Filipinas, 36 S. Ct. 617, 241 U. S. 455, 60 L. Ed. 1099.

§ 1214. (Jud. Code, § 237, as amended, Act Dec. 23, 1914, c. 2, and Act Sept. 6, 1916, c. 448, § 2.) Writs of error from judgments and decrees of State courts; certiorari, etc.

I. CONSTITUTIONALITY AND CONSTRUCTION AND OPERATION IN GENERAL

8. Constitution or laws of the United States—"Highest court of a state" defined.—Writ of error to superior court of Ohio will be dismissed, where judgment of such court has been affirmed by the Court of Appeals of that state, with order that the superior court shall carry this judgment into execution, as a writ should have been directed to the Court of Appeals where state Supreme Court has refused to require Court of Appeals to certify record to it for review. Second Nat. Bank of Cincinnati, Ohio, v. First Nat. Bank of Okeana, Ohio, 37 S. Ct. 236, 242 U. S. 600, 61 L. Ed. 518.

Court of Appeals of Ohio held the highest court of the state within which decision could be had within Judicial Code, § 237, governing writs of error to state courts, where it denied application to direct Court of Appeals to certify the record for review. Cuyahoga River Power Co. v. Northern Realty Co., 37 S. Ct. 643, 244 U. S. 300, 61 L. Ed. 1153.

A judgment of a state trial court within a class as to which power of national Supreme Court to review by writ of error was taken away, and authority to review on certiorari was substituted, by Act Sept. 6, 1916, § 2, was not within the exception of a judgment rendered before the act became operative; it not being till thereafter that the state Court of Appeals refused to exercise its discretionary power of review, rendering the trial court's judgment a final judgment of the court of last resort of the state, which alone can be reviewed. Andrews v. Virginian Ry. Co., 39 S. Ct. 101, 63 L. Ed. —.

Where federal statutes under which recovery was sought were not alleged to be invalid, Springfield Court of Appeals had jurisdiction, in view of Const. Mo. 1875, art. 6, § 12, and Amendment 1884, § 5, since Court of Appeals was highest court where decisions could have been had and its judgment was reviewable by the United States Supreme Court under this section. Mitchell v. Joplin Nat. Bank (Mo.) 201 S. W. 903.

II. CHARACTER OF DECISIONS AND QUESTIONS REVIEWABLE

14. Final judgments or decrees.—See George A. Fuller Co. v. Otis Elevator Co., 38 S. Ct. 180, 62 L. Ed. 422.

The judgment of a state court, awarding mandamus to enforce an or-

der of the state railway commission directing it to relay rails removed from a logging spur and to resume service thereon on execution of an indemnity bond in case the order should be vacated in a pending suit in equity, is final under Judicial Code, § 237. Detroit & M. Ry. Co. v. Michigan R. R. Commission, 36 S. Ct. 424, 240 U. S. 564, 60 L. Ed. 802, affirming judgment Michigan R. Commission v. Detroit & M. Ry. Co., 144 N. W. 696, 178 Mich. 230.

Re-enactment in Act Sept. 6, 1916, respecting review of judgments of state courts, of requirements of finality, held an adoption of the construction previously prevailing. Bruce v. Tobin, 38 S. Ct. 7, 245 U. S. 18, 62 L. Ed. 123, denying certiorari Tobin v. Bruce (S. D.) 162 N. W. 933.

34. Determination of controversy—Remanding on reversal or affirmance or dismissal of appeal.—Judgment of highest state court, affirming on certiorari judgment that petitioner was entitled under Const. Wash. art. 1, § 16, and Laws 1913, c. 133, to condemn land for private way, is not final as to review by federal Supreme Court, where it remanded cause for assessment of damages. State of Washington ex rel. Grays Harbor Logging Co. v. Coats-Fordney Logging Co., 37 S. Ct. 295, 243 U. S. 251, 61 L. Ed. 702, dismissing writ of error State v. Superior Court of Chehalis County, 144 P. 722, 82 Wash. 503.

Under Act Sept. 6, 1916, judgment of state Supreme Court, reversing judgment of trial court and directing a new trial, held not reviewable by certiorari, though state Supreme Court determined the ultimate rights of the parties. Bruce v. Tobin, 38 S. Ct. 7, 245 U. S. 18, 62 L. Ed. 123, denying certiorari Tobin v. Bruce (S. D.) 162 N. W. 933.

35. Real or frivolous federal questions.—Contention that municipal ordinance subjecting business of private detective to police supervision offends due process of law clause of Const. U. S. Amend. 14, is not so frivolous as not to serve as basis of writ of error to a state court. Lehon v. City of Atlanta, 37 S. Ct. 70, 242 U. S. 53, 61 L. Ed. 145, affirming judgment 84 S. E. 608, 16 Ga. App. 64.

Contention that owner of shipment or his authorized agent may act so that judgment in action against carrier is res judicata is meant by words "lawful holder" in provisions of Carmack Amendment of June 29, 1906, § 7, pars. 11 and 12, to Act Feb. 4, 1887, § 20 (U. S. Comp. St. 1916, § 8604a), providing that common carrier shall be liable to lawful holder of bill of lading for injury to freight, is not frivolous. Pennsylvania R. Co. v. Olivit Bros., 37 S. Ct. 468, 243 U. S. 574, 61 L. Ed. 908, affirming judgment Olivit Bros. v. Pennsylvania R. Co., 96 A. 589, 88 N. J Law, 376.

36. Decision of federal question presented.—Federal questions not presented in state court and not necessary to determination of cause will not be reviewed by United States Supreme Court. In re Thompson, 102 A. 303, 116 Me. 473.

37. Nature of decisions reviewable in general.—Writ of error lies to federal Supreme Court from the highest state court where decree of a federal court was an element in the decision against plaintiff in error. Donohue v. Vosper, 37 S. Ct. 350, 243 U. S. 59, 61 L. Ed. 592, affirming decree (Mich.) 155 N. W. 407.

38. Decisions founded on federal or nonfederal grounds.—Order of Supreme Court dismissing for want of jurisdiction writ of error to Court of Appeals, declaring that there was no question under the state or federal Constitution involved, held broad enough to sustain the judgment irrespective of the merits of the federal question involved. Cuyahoga River Power Co. v. Northern Realty Co., 37 S. Ct. 643, 244 U. S. 300, 61 L. Ed. 1153.

39. —— Decisions reviewable because not sustained on nonfederal ground.—A decision of the state court upholding a paving assessment levied on a street railway company is reviewable in the federal Supreme Court on the ground that the ordinance fixing the obligation impaired contract rights, though the state court's opinion may be construed as asserting that the duty to pave was imposed by the railway company's franchise alone. Southern Wisconsin Ry. Co. v. City of Madison, 36 S. Ct. 400, 240 U. S. 457, 60 L. Ed. 739, affirming judgment City of Madison v. Southern Wisconsin Ry. Co., 146 N. W. 492, 156 Wis. 352.

40. —— Decisions sustained on nonfederal ground and not reviewable.—Decision of Supreme Court of state adverse to contention that under due process of law and equal protection of law clauses of Const. U. S. Amend. 14, adjudication of state board of irrigation as to diversion through a canal of water from stream was not binding on those claiming under other appropriations, held not reviewable on writ of error, where court also decided that canal company was entitled to prevail on the ground of estoppel. Enterprise Irr. Dist. v. Farmers' Mut. Canal Co., 37 S. Ct. 318, 243 U. S. 157, 61 L. Ed. 644, dismissing writ of error Same v. Tri-State Land Co., 138 N. W. 171, 92 Neb. 121.

In suit on tax bill against property which city had condemned, decision of state Supreme Court that city was not liable on the tax bill or in tort to an assignee of the tax bill held not reviewable, as it rested upon general law adequate to support it independent of decision under Const. Amend. 14. Municipal Securities Corp. v. Kansas City,

38 S. Ct. 224, 246 U. S. 63, 62 L. Ed. 579, dismissing writ of error 177 S. W. 856, 265 Mo. 252.

Where Supreme Court of Oklahoma, in affirming judgment denying probate to alleged will of full-blood Creek Indian, based its determination on nonfederal ground sufficient to support it, Supreme Court of United States will not review judgment on writ of error, on ground that validity of will was governed by laws of United States. Bilby v. Stewart, 38 S. Ct. 264, 246 U. S. 255, 62 L. Ed. 701, dismissing writ of error (Okl.) 153 P. 1173.

Writ of error to state court, based on a federal question being involved, because of a contract authorizing sale of land belonging to the United States covered by an inchoate homestead entry, will be dismissed; the state court, on sufficient evidence, expressly finding that such land was not included in the contract. King v. Putnam Inv. Co., 39 S. Ct. 15.

Even if the state Supreme Court decided a federal question adversely to plaintiffs in error, it will not be considered, but writ of error to that court will be dismissed; it having also decided against them on an independent ground broad enough to support the judgment, and based wholly on state statutes and procedure, that the cross-complaint presenting the federal question was premature, and immaterial to the question presented by the petition, and should have been stricken. Petrie v. Nampa & Meridian Irr. Dist., 39 S. Ct. 25, 63 L. Ed. —.

41. Construction of United States statutes and denial of rights thereunder.—Federal Supreme Court has jurisdiction of writ of error to a state court in a suit turning on construction of an act of Congress incorporating defendant and under which it justifies. Supreme Lodge, K. of P. v. Mims, 36 S. Ct. 702, 241 U. S. 574, 60 L. Ed. 1179, reversing judgment (Tex. Civ. App.) 167 S. W. 835.

Decision of the highest state court, denying relief under New Jersey workmen's compensation act for drowning in navigable waters, holding that Act Oct. 6, 1917, § 1 (ante, § 991 [3]), saving to claimants rights and remedies under the workmen's compensation law of any state, was inapplicable, being passed after the accident, and that the rights of parties depended on the maritime laws, held not one allowing review by the national Supreme Court, on writ of error, under this section. Coon v. Kennedy, 39 S. Ct. 146, 63 L. Ed. —.

42. Validity of treaties and denial of rights thereunder.—Validity of treaty is not drawn in question, so as to allow, under this section, review of decision of state court by writ of error, but the remedy is by certiorari, decision being merely as to special construction of treaty as giving a consul certain power, under which a right is claimed. Erie R. Co. v. Hamilton, 39 S. Ct. 95, 63 L. Ed. —.

43. Decisions in favor of or against authority exercised under United States or officers thereof.—A right under a federal statute was claimed and decided against within this section, in action against initial carrier of interstate shipment to recover for negligence of connecting carrier and itself, brought since the Carmack Amendment (U. S. Comp. St. 1916, § 8604a), where defendant carrier pleaded breach of obligation in bill of lading to report claims to terminal carrier within a certain time after notice of arrival, and the state court deciding that a bill of lading would be controlling in the absence of special facts found as to verbal notice to terminal carrier. St. Louis, I. M. & S. Ry. Co. v. Starbird, 37 S. Ct. 462, 243 U. S. 592, 61 L. Ed. 917, modifying judgment 177 S. W. 912, 118 Ark. 485.

Refusal of the highest court of the state to pass on question whether Employers' Liability Act April 22, 1908 (U. S. Comp. St. 1916, § 8604a), should not have been applied to the action, held not reviewable in federal Supreme Court. Missouri Pac. Ry. Co. v. Taber, 37 S. Ct. 522, 244 U. S. 200, 61 L. Ed. 1082, dismissing writ of error Taber v. Missouri Pac. Ry. Co. (Mo.) 186 S. W. 688.

Refusal of highest state court to interfere with discretion of trial court in refusing to permit answer to be amended, so as to show that no tariff rate for special trains had been filed, is not a denial of a federal right which federal Supreme Court can review on writ of error, where the cause had been pending some months. Nevada-California-Oregon Ry. v. Burrus, 37 S. Ct. 576, 244 U. S. 103, 61 L. Ed. 1019, dismissing writ of error Burrus v. Nevada-California-Oregon Ry., 145 P. 926, 38 Nev. 156.

44. Construction or validity of state constitutions and statutes in general.—Whether state, so far as it had the power, had by amendment vested part of the legislative power in the people by reserving a right to approve or disapprove laws enacted by the General Assembly, is a question of state law not determinable by federal Supreme Court on writ of error. State of Ohio ex rel. Davis v. Hildebrant, 36 S. Ct. 708, 241 U. S. 565, 60 L. Ed. 1172.

On writ of error to a state court, the validity of a state statute, under the state Constitution, is not open to consideration in the federal Supreme Court. Crane v. Campbell, 38 S. Ct. 98, 245 U. S. 304, 62 L. Ed. 304, af-

firming judgment Ex parte Crane, 151 P. 1006, 27 Idaho, 671.

III. PARTICULAR CLASSES OF DECISIONS REVIEWABLE AS INVOLVING FEDERAL QUESTIONS

48½. Boundaries between states.—Where state Supreme Court's decision turned upon various treaties and acts of Congress establishing interstate boundary line, federal question is involved, conferring jurisdiction on federal Supreme Court to review decision. Cissna v. State of Tennessee, 38 S. Ct. 306, 246 U. S. 289, 62 L. Ed. 720, reversing judgment State v. Muncie Pulp Co., 104 S. W. 437, 119 Tenn. 47.

Whether two states, by long acquiescence in practical location of their common boundary, or by other agreement, had definitely fixed or changed boundary fixed by federal treaties or statutes, is federal question. Id.

50. Common law.—Whether cancellation of land contract is governed by the law of the situs, or the place of making and performance, is a question of local common law, not reviewable on writ of error to a state court. Kryger v. Wilson, 37 S. Ct. 34, 242 U. S. 171, 61 L. Ed. 229, affirming judgment Wilson v. Kryger, 149 N. W. 721, 29 N. D. 28.

55. Denying faith and credit to constitution or statute of another state or territory.—Where it was claimed that full faith and credit was denied a foreign judgment by permitting recovery on insurance certificate, if unpaid assessment was excessive, court's reference to fact that directors did not levy assessment, as a makeweight, held to add nothing to the substantial basis of the decision. Hartford Life Ins. Co. v. Barber, 38 S. Ct. 54, 245 U. S. 146, 62 L. Ed. 208, reversing judgments Barber v. Hartford Life Ins. Co., 187 S. W. 867, 269 Mo. 21, and 187 S. W. 874.

58. Denying faith and credit to records, judgments, and proceedings of other states and territories.—Something more than mere error in construing statutes of a sister state is necessary to sustain claim that there has been denial of full faith and credit required under Const. art. 4, § 1. Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill. Co., 37 S. Ct. 344, 243 U. S. 93, 61 L. Ed. 610, affirming judgment Gold Issue Min. & Mill. Co. v. Pennsylvania Fire Ins. Co. of Philadelphia, 184 S. W. 999, 267 Mo. 524.

Where decision of state court is challenged as not giving proper credit to decree of another state, motion to dismiss held not to lie on ground that decree was given value given it by the statutes of the state in which it was rendered; this being the question in controversy. Bates v. Bodie, 38 S. Ct. 182, 245 U. S. 520, 62 L. Ed. 444, L. R. A. 1918C, 355, reversing judgment Bodie v. Bates, 156 N. W. 8, 99 Neb. 253.

61. Due process of law and equal protection of laws.—Const. Amend. 14, guaranteeing due process of law and equal protection of the laws, does not convert an issue as to jurisdiction of a state court into anything other than a question of state law, the decision of which is binding on the federal Supreme Court. Gasquet v. Lapeyre, 37 S. Ct. 165, 242 U. S. 367, 61 L. Ed. 367, dismissing writ of error Interdiction of Gasquet, 68 So. 89, 136 La. 957.

Contention that state Supreme Court misconceived the statute and common law of state, infringing due process of law and equal protection of the law clauses of Const. U. S. Amend. 14, presents no federal question. Enterprise Irr. Dist. v. Farmers' Mut. Canal Co., 37 S. Ct. 318, 243 U. S. 157, 61 L. Ed. 644, dismissing writ of error Same v. Tri-State Land Co., 138 N. W. 171, 92 Neb. 121.

Decision of highest state court sustaining condemnation proceeding, where owners asserted that it would be taking of property without due process of law contrary to Const. Amend. 14, is reviewable in federal Supreme Court. Hendersonville Light & Power Co. v. Blue Ridge Interurban Ry. Co., 37 S. Ct. 440, 243 U. S. 563, 61 L. Ed. 900, affirming judgment Blue Ridge Interurban Ry. Co. v. Hendersonville Light & Power Co., 88 S. E. 245, 171 N. C. 314.

Judgment of Oregon court of last resort, holding that order of county court directing sale of lands of decedent to pay debts, made under L. O. L. §§ 1252–1270, was not subject to collateral attack by nonresident heirs, though statutory requirement as to time of hearing was not observed, and heirs asserted that to sustain validity of sale would deprive them of their property without due process, in violation of Const. U. S. Amend. 14, does not involve validity of treaty or statute of United States, or statute of or authority exercised under state; hence writ of error to review such judgment will not lie, under this section as amended. Stadelman v. Miner, 38 S. Ct. 359, 246 U. S. 544, 62 L. Ed. 875, dismissing writ of error 163 P. 983, 83 Or. 348, which affirmed on second rehearing 163 P. 585, 83 Or. 348, which reversed on rehearing 155 P. 708, 83 Or. 348.

Where property owner contended that judgment of state court allowing benefits to be set off against his claim for damages to realty resulting from construction and operation of an elevated railroad deprived him of his property without due process of law in violation of Fourteenth Amendment, question for national Supreme Court is

not whether rule adopted by the state was best supported by reason, but whether a fundamental right was denied. McCoy v. Union Elevated R. Co., 38 S. Ct. 504, 247 U. S. 354, 62 L. Ed. 1156, affirming judgment 111 N. E. 517, 271 Ill. 490 and leave to file petition for rehearing granted 38 S. Ct. 581.

63. **Habeas corpus.**—A contention based on Const. art. 1, § 9, forbidding suspension of writ of habeas corpus, presents no federal question, since it is not restrictive of state, but only of federal, action. Gasquet v. Lapeyre, 37 S. Ct. 165, 242 U. S. 367, 61 L. Ed. 367, dismissing writ of error Interdiction of Gasquet, 68 So. 89, 136 La. 957.

64. **Impairment of obligations of contracts.**—Whether a municipal ordinance may be upheld without impairing an admitted contract is a federal question which will support the appellate jurisdiction of the Supreme Court over a state court, though a construction of the contract is necessary. Southern Wisconsin Ry. Co. v. City of Madison, 36 S. Ct. 400, 240 U. S. 457, 60 L. Ed. 739, affirming judgment City of Madison v. Southern Wisconsin Ry. Co., 146 N. W. 492, 156 Wis. 352.

Impairment of a contract by judicial decision does not raise a federal question, which can be reviewed by the federal Supreme Court on writ of error to a state court. Kryger v. Wilson, 37 S. Ct. 34, 242 U. S. 171, 61 L. Ed. 229, affirming judgment Wilson v. Kryger, 149 N. W. 721, 29 N. D. 28.

Decision of highest court of state refusing to recognize any property rights of the Long Sault Development Company in St. Lawrence river granted by Laws N. Y. 1907, c. 355, is not reviewable in federal Supreme Court on theory that contract obligations were impaired by effect given by state court to Laws N. Y. 1913, c. 452, where decision held the original grant unconstitutional. Long Sault Development Co. v. Call, 37 S. Ct. 79, 242 U. S. 272, 61 L. Ed. 294, dismissing writ of error Same v. Kennedy, 105 N. E. 849, 212 N. Y. 1, Ann. Cas. 1915D, 56.

Decision of the highest court of the state that reduced street railway fares must be given in territory annexed to Detroit by Acts Mich. June 16, 1905 (Loc. Acts 1905, No. 655), June 19, 1907 (Loc. Acts 1907, No. 665) and Oct. 24, 1907 (Acts [Ex. Sess.] No. 1), on lines operated under franchise theretofore acquired by railroad under Comp. Laws Mich. 1897, § 6448, held to sustain writ of error on ground that such franchises were protected by the contract clause of the federal Constitution so as to authorize a higher fare. Detroit United Ry. v. People of State of Michigan, 37 S. Ct. 87, 242 U. S. 238, 61 L. Ed. 268, reversing judgments People v. Detroit United Ry., 125 N. W. 700, 162 Mich. 460, 139 Am. St. Rep. 582 and City of Detroit v. Same, 139 N. W. 56, 173 Mich. 314.

Contention that opening of street through hospital grounds violated contract clause of federal Constitution held so devoid of merit as to justify dismissal for want of jurisdiction of writ of error to state court. Contributors to Pennsylvania Hospital v. City of Philadelphia, 38 S. Ct. 35, 245 U. S. 20, 62 L. Ed. 124, affirming decree 98 A. 1077, 254 Pa. 392.

Decision of state court that mandamus would not lie against county treasurer to enforce contract claim, but that remedy was by proceedings against different officers or the county, does not impair contract rights, so as to allow review by national court. Farson, Son & Co. v. Bird, 39 S. Ct. 111, 63 L. Ed.. —.

66. **Indian tribes, actions by or against.**—A ruling of the highest state court adverse to contention that deed from heir of a Chickasaw allottee was champertous is not reviewable in federal Supreme Court on writ of error. Gannon v. Johnston, 37 S. Ct. 330, 243 U. S. 108, 61 L. Ed. 622, affirming judgment 140 P. 430, 40 Okl. 695, Ann. Cas. 1915D, 522.

Holding of state court that purchaser had burden of showing that Indian allottee had heirs other than those executing deed under which vendor claimed, and that mere suggestion that there might be other heirs did not make title unmerchantable, held a matter of state law, with which the Supreme Court had no concern. Egan v. McDonald, 38 S. Ct. 223, 246 U. S. 227, 62 L. Ed. 680, affirming judgment 153 N. W. 915, 36 S. D. 92.

68. **Interstate commerce.**—Whether the liability of an interstate carrier under Act Feb. 4, 1887, as amended by Act June 29, 1906 (U. S. Comp. St. 1916, § 8604a), was changed to that of a warehouseman under a local law, casting the burden of proof upon a warehouseman in case of loss by fire, held a federal question supporting the appellate jurisdiction of the federal Supreme Court over a state court. Southern Ry. Co. v. Prescott, 36 S. Ct. 469, 240 U. S. 632, 60 L. Ed. 836, reversing judgment Prescott v. Southern Ry. Co., 83 S. E. 781, 99 S. C. 422.

Federal question sustaining writ of error from federal Supreme Court to a state court held involved by decision of latter court that an embargo, by which railroad at request of paper company refused to furnish cars to shippers to such paper company which it was bound to receive, violates Hepburn Act. Menasha Paper Co. v. Chicago & N. W. Ry. Co., 36 S. Ct. 501, 241 U. S. 55, 60 L. Ed. 885, affirming judgment Chicago & N. W. Ry. Co. v. Menasha Paper Co., 149 N. W. 751, 159 Wis. 508.

Construction of bill of lading for an

interstate shipment under Carmack Amendment (U. S. Comp. St. 1916, § 8604a), is a federal question. Georgia, F. & A. Ry. Co. v. Blish Milling Co., 36 S. Ct. 541, 241 U. S. 190, 60 L. Ed. 948, affirming judgment 82 S. E. 784, 15 Ga. App. 142.

A holding, that facts controlling in a suit for delay in delivery of interstate shipment in which carrier relied on interstate bill of lading as a defense must not be considered because bill of lading gives innocent purchaser greater rights than those enjoyed by the shipper, is a decision of a federal question. Atchison, T. & S. F. Ry. Co. v. Harold, 36 S. Ct. 665, 241 U. S. 371, 60 L. Ed. 1050, reversing judgment Harold v. Atchison, T. & S. F. Ry. Co., 144 P. 823, 93 Kan. 456.

Whether Congress has covered subject of headlights by amendment of March 4, 1915, to Boiler Inspection Act Feb. 17, 1911 (U. S. Comp. St. 1916, §§ 8639a–8639d), so as to invalidate order of state railroad commission when applied to interstate commerce as to headlights of engines, is not open to review, where the judgment refusing to enjoin enforcement of order was entered before passage of amendment. Vandalia R. Co. v. Public Service Commission of Indiana, 37 S. Ct. 93, 242 U. S. 255, 61 L. Ed. 276, affirming judgment Same v. Railroad Commission of Indiana, 101 N. E. 85, 182 Ind. 382.

Where defeated party insisted in highest state court on its rights under Interstate Commerce Act, § 8 (U. S. Comp. St. 1916, § 8572), an appeal lies on adverse decision to federal Supreme Court. Louisville & N. R. Co. v. Ohio Valley Tie Co., 37 S. Ct. 120, 242 U. S. 288, 61 L. Ed. 305, reversing judgment 170 S. W. 633, 161 Ky. 212.

The federal Supreme Court has jurisdiction of writ of error to state court to review decision adverse to contention that local freight rate between stations in the state is so related to through rates to place of shipment from districts outside the state as to exclude regulation by Illinois Public Utilities Commission. Chicago, M. & St. P. R. Co. v. State Public Utilities Commission of Illinois, 37 S. Ct. 173, 242 U. S. 333, 61 L. Ed. 341, affirming judgment 108 N. E. 729, 268 Ill. 49.

Judgment of highest court on ground of validity of stipulation in interstate through bill of lading may be reviewed in federal court on cross writ of error, where consignee asserts that Carmack amendment was violated by such stipulation. St. Louis, I. M. & S. Ry. Co. v. Starbird, 37 S. Ct. 462, 243 U. S. 592, 61 L. Ed. 917, modifying judgment 177 S. W. 912, 118 Ark. 485.

Case involving rights under interstate bills of lading issued under Carmack Amendment (U. S. Comp. St. 1916, § 8604a), is reviewable in federal Supreme Court on writ of error to state court. Gulf, C. & S. F. Ry. Co. v. Texas Packing Co., 37 S. Ct. 487, 244 U. S. 31, 61 L. Ed. 970, affirming judgment (Tex. Civ. App.) 172 S. W. 195.

The contention that a steamship company engaged in interstate commerce could not be subjected to Workmen's Compensation Act Ohio, May 31, 1911, without burdening such commerce, contrary to Const. art. 1, § 8, will not serve as basis of writ of error from federal Supreme Court. Valley S. S. Co. v. Wattawa, 37 S. Ct. 523, 244 U. S. 202, 61 L. Ed. 1084.

71. National banks.—Contention that, under National Bank Act, rules of directors of national bank did not empower cashier to sell shares of stock belonging to the bank, presents no federal question supporting appellate jurisdiction of federal Supreme Court. Union Nat. Bank v. McBoyle, 37 S. Ct. 370, 243 U. S. 26, 61 L. Ed. 570, dismissing writ of error McBoyle v. Union Nat. Bank, 142 P. 837, 168 Cal. 263.

80. Pleading and practice.—See Nevada-California-Oregon Ry. v. Burrus, 37 S. Ct. 576, 244 U. S. 103, 61 L. Ed. 1019, dismissing writ of error Burrus v. Nevada-California-Oregon Ry., 145 P. 926, 38 Nev. 156.

Whether a declaration, in an action against a railway company for death of an employé, permitted recovery at common law is a question of local law, in the absence of a showing that the injury came within the federal Employers' Liability Act (U. S. Comp. St. 1916, § 8657 et seq.) and is therefore not reviewable on error to a state court from the federal Supreme Court. Osborne v. Gray, 36 S. Ct. 486, 241 U. S. 16, 60 L. Ed. 865.

Whether two years' limitation prescribed by Employers' Liability Act was disregarded by permitting amendment to the complaint is a federal question subject to re-examination by writ of error. Seaboard Air Line Ry. v. Renn, 36 S. Ct. 567, 241 U. S. 290, 60 L. Ed. 1006, affirming judgment Renn v. Seaboard Air Line Ry., 86 S. E. 964, 170 N. C. 128.

Objection that copy of document sued on should have been filed with the declaration in a state court is not reviewable in federal Supreme Court on writ of error. Chicago Life Ins. Co. v. Cherry, 37 S. Ct. 492, 244 U. S. 25, 61 L. Ed. 966, affirming judgment Cherry v. Chicago Life Ins. Co., 190 Ill. App. 70.

Whether state Supreme Court should take judicial notice that principal river of the state is navigable at the state capital held a question of state law, and federal Supreme Court could not pronounce its action erroneous. Wear v. State of Kansas ex rel. Brewster, 38 S. Ct. 55, 245 U. S. 154, 62 L. Ed. 214, Ann. Cas. 1918B, 586, affirming judgment State ex rel. Dawson v. Akers.

140 P. 637, 92 Kan. 169, Ann. Cas. 1916B, 543.

Where action under federal Employers' Liability Act is tried in state court, questions purely of local practice are not reviewable by Supreme Court of United States on writ of error to highest state court. Louisville & N. R. Co. v. Holloway, 38 S. Ct. 379, 246 U. S. 525, 62 L. Ed. 867, affirming judgment Same v. Holloway's Adm'r, 181 S. W. 1126, 168 Ky. 262.

Where railroad company which had been notified of Missouri attorney's lien on his client's cause of action satisfied judgment in favor of client rendered in federal court in action brought by second attorney, enforcement of lien of first attorney given by Rev. St. Mo. 1909, §§ 964, 965, by action in state court against railroad company did not deprive it of any right guaranteed by United States Constitution or Statutes, so as to warrant review by National Supreme Court of state court's judgment on writ of error under this section as amended. Union Pac. R. Co. v. Laughlin, 38 S. Ct. 436, 247 U. S. 204, 62 L. Ed. 1073, dismissing writ of error Laughlin v. Union Pac. Ry. Co., 196 S. W. 398, 196 Mo. App. 541.

82. Public lands, entries thereon, and titles derived from state or United States.—Whether a person has acquired title by adverse possession to lands conveyed by United States to state in aid of railroad construction is a local question not open to review on writ of error to a state court. Donohue v. Vosper, 37 S. Ct. 350, 243 U. S. 59, 61 L. Ed. 592, affirming decree (Mich.) 155 N. W. 407.

A judgment of a state court holding certain school lands within a forest reservation subject to condemnation by a water company is reviewable in the federal Supreme Court, where opinion of state court shows that Rev. St. §§ 2275, 2276 (U. S. Comp. St. 1916, §§ 4860, 4861), giving right to select other lands in lieu of school sections, were basis for decision. State of California v. Deseret Water, Oil & Irrigation Co., 37 S. Ct. 394, 243 U. S. 415, 61 L. Ed. 821, reversing judgment Deseret Water Oil & Irr. Co. v. State, 138 P. 981, 167 Cal. 147.

83. Removal of causes to federal court.—Where District Court remanded cause to state court because jurisdictional amount was not involved, order of appellate state court affirming judgment denying motion to set aside removal to federal court is not subject to review in federal Supreme Court, being an attempt to review, contrary to Judicial Code, § 28 (U. S. Comp. St. 1916, § 1010), order of federal court remanding cause. Yankaus v. Feltenstein, 37 S. Ct. 567, 244 U. S. 127, 61 L. Ed. 1036.

84. Questions of fact.—On writ of error to state court the Supreme Court must examine the evidence to determine the validity of the claim that there was no substantial evidence that a defect in a power brake contributed to the death of an employé, as this presents a federal question of law. Union Pac. R. Co. v. Huxoll, 38 S. Ct. 187, 245 U. S. 535, 62 L. Ed. 455, affirming judgment Huxoll v. Union Pac. R. Co., 155 N. W. 900, 99 Neb. 170.

In action under federal Employers' Liability Act, tried in state court where judgment for plaintiff was affirmed by highest state tribunal, question of excessiveness of damages cannot be reviewed in federal Supreme Court on writ of error. Louisville & N. R. Co. v. Holloway, 38 S. Ct. 379, 246 U. S. 525, 62 L. Ed. 867, affirming judgment Same v. Holloway's Adm'r, 181 S. W. 1126, 168 Ky. 262.

86. Taxation and assessments.—Extent of authority of a city under its charter, the validity of its ordinances, and the rights of parties under assessment proceedings, are all state questions as to which decision of state court is controlling on federal Supreme Court. St. Louis & Kansas City Land Co. v. Kansas City, 36 S. Ct. 647, 241 U. S. 419, 60 L. Ed. 1072, affirming judgment Kansas City v. St. Louis & Kansas City Land Co., 169 S. W. 62, 260 Mo. 395.

Whether assessment of benefits in street widening proceedings on portion of one's property is an adjudication that the other portions were not benefited is a question of state law not reviewable on writ of error to a state court. Id.

Ruling of state court as to effect, as to curative proceeding to assess benefits, of a decree in a state court holding assessment void, does not present a federal question. Id.

Federal Supreme Court held to have nothing to do with consistency or inconsistency of state courts' decisions as to taxability of bank deposits in another state. Fidelity & Columbia Trust Co. v. City of Louisville, Ky., 38 S. Ct. 40, 245 U. S. 54, 62 L. Ed. 145, L. R. A. 1918C, 124, affirming judgments Ewald's Ex'r v. Same, 181 S. W. 1095, 168 Ky. 71, 188 S. W. 652, 171 Ky. 509, and 189 S. W. 438, 172 Ky. 451.

IV. PROCEDURE, RECORD, AND REVIEW

(A) *Presentation of federal question*

88. Necessity of raising federal question.—Federal questions not presented in state court and not necessary to determination of cause will not be reviewed by United States Supreme

Court. In re Thompson, 102 A. 303, 116 Me. 473.

89. Manner and time of presenting federal question in general.—To become basis of proceeding in error from United States Supreme Court to any state Supreme Court, "a right, privilege or immunity" claimed under a federal statute must have been "especially set up and claimed" and must have been denied, in view of Comp. St. 1916, § 1214. Atlantic Coast Line R. Co. v. Mims, 37 S. Ct. 188, 242 U. S. 532, 61 L. Ed. 476. See, also, Mo. Pac. Ry. Co. v. Taber, 37 S. Ct. 522, 244 U. S. 200, 61 L. Ed. 1082.

90. —— Federal question raised.—Plaintiffs suing directors of a national bank to recover deposits on the ground of false representations as to bank's financial condition held entitled to appeal to the federal Supreme Court from a judgment of the highest state court reversing the judgment in their favor in the trial court, though they did not base their action on Rev. St. § 5239 (Comp. St. 1916, § 9831), and the application of such statute was suggested by defendants' answer. Jones Nat. Bank v. Yates, 36 S. Ct. 429, 240 U. S. 541, 60 L. Ed. 788, reversing judgment 139 N. W. 844, 1135, 93 Neb. 121.

The question whether proper effect was given to Interstate Commerce Act, and its amendments, in interpreting bill of lading for interstate shipment, requiring notice of claims to be given to carrier's officers as excluding officers of connecting carriers, held fairly presented so as to sustain writ of error from federal Supreme Court. Northern Pac. Ry. Co. v. Wall, 36 S. Ct. 493, 241 U. S. 87, 60 L. Ed. 905, reversing judgment Wall v. Northern Pac. Ry. Co., 145 P. 291, 50 Mont. 122.

Where state Supreme Court treats federal questions as necessarily involved, decides them against plaintiff in error, and could not otherwise have reached same result, it is immaterial how questions were raised, in so far as Supreme Court's jurisdiction to review decision is concerned. Cissna v. State of Tennessee, 38 S. Ct. 306, 246 U. S. 289, 62 L. Ed. 720, reversing judgment State v. Muncie Pulp Co., 104 S. W. 437, 119 Tenn. 47.

91. —— Federal question not raised.—Refusal of state court, upheld by highest court of state, to admit testimony in support of claim under federal Employers' Liability Act April 22, 1908 (U. S. Comp. St. 1916, § 8657 et seq.), held not a denial of a federal right which the federal Supreme Court can review, where such claim was not asserted so as to call for its consideration by the highest state court. Atlantic Coast Line R. Co. v. Mims, 37 S. Ct. 188, 242 U. S. 532, 61 L. Ed. 476, dismissing writ of error Mims v. Atlantic Coast Line R. Co., 85 S. E. 372, 100 S. C. 375.

92. —— Appellate court.—Carrier which has abandoned application for modification of order of state railroad commission requiring headlights on locomotives cannot urge on writ of error to a state court that the order is so uncertain as to be a denial of due process of law. Vandalia R. Co. v. Public Service Commission of Indiana 37 S. Ct. 93, 242 U. S. 255, 61 L. Ed. 276, affirming judgment Same v. Railroad Commission of Indiana, 101 N. E. 85, 182 Ind. 382.

The claim that a state court denied a judgment of a sister state the credit to which it was entitled under Const. art. 4, § 1, and Rev. St. § 905 (Comp. St. 1916, § 1519), held not to serve as basis for writ of error to state court, where the effect of the judgment in the courts of the state where rendered was not raised below. Gasquet v. Lapeyre, 37 S. Ct. 165, 242 U. S. 367, 61 L. Ed. 367, dismissing writ of error Interdiction of Gasquet, 68 So. 89, 136 La. 957.

Objections that, in advance of determination by Interstate Commerce Commission as to whether routing was reasonable, state courts assumed jurisdiction of action to recover amount equal to that by which freight for shipments carried on interstate route between intrastate points exceeded intrastate rate, are available in Supreme Court, though first urged in state Supreme Court, where they were considered and overruled. Northern Pac. Ry. Co. v. Solum, 38 S. Ct. 550, 247 U. S. 477, 62 L. Ed. 1221, reversing judgments Solum v. Northern Pac. Ry. Co., 157 N. W. 996, 133 Minn. 93, and Monarch Elevator Co. v. Same, 157 N. W. 998, 133 Minn. 461, and dismissing writ of error Duluth Elevator Co. v. Same, 162 N. W. 1087, 136 Minn. 468.

93. —— After decision on appeal.—Claim that the case is governed by federal law, raised after the case had twice been passed on by state Supreme Court, is too late to allow of error to such court. Missouri, K. & T. Ry. Co. v. Sealy, 39 S. Ct. 97, 63 L. Ed. ——.

Petition for writ of error on ground that federal question sought to be raised did not exist until after filing of the court's opinion would be denied where opinion was within agreed statement of facts on which the case was tried, on a matter not material to decision. Wren v. Dixon (Nev.) 167 P. 324, denying petition for writ of error to the United States Supreme Court 161 P. 722.

94. —— On rehearing.—Objection that intervener holding bonds in suit to enjoin collection of drainage tax was not given opportunity to defend in violation of Const. U. S. Amend. 14, held raised in time to serve as basis of writ of error from the federal Supreme Court when first made in assignment of errors filed in state Supreme Court

on refusal to consider application for rehearing. Saunders v. Shaw, 37 S. Ct. 638, 244 U. S. 317, 61 L. Ed. 1163, reversing judgment Shaw v. Board of Com'rs of Bayou Terre-Aux-Boeufs Drainage Dist., 70 So. 910, 138 La. 917.

Where plaintiffs in error did not raise any federal question until their second petition for rehearing, after state Supreme Court had affirmed judgment on adequate nonfederal ground, question was raised too late for consideration on writ of error sued out from United States Supreme Court. Bilby v. Stewart. 38 S. Ct. 264, 246 U. S. 255, 62 L. Ed. 701, dismissing writ of error (Okl.) 153 P. 1173.

To suggest or set up a federal question for the first time in a petition for rehearing in the highest court of the state is not in time. Wren v. Dixon (Nev.) 167 P. 324, denying petition for writ of error to the United States Supreme Court 161 P. 722.

95. Sufficiency of presentation of federal question in general.—Objection to application to steamship company of the Workmen's Compensation Act Ohio, May 31, 1911, because Const. art. 3, § 2, gave federal courts jurisdiction of all cases of admiralty, is not ground for writ of error, where it was not presented to the trial court, nor clearly pointed out to Court of Appeals of state. Valley S. S. Co. v. Wattawa, 37 S. Ct. 523, 244 U. S. 202, 61 L. Ed. 1084.

Where Minnesota statute giving attorneys lien on cause of action was held applicable to action based on federal Employers' Liability Act, and pleadings showed that action was one for injuries received in interstate commerce, and question of applicability of statute was discussed in state court, constitutional question was sufficiently raised to authorize writ of error. Dickinson v. Stiles, 38 S. Ct. 415, 246 U. S. 631, 62 L. Ed. 908, affirming judgment Holloway v. Dickinson, 163 N. W. 791, 137 Minn. 410.

Where, in action to quiet title, plaintiff, grantee of father of deceased Chickasaw Indian allottee, claimed deceased was legitimate child and hence his father was his heir, and defendant claimed as heir of deceased as being illegitimate, refusal of requests by defendant for ruling, in effect, that a marriage of Chickasaws, although in accord with their customs, was invalid under Chickasaw Act Oct. 12, 1876, unless solemnized by a judge or preacher, and hence not validated by Act May 2, 1890, § 38, validating previous marriages "contracted under the laws or tribal customs of any Indian nation," opened, although somewhat remotely, a federal question, as to proper construction of the 1890 act. Carney v. Chapman, 38 S. Ct. 449, 247 U. S. 102, 62 L. Ed. 1005, affirming judgment (Okl.) 158 P. 1125.

(B) Right of review and parties entitled thereto

102. Parties entitled to a review.—The constitutionality of the compulsory insurance provisions of Iowa elective Workmen's Compensation Act, § 42, will not be considered by the federal Supreme Court at the instance of an employer not accepting the act, where the highest state court has held that an employer not accepting is not compelled to insure. Hawkins v. Bleakly, 37 S. Ct. 255, 243 U. S. 210, 61 L. Ed. 678, affirming decree Same v. Bleakley (D. C.) 220 F. 378.

(C) Writ of error or certiorari and procedure thereon

106. Form of remedy for review.—See Chicago Life Ins. Co. v. Cherry, 37 S. Ct. 492, 244 U. S. 25, 61 L. Ed. 966, affirming judgment Cherry v. Chicago Life Ins. Co., 190 Ill. App. 70.

A writ of error directed to the superior court of Cincinnati, Ohio, must be dismissed where the judgment of that court in the case had been affirmed by the appropriate Court of Appeals of that state, and the latter court, after a general judgment of affirmance, had ordered "that a special mandate be sent to the superior court of Cincinnati to carry this judgment into execution." The writ should have been directed to the Court of Appeals, as the highest court in which a judgment could be rendered in the case, in view of the refusal of the Supreme Court of the state to grant a motion to require the Court of Appeals to certify its record to the Supreme Court for review. Second Nat. Bank of Cincinnati, Ohio, v. First Nat. Bank of Okeana, Ohio, 37 S. Ct. 236, 61 L. Ed. 518.

A writ of certiorari to review a decision of a state court is granted or refused in the exercise of a sound discretion. Philadelphia & Reading Coal & Iron Co. v. Gilbert, 38 S. Ct. 58, 245 U. S. 162, 62 L. Ed. 221, dismissing writ of error Gilbert v. Philadelphia & Reading Coal & Iron Co., 162 N. Y. S. 1121, 176 App. Div. 889.

Under this section, as amended by Act Sept. 6, 1916, where foreign corporation moved to set aside service as an invasion of its rights under Const. Amend. 14, § 1, certiorari, and not writ of error, held the proper mode of review. Id.

Difference in remedies of writ of error and certiorari provided for by this section, as amended by Act Sept. 6, 1916, c. 448, to review decisions of state courts involving federal questions, is that writ of error is allowed as of right, where upon examination it appears that the case is of class designated, but in certiorari cases issuance of writ rests in discretion of Supreme Court. Ireland v. Woods, 38 S. Ct. 319, 246 U. S. 323, 62 L. Ed.

745, dismissing writ of error People ex rel. Ireland v. Same, 117 N. E. 1081, 221 N. Y. 600, which affirmed judgment 163 N. Y. S. 991, 177 App. Div. 1.

Denial of habeas corpus to obtain release from arrest for interstate rendition under warrant issued by New York Governor under Code Cr. Proc. N. Y. § 827, on ground that petitioner, not being fugitive from justice, was restrained in violation of Const. art. 4, § 2, cl. 2, and Rev. St. § 5278 (Comp. St. 1916, § 10126), held not a denial of national powers so as to warrant review on writ of error under this section as amended by Act Sept. 6, 1916, c. 448, but to fall within class of cases reviewable by certiorari. Id.

Where it was urged that state court erred in holding that action to recover money paid as freight was not affected by federal Interstate Commerce Acts, and that state court erred in assuming jurisdiction prior to determination of questions of railroad routing by Interstate Commerce Commission, the judgment might, before Act Sept. 6, 1916, amending this section, be reviewed on writ of error, but, after that act went into effect, writ of error was not available. Northern Pac. Ry. Co. v. Solum, 38 S. Ct. 550, 247 U. S. 477, 62 L. Ed. 1221, reversing judgments Solum v. Northern Pac. Ry. Co., 157 N. W. 996, 133 Minn. 93, and Monarch Elevator Co. v. Same, 157 N. W. 998, 133 Minn. 461, and dismissing writ of error Duluth Elevator Co. v. Same, 162 N. W. 1087, 136 Minn. 468.

Under this section as amended by Act Sept. 6, 1916, an application to United States Supreme Court for certiorari to review final judgment of higher court of state will be granted only on sufficient cause shown for failure to apply for writ of error within time allowed by law, or, where such writ would not lie, as a substitute for error in discretion of Supreme Court. Seaboard Air-Line Ry. Co. v. Horton (N. C.) 96 S. E. 954.

107. Allowance of writ.—Writ of error to review decision of state court in cases specified in the statute is granted as of right. Philadelphia & Reading Coal & Iron Co. v. Gilbert, 38 S. Ct. 58, 245 U. S. 162, 62 L. Ed. 221, dismissing writ of error Gilbert v. Philadelphia & Reading Coal & Iron Co., 162 N. Y. S. 1121, 176 App. Div. 889.

Where a cause was appealed to the Supreme Court, which transferred it to a District Court of Appeal, and thereafter the Supreme Court refused to vacate the decision of the District Court of Appeal and hear the case, the Supreme Court has no authority to allow a writ of error from the United States Supreme Court. Terry v. Southern Pac. Co. (Cal.) 169 P. 354.

Petition for writ of error on ground that federal question sought to be raised did not exist until after filing of the court's opinion would be denied where opinion was within agreed statement of facts on which the case was tried, on a matter not material to decision. Wren v. Dixon (Nev.) 167 P. 324, denying petition for writ of error to the United States Supreme Court 161 P. 722.

An application for a writ of error to the Supreme Court of the United States must be made, not to the Supreme Court of North Carolina, but to its presiding officer, and if allowed, ancillary supersedeas will be granted by him. Seaboard Air-Line Ry. Co. v. Horton (N. C.) 96 S. E. 954.

The North Carolina Supreme Court, after affirming the judgment below, has no authority to grant certiorari to remove the case from the courts of the state to the United States Supreme Court. Id.

Writ of error allowed to the United States Supreme Court will be revoked; the parties having since its issuance settled their differences and ended the litigation. Southern Life & Trust Co. v. Guimarin (S. C.) 90 S. E. 326.

109. —— Jurisdiction of lower federal court.—Where, from judgment rendered against it by state court, complainant appealed to state Supreme Court, and on affirmance took a writ of error to United States Supreme Court, complainant could not secure relief against judgment by independent suit in federal District Court. American Surety Co. of New York v. Mills, 232 F. 841, 147 C. C. A. 35.

110½. Cross-writ of error.—See St. Louis, I. M. & S. Ry. Co. v. Starbird, 37 S. Ct. 462, 243 U. S. 592, 61 L. Ed. 917, modifying judgment 177 S. W. 912, 118 Ark. 485.

110¾. Abatement and revival.—Rev. St. Tex. 1911, art. 1206, held to prevent abatement of suit pending against a corporation on appeal when such corporation was dissolved. Pease v. Rathbun-Jones Engineering Co., 37 S. Ct. 283, 243 U. S. 273, 61 L. Ed. 715, affirming decree 228 F. 273, 142 C. C. A. 565.

Expiration of term of office of state comptroller requires the dismissal for want of proper defendant to stand in judgment of writ of error to state court dismissing bill to enjoin such official from assessing the tax on the ground that the state law authorizing it was void. Pullman Co. v. Knott, 37 S. Ct. 428, 243 U. S. 447, 61 L. Ed. 841, dismissing writ of error 69 So. 703, 70 Fla. 9.

111. Security to prosecute writ, supersedeas, and stay of proceedings.—Supersedeas should be issued by the United States Supreme Court if it should grant a certiorari to remove the cause from the courts of North Carolina to the Supreme Court. Sea-

board Air-Line Ry. Co. v. Horton (N. C.) 96 S. E. 954.

(D) Record

122. Necessity and sufficiency of showing of federal question—Opinion of state court as part of record.—Federal Supreme Court will not take jurisdiction of writ of error to state court where absence of opinion by the court below makes it impossible to say whether its judgment could be sustained independent of the federal question. Cuyahoga River Power Co. v. Northern Realty Co., 37 S. Ct. 643, 244 U. S. 300, 61 L. Ed. 1153.

(E) Scope and extent of review

125. Authority of court in general.—The federal Supreme Court, reviewing a refusal of a state court to discharge on habeas corpus a person whose extradition is sought by another state, held entitled to assume that the accused was a fugitive from the justice of the demanding state. Innes v. Tobin, 36 S. Ct. 290, 240 U. S. 127, 60 L. Ed. 562, affirming judgment Ex parte Innes (Tex. Cr. App.) 173 S. W. 291, L. R. A. 1916C, 1251.

On review of judgment upholding order of State Public Service Commission, requiring gas company to extend pipes, Supreme Court will not substitute its judgment for that of the commission, but will determine whether there was a want of a hearing or such arbitrary or capricious action as denied due process of law. People of State of New York ex rel. New York & Queens Gas Co. v. McCall, 38 S. Ct. 122, 245 U. S. 345, 62 L. Ed. 337, affirming order People ex rel. New York & Queens Gas Co. v. McCall, 113 N. E. 795, 219 N. Y. 84, Ann. Cas. 1916E, 1042, which reversed 157 N. Y. S. 707, 171 App. Div. 580.

Where a case was submitted and decided on the pleadings, every uncontradicted allegation of fact by the unsuccessful party must be taken as true. Postal Telegraph Cable Co. v. City of Newport, Ky., 38 S. Ct. 566, 247 U. S. 464, 62 L. Ed. 1215, reversing judgment 169 S. W. 700, 160 Ky. 244.

127. Immaterial questions.—On writ of error to review final judgment recognizing street railway franchise as existing, but declaring it ended by resolution of county commissioners, consideration of question whether the franchise has since expired by limitation held unnecessary. Northern Ohio Traction & Light Co. v. State of Ohio ex rel. Pontius, 38 S. Ct. 196, 245 U. S. 574, 62 L. Ed. 481, reversing judgment State v. Northern Ohio Traction & Light Co., 114 N. E. 53, 93 Ohio St. 466.

128. Questions not raised or decided.—Errors not assigned on appeal to the highest state court will not be considered by the federal Supreme Court on error. Bullen v. State of Wisconsin, 36 S. Ct. 473, 240 U. S. 625, 60 L. Ed. 830, affirming judgment In re Bullen's Estate, 128 N. W. 109, 143 Wis. 512, 139 Am. St. Rep. 1114.

Objection that an instruction under Employers' Liability Act (U. S. Comp. St. 1916, § 8657 et seq.) did not state as an element appreciation by the employé of the dangers of the situation held not available, where objection made at trial was general one that instruction did not correctly state the common-law doctrine of assumption of risk. Jacobs v. Southern Ry. Co., 36 S. Ct. 588, 241 U. S. 229, 60 L. Ed. 970.

Charging the jury, in an action under Employers' Liability Act (U. S. Comp. St. 1916, § 8657 et seq.), that on finding plaintiff guilty of contributory negligence they should reduce his damages proportionally, held not reversible error where no correction was asked. St. Louis & S. F. R. Co. v. Brown, 36 S. Ct. 602, 241 U. S. 223, 60 L. Ed. 966, affirming judgment 144 P. 1075, 45 Okl. 143.

Judgment against railroad in action for the death of a fireman will not be reversed because of assumption that he was not engaged in interstate commerce though there can be no recovery if he was so engaged where the railroad did not ask to go to the jury on the question. Louisville & N. R. Co. v. Parker, 37 S. Ct. 4, 242 U. S. 13, 61 L. Ed. 119, affirming judgment 177 S. W. 465, 165 Ky. 658.

131. Validity of state statutes when tested by federal constitution.—Federal Supreme Court in deciding whether state legislation impairs obligation of contract must determine whether there was a contract, the obligation arising thereunder, and question of its impairment. Detroit United Ry. v. People of State of Michigan, 37 S. Ct. 87, 242 U. S. 238, 61 L. Ed. 268, reversing judgments People v. Detroit United Ry., 125 N. W. 700, 162 Mich. 460, 139 Am. St. Rep. 582, and City of Detroit v. Same, 139 N. W. 56, 173 Mich. 314.

131½. Stipulations.—Stipulation in suit to recover demurrage charges that track was a private track is a nullity, where facts set forth in petition and exhibits admitted by demurrer show that track was owned by carrier. Swift & Co. v. Hocking Valley Ry. Co., 37 S. Ct. 287, 243 U. S. 281, 61 L. Ed. 722, affirming judgment 112 N. E. 212, 93 Ohio St. 143.

133. Questions of fact.—A judgment of a state court in an action brought under the Employers' Liability Act (U. S. Comp. St. 1916, § 8657 et seq.) will not be disturbed on writ of error by the federal Supreme Court, where nothing but questions of fact are involved and the statute is not construed, or any legal principles in its applica-

tion declared. Great Northern Ry. Co. v. Knapp, 36 S. Ct. 399, 240 U. S. 464, 60 L. Ed. 745, affirming judgment Knapp v. Great Northern Ry. Co., 153 N. W. 848, 130 Minn. 405.

The federal Supreme Court reviewing on error a judgment of the state appellate court reversing a judgment holding directors of a national bank liable under Rev. St. § 5239 (Comp. St. 1916, § 9831), for deposits received under false representations as to the bank's financial condition, will inquire into the facts to determine whether there is substantial evidence to support the findings. Jones Nat. Bank v. Yates, 36 S. Ct. 429, 240 U. S. 541, 60 L. Ed. 788, reversing judgment 139 N. W. 844, 1135, 93 Neb. 121.

In absence of clear error, the federal Supreme Court will not reverse a finding of the state trial and appellate courts that the "next of kin," entitled to sue under Act April 22, 1908, as amended by Act April 5, 1910 (U. S. Comp. St. 1916, § 8665), were so dependent on deceased as to justify recovery under the federal statute. Seaboard Air Line Ry. v. Kenney, 36 S. Ct. 458, 240 U. S. 489, 60 L. Ed. 762, affirming judgment Kenney v. Seaboard Air Line R. Co., 82 S. E. 968, 167 N. C. 14.

Refusal of state court, sustained by a court of last resort, to take from the jury an action under the Employers' Liability Act by directing verdict for defendant, will not be disturbed on writ of error by federal Supreme Court unless clearly erroneous. Louisville & N. R. Co. v. Stewart, 36 S. Ct. 586, 241 U. S. 261, 60 L. Ed. 989, affirming judgment Same v. Stewart's Adm'x, 174 S. W. 744, 163 Ky. 823.

Concurrent determination of state trial and appellate courts that deceased railway employé assumed risk of danger causing death will not be disturbed on writ of error in the federal Supreme Court unless clearly erroneous. Baugham v. New York, P. & N. R. Co., 36 S. Ct. 592, 241 U. S. 237, 60 L. Ed. 977.

Unanimous ruling of highest state court that suit under Employers' Liability Act (U. S. Comp. St. 1916, § 8657 et seq.) was properly left to the jury will not be disturbed on writ of error, except for clear and palpable error. Baltimore & O. R. Co. v. Whitacre, 37 S. Ct. 33, 242 U. S. 169, 61 L. Ed. 228, affirming judgment 92 A. 1060, 124 Md. 411.

Decision of state court that evidence did not require submission to jury of question whether conductor on interstate railway was, when injured, employed in interstate commerce, held not to show error requiring reversal. Erie R. Co. v. Welsh, 37 S. Ct. 116, 242 U. S. 303, 61 L. Ed. 319, affirming judgment 105 N. E. 189, 89 Ohio St. 81.

Ruling of highest state court that trial court had properly left to jury case brought under federal Employers' Liability Act April 22, 1908 (U. S. Comp. St. 1916, § 8657 et seq.), will not be disturbed on writ of error unless clear error is shown. Seaboard Air Line Ry. v. Lorick, 37 S. Ct. 440, 243 U. S. 572, 61 L. Ed. 907.

Federal Supreme Court will not lightly disturb concurrent conclusions, of two state courts in action under Employers' Liability Act, as amended by Act April 5, 1910 (U. S. Comp. St. 1916, §§ 8662, 8665), that there was sufficient ground for attributing negligence to railway carrier causing injury to employé. Southern Ry. Co. v. Puckett, 37 S. Ct. 703, 244 U. S. 571, 61 L. Ed. 1321, affirming judgment 85 S. E. 809, 16 Ga. App. 551.

On writ of error to a state court, it is not the province of the federal Supreme Court to weigh conflicting evidence, where the record shows testimony supporting the verdict. Great Northern Ry. Co. v. Donaldson, 38 S. Ct. 230, 246 U. S. 121, 62 L. Ed. 616, Ann. Cas. 1918C, 581, affirming judgment Donaldson v. Great Northern Ry. Co., 154 P. 133, 89 Wash. 161.

Where the state court denied asserted federal rights on a basis of fact having no support in the record, a finding of fact by the state court is not conclusive on the national Supreme Court, and it should review and correct the error. Postal Telegraph Cable Co. v. City of Newport, Ky., 38 S. Ct. 566, 247 U. S. 464, 62 L. Ed. 1215, reversing judgment 169 S. W. 700, 160 Ky. 244.

It is the duty of the Supreme Court of the United States to examine for itself whether there is any basis in the admitted facts, or in the evidence, when the facts are in dispute, for finding that the federal right involved has been waived by the party complaining of the judgment of a state court. Union Pac. R. Co. v. Public Service Commission of Missouri, 39 S. Ct. 24.

In suit attacking constitutionality of state statute whereunder fees for inspection of oils and gasoline were exacted, claim being that act was revenue measure and burden on interstate commerce, finding of fact by trial court of state, approved by its Supreme Court, is accepted as conclusive by Supreme Court of United States. Pure Oil Co. v. State of Minnesota, 39 S. Ct. 35.

(F) Determination and disposition of cause

134. Authority in general.—A verdict on first trial of action for death under Employers' Liability Act (U. S. Comp. St. 1916, § 8657 et seq.) cannot be reinstated by federal Supreme Court on cross-writ of error to a state court which, having set aside verdict for plaintiff on first trial, affirmed, on second appeal, judgment for plaintiff in a lesser amount, on second trial. Louisville & N. R. Co. v. Stewart, 36 S. Ct.

586, 241 U. S. 261, 60 L. Ed. 989, affirming judgment Same v. Stewart's Adm'x, 174 S. W. 744, 163 Ky. 823.

137. **Authority to dismiss cause.**—Where writ of error was not available, under this section, as amended by Act Sept. 6, 1916, to review judgment of state court, it must be dismissed, though defendant in error does not raise jurisdictional question. Northern Pac. Ry. Co. v. Solum, 38 S. Ct. 550, 247 U. S. 477, 62 L. Ed. 1221, reversing judgments Solum v. Northern Pac. Ry. Co., 157 N. W. 996, 133 Minn. 93, and Monarch Elevator Co. v. Same, 157 N. W. 998, 133 Minn. 461, and dismissing writ of error Duluth Elevator Co. v. Same, 162 N. W. 1087, 136 Minn. 468.

No federal question being presented by the record, writ of error to state court will be dismissed by the court sua sponte. Palmer v. State of Ohio, 39 S. Ct. 16.

138. **Authority to affirm.**—Judgment for plaintiff in action under federal Employers' Liability Act April 22, 1908 (U. S. Comp. St. 1916, § 8657 et seq.), will not be disturbed on writ of error to state court, where no errors are shown and evidence justifies submission to jury. New York Cent. & H. R. R. Co. v. Tonsellito, 37 S. Ct. 620, 244 U. S. 360, 61 L. Ed. 1194, modifying judgment Tonsellito v. New York Cent. & H R. R. Co., 94 A. 804, 87 N. J. Law, 651.

142. **Mandate and proceedings in state court.**—Where special paving assessments based on front-foot rule and also on area rule were on error to the United States Supreme Court declared void as to the area rule, the state Supreme Court on remand could order reversal and direct judgment sustaining assessment as to the other rule without requiring a new assessment. Schneider Granite Co. v. Gast Realty & Investment Co., 38 S. Ct. 125, 245 U. S. 288, 62 L. Ed. 292, affirming judgment 191 S. W. 689, 269 Mo. 561.

(G) Instructions as to applications for writs of certiorari

See note under § 1217.

CITED WITHOUT DEFINITE APPLICATION

Central Trust Co. of Illinois v. Chicago Auditorium Ass'n, 36 S. Ct. 412, 60 L. Ed. 811, L. R. A. 1917B, 580; Southern Pacific Co. v. Jensen, 37 S. Ct. 524, 61 L. Ed. 1086, L. R. A. 1918C, 451. Ann. Cas. 1917E, 900; Zanesville & Western R. Co. v. Williams, 39 S. Ct. 18; Oregon-Washington R. & Nav. Co. v. Stoddard Lumber Co., 39 S. Ct. 20; Baltimore & O. S. W. R. Co. v. U. S., 39 S. Ct. 133; Georgia State Board of Examiners of Optometry v. Mott, 39 S. Ct. 134; Illinois Cent. R. Co. v. Anderson, 39 S. Ct. 135; Magnolia Bank v. Board of Supervisors of Pine County, Miss., 39 S. Ct. 135; Robinson v. Steele, 39 S. Ct. 135; American Packing Co. v. Luketa, 39 S. Ct. 136.

§ 1215. (Jud. Code, § 238, as amended, Act Jan. 28, 1915, c. 22, § 2.) Appeals and writs of error from United States district courts.

II. JUDGMENTS AND DECREES REVIEWABLE IN GENERAL

18. **Real, frivolous, or moot questions.**—An appeal from a decree presenting the question whether Anti-Trust Act July 2, 1890 (U. S. Comp. St. 1916, § 8820 et seq.), was violated by combination of steamship companies to monopolize ocean carriage, presents a moot question by reason of European War. U. S. v. American-Asiatic S. S. Co., 37 S. Ct. 233, 242 U. S. 537, 61 L. Ed. 479, reversing decree Same v. Prince Line (D. C.) 220 F. 230.

19. **Nature and finality of judgment.**—Order remanding a cause is not reviewable. Pacific Live Stock Co. v. Lewis, 36 S. Ct. 637, 241 U. S. 440, 60 L. Ed. 1084, affirming decree (D. C.) 217 F. 95.

Order denying petition to restrain United States attorney from taking possession of exhibits impounded by order of federal district court held final, so that writ of error to review same would lie, though it be treated as part of criminal proceedings against petitioner, who was alleged to have committed perjury in suit in which exhibits were impounded. Perlman v. U. S., 38 S. Ct. 417, 247 U. S. 7, 62 L. Ed. 950.

III. FEDERAL QUESTIONS REVIEWABLE

(A) Cases in which jurisdiction of the court is in issue

20. **Nature of issue of jurisdiction—Causes in which direct appeal or writ of error may be taken.**—A case cannot be brought to the United States Supreme Court on writ of error to a district court under section 5 of Court of Appeals Act of 1891, now section 238 of Judicial Code, as one involving jurisdiction where jurisdiction challenged is not that of the court rendering the judgment, from which appeal is taken, but is that of the court rendering the judgment sought to be set aside. Stevirmac Oil & Gas Co. v. Dittman, 38 S. Ct. 116, 245 U. S. 210, 62 L. Ed. 248.

Judgments of the District Courts, in the exercise of the power conferred on them, concurrently with the Court of Claims, by the Tucker Act of March 3, 1887, to decide claims against the United States, are reviewable exclusively and directly by the Supreme Court, and

this remedy is unaffected by the general distribution of appellate power by Judiciary Act 1891, or by the Judicial Code; implications of repeal being prevented by sections 294, 295 thereof (Comp. St. 1916, §§ 1271, 1272), and Tucker Act, § 4 (Comp. St. 1916, § 1574), being excepted from the repealing clause. J. Homer Fritch, Inc., v. U. S., 39 S. Ct. 158.

21. —— **Jurisdiction over defendant or service of process.**—The jurisdiction of a federal District Court is involved so as to sustain a direct appeal to the federal Supreme Court under Judicial Code, § 238, where orders are made quashing substituted service of process against the representative of a nonresident within the district, and setting aside all proceedings based thereon. G. & C. Merriam Co. v. Saalfield, 36 S. Ct. 477, 241 U. S. 22, 60 L. Ed. 868.

Under Judicial Code, § 238, direct writ of error lies to review order of federal District Court quashing summons because served on a nonresident while returning from the courtroom after testifying in a case in which he was a party. Stewart v. Ramsay, 37 S. Ct. 44, 242 U. S. 128, 61 L. Ed. 192.

Where bill for infringement of patent, brought under Judicial Code, § 48, was dismissed, and preliminary injunction denied, on ground defendant was not an inhabitant and had no regular place of business in district wherein suit was brought, Circuit Court of Appeals is, under section 128, without jurisdiction of appeal from order of dismissal, and question being one primarily involving jurisdiction, appeal must, under section 238, be taken to Supreme Court. American Electric Welding Co. v. Lalance & Grosjean Mfg. Co. (C. C. A.) 249 F. 968.

22. —— **Dismissal of cause.**—See Patterson v. Delaware & Hudson Co. (C. C. A.) 251 F. 255.

An appeal from a federal District Court to the Supreme Court on a question of jurisdiction will not be dismissed as moot because, pending the appeal, a state court has dismissed upon the merits a suit between the same parties involving the same subject-matter. Male v. Atchison, T. & S. F. R. Co., 36 S. Ct. 351, 240 U. S. 97, 60 L. Ed. 544.

24. —— **Diversity of citizenship.**—Questions of jurisdiction of the federal District Court, depending on the district of residence, are, when decided below, questions of federal jurisdiction, which may be brought to the Supreme Court under Judicial Code, § 238, by direct appeal. Male v. Atchison, T. & S. F. R. Co., 36 S. Ct. 351, 240 U. S. 97, 60 L. Ed. 544.

While an appeal from a decree dismissing a bill for want of jurisdiction, because of lack of diversity of citizenship between all of the parties defendant and plaintiff, should, under this section, be taken directly to the Supreme Court, yet where the bill, as originally filed, showed diversity of citizenship between all of the parties, the Circuit Court of Appeals, no objection having been made, will dispose of an appeal from a decree dismissing the bill after one whose citizenship was the same as that of complainants was made a party defendant by amendment. Patterson v. Delaware & Hudson Co., (C. C. A.) 251 F. 255.

30. **Causes in which direct appeal or writ of error may not be taken.**—Suit to try title to land in Texas between present and former bed of Rio Grande, District Court's jurisdiction of which was based on diversity of citizenship, held, notwithstanding allegation in answer as to treaties contracting for boundary commission with exclusive jurisdiction, not to involve construction or validity of treaty, so as to allow it to be brought directly to Supreme Court for review.—Cordova v. Grant, 39 S. Ct. 138.

36. **Certification of federal questions —Requisites and sufficiency of certificate.**—Order of federal District Judge allowing writ of error from federal Supreme Court held to take place of certificate required by this section. McAllister v. Chesapeake & O. Ry. Co., 37 S. Ct. 274, 243 U. S. 302, 61 L. Ed. 735.

(C) *Cases involving construction or application of federal constitution*

40. **Jurisdiction of supreme court in general.**—A federal Circuit Court of Appeals has no appellate jurisdiction where the jurisdiction of the District Court was invoked upon the sole ground that the application of the federal Constitution was involved. Carolina Glass Co. v. State of South Carolina, 36 S. Ct. 293, 240 U. S. 305, 60 L. Ed. 658, affirming judgments 69 S. E. 391, 87 S. C. 270, and Same v. Murray (D. C.) 197 F. 392, reversing judgment 206 F. 635, 124 C. C. A. 423.

Constitutionality of statute imposing income tax held involved so as to authorize plaintiff to take a direct writ of error to the Supreme Court, though the statute and the constitutional amendment both use the word "income." Towne v. Eisner, 38 S. Ct. 158, 245 U. S. 418, 62 L. Ed. 372, reversing judgment (D. C.) 242 F. 702.

Suit by person committed to insane asylum for restoration of writings, letters, documents, and papers and to set aside the pretended inquisition, held not to involve construction or application of federal Constitution, so as to authorize direct appeal to the Supreme Court under this section.

Ketcham v. Burr, 38 S. Ct. 179, 245 U. S. 510, 62 L. Ed. 439.

Claim that attempt to exempt land purchased with released Indian trust funds from state taxation exceeded powers of Congress, as limited by article 4, § 3, and Ninth and Tenth Amendments of federal Constitution, raised substantial constitutional question, authorizing direct appeal to Supreme Court, under this section. McCurdy v. United States, 38 S. Ct. 289, 246 U. S. 263, 62 L. Ed. 706.

(D) Cases in which the constitutionality of federal laws are drawn in question

42. Causes in which direct appeal or writ of error may be taken.—In appeals from final decrees, under sections 128 and 238 of the Judicial Code, where the jurisdiction of the District Court as set out in the bill is based solely on a constitutional question, the appeal lies to the Supreme Court, and cannot be taken to a Court of Appeals. Supreme Council of Royal Arcanum v. Hobart (C. C. A.) 244 F. 385.

(E) Cases in which the validity or construction of any treaty is drawn in question

45. Jurisdiction of supreme court.—The contention on habeas corpus that immigration officers, in denying admission to a Chinaman as a returning merchant, superadded qualifications to Act Nov. 3, 1893, § 2 (U. S. Comp. St. 1916, § 4324), and hence infringed the treaty of November 17, 1880, does not involve the construction of a treaty within this section. Chin Fong v. Backus, 36 S. Ct. 490, 241 U. S. 1, 60 L. Ed. 859, dismissing appeal Ex parte Chin Fong (D. C.) 213 F. 288.

IV. PROCEDURE AND REVIEW

50. Presentation of federal question.—The United States Supreme Court looks after its own jurisdiction whether the point is raised by counsel or not. Stevirmac Oil & Gas Co. v. Dittman, 38 S. Ct. 116, 245 U. S. 210, 62 L. Ed. 248.

51. Right to and mode of review.—Payment by surety on appeal bond of deficiency execution issued on affirmance of decree relieves court on appeal from deciding whether judgment against sureties for deficiency was erroneous.—Pease v. Rathbun-Jones Engineering Co., 37 S. Ct. 283, 243 U. S. 273, 61 L. Ed. 715, affirming decree 228 F. 273, 142 C. C. A. 565.

Petitioner held to have such interest that he could appeal from order denying his petition to enjoin United States attorney from taking possession for use in criminal prosecution of exhibits which were property of petitioner and had been impounded in suit by corporation of which petitioner was president. Perlman v. U. S., 38 S. Ct. 417, 247 U. S. 7, 62 L. Ed. 950.

In the absence of a rule of court to the contrary, an action at law in which an equitable defense is pleaded, under Judicial Code, § 274b (U. S. Comp. St. 1916, § 1251b), may be reviewed either by error or appeal.—Maine Northwestern Development Co. v. Northwestern Commercial Co., 240 F. 583, 153 C. C. A. 387.

52. —— Cross-appeal or writ of error.—A party, who escaped reversal of the judgment and remand by permission to file a remission of excessive amount, may not maintain cross-writ of error from federal Supreme Court. Woodworth v. Chesbrough, 37 S. Ct. 583, 244 U. S. 79, 61 L. Ed. 1005, dismissing writ of error Chesbrough v. Woodworth, 221 F. 912, 137 C. C. A. 482.

54. Scope of review.—See Ana Maria Sugar Co. v. Quinones (C. C. A.) 251 F. 499.

The federal Supreme Court, on appeal from District Court to review denial, on hearing before three judges, of interlocutory injunction to restrain enforcement of order of State Public Service Commission as repugnant to federal Constitution, has jurisdiction to review entire case. Van Dyke v. Geary, 37 S. Ct. 483, 244 U. S. 39, 61 L. Ed. 973, affirming order (D. C.) 218 F. 111.

Under the provision for direct appeals and writs of error, where jurisdiction of District Court is in issue, the merits of the controversy are not brought up for decision, but merely question of jurisdiction. Stevirmac Oil & Gas Co. v. Dittman, 38 S. Ct. 116, 245 U. S. 210, 62 L. Ed. 248.

On writ of error to review a decision of the District Court on the ground that the constitutionality of a statute is involved, the construction of the statute as well as its constitutionality are open to consideration in the Supreme Court. Towne v. Eisner, 38 S. Ct. 158, 245 U. S. 418, 62 L. Ed. 372, reversing judgment (D. C.) 242 F. 702.

Though on direct writ of error to review conviction in District Court constitutional questions are disposed of adversely to plaintiffs in error, the other questions involved must be considered. Goldman v. U. S., 38 S. Ct. 166, 245 U. S. 474, 62 L. Ed. 410; Kramer v. Same, 38 S. Ct. 168, 245 U. S. 478, 62 L. Ed. 413.

Where constitutional question conferred appellate jurisdiction upon Supreme Court to review federal District Court's decision, all questions involved are open for review. McCurdy v. U. S., 38 S. Ct. 289, 246 U. S. 263, 62 L. Ed. 706.

56. —— Rehearing.—Dismissal of writ of error will be set aside, rehear-

ing granted, and cause restored to the docket where it is shown that assumption that removal was on sole ground of diversity of citizenship was incorrect, and the fact that cause of action arose under Interstate Commerce Act was also a ground of removal. Southern Pac. Co. v. Stewart, 38 S. Ct. 203, 245 U. S. 562, 62 L. Ed. 472, granting rehearing 38 S. Ct. 130, 245 U. S. 359, 62 L. Ed. 345.

57. Determination and disposition of cause and effect thereof.—On appeal from decree in suit to restrain enforcement of ordinance as in violation of federal Constitution, cause held reviewable upon both the law and the facts, and relief proper under the circumstances disclosed when case is decided will be granted. City of Cincinnati v. Cincinnati & Hamilton Traction Co., 38 S. Ct. 153, 245 U. S. 446, 62 L. Ed. 389.

CITED WITHOUT DEFINITE APPLICATION

Badders v. U. S., 36 S. Ct. 367, 60 L. Ed. 706; Pinel v. Pinel, 36 S. Ct. 416, 60 L. Ed. 817; Bankers' Trust Co. v. Texas & P. R. Co., 36 S. Ct. 569, 60 L. Ed. 1010; Guerini Stone Co. v. P. J. Carlin Const. Co., 39 S. Ct. 102.

§ 1216. (Jud. Code, § 239.) Circuit court of appeals may certify questions to Supreme Court for instructions.

6. Finality of decision as condition precedent to certifying questions.—Under Judicial Code, § 251, Court of Appeals of District of Columbia cannot certify questions to Supreme Court in cases in which its judgments or decrees are not final under section 250, especially in view of section 239. United States ex rel. Arant v. Lane, 38 S. Ct. 94, 245 U. S. 166, 62 L. Ed. 223.

9. Nature and character of questions which may be certified in general.—Where decisions of several Circuit Courts of Appeals concerning right of Secretary of Labor to deport Chinese persons, on ground that they were found in United States in violation of Chinese Exclusion Act, are conflicting, and the question has not been presented to Supreme Court, the matter is one which another Circuit Court of Appeals may properly certify to Supreme Court for instructions. U. S. v. Woo Jan (C. C. A.) 250 F. 595.

15. Form, requisites, and sufficiency of certificate.—Under this section and Supreme Court rule 37, providing that the certificate shall contain a proper statement of the facts on which the certified questions arise, the certificate by itself, and without reference to transcript, must state the pertinent facts necessary for answering the questions. Dillon v. Strathearn S. S. Co., 39 S. Ct. 83.

The certificate on certification of questions from Circuit Court of Appeals for instructions may not so blend facts with questions of law as to require separation for a conclusion as to either. Cleveland-Cliffs Iron Co. v. Arctic Iron Co., 39 S. Ct. 91.

Recitals of certificate on certification of questions from Circuit Court of Appeals must distinguish between merely evidential facts and those which are ultimate, and so could furnish support for the legal propositions as to which instructions are asked. Id.

18. Jurisdiction and authority of Supreme Court.—Exercise of the discretion which this section gives the Supreme Court, when questions are certified from Circuit Court of Appeals, to direct the sending up of the whole record, is not called for where the certificate is of such character as not to be embraced by the statute. Cleveland-Cliffs Iron Co. v. Arctic Iron Co. (Sup.) 39 S. Ct. 91.

20. Dismissing or remanding cause.—The certificate, on certification of questions under this section, not sufficiently stating the pertinent facts, will be dismissed. Dillon v. Strathearn S. S. Co. (Sup.) 39 S. Ct. 83.

§ 1217. (Jud. Code, § 240.) Certiorari to circuit court of appeals.

See George A. Fuller Co. v. Otis Elevator Co., 38 S. Ct. 180, 62 L. Ed. 422.

3. Nature and character of causes or decisions reviewable on certiorari in general.—Refusal to submit questions to jury on ground that evidence was not sufficient to warrant a finding thereon, when approved by the Circuit Court of Appeals, held not reviewable on certiorari. Houston Oil Co. of Texas v. Goodrich, 38 S. Ct. 140, 245 U. S. 440, 62 L. Ed. 385, dismissing certiorari 226 F. 434, 141 C. C. A. 264.

Where application for temporary injunction was denied on ground there was an adequate remedy at law, but the bill was not dismissed and complainant appealed from a decree of affirmance rendered by Circuit Court of Appeals, Supreme Court may grant petition for certiorari, and, though without jurisdiction to entertain the appeal, treat record on appeal as a return to writ. Union Pac. R. Co. v. Board of Com'rs of Weld County, 38 S. Ct. 510, 247 U. S. 282, 62 L. Ed. 1110, reversing decree 222 F. 651, 138 C. C. A. 175, which denies rehearing 217 F. 540, 133 C. C. A. 392.

A conviction for a criminal, although a summary, contempt, is not reviewable on error; but the matter may be reviewed on certiorari, issuable in the discretion of the court. Toledo News-

paper Co. v. U. S., 38 S. Ct. 560, 247 U. S. 402, 62 L. Ed. 1186, affirming judgment 237 F. 986, 150 C. C. A. 636, which affirmed United States v. Toledo Newspaper Co., 220 F. 458, and leave to file petition for rehearing granted 38 S. Ct. 581.

5. Nature and character of questions reviewable on certiorari.—Where, in action to recover 1 per cent. of item alleged to have been wrongfully omitted from corporation's return of net income, required by Corporation Tax Act of 1909, United States took no writ of error as to ruling of District Court allowing part of item as proper deduction, propriety of partial deduction cannot be considered by Supreme Court, on certiorari to review judgment of Circuit Court of Appeals allowing the whole item as a proper deduction. U. S. v. Biwabik Mining Co., 38 S. Ct. 462, 247 U. S. 116, 62 L. Ed. 1017, reversing judgment Biwabik Mining Co. v. U. S., 242 F. 9, 154 C. C. A. 601.

9. Application for certiorari and proceedings thereon and record.—Under Judicial Code, § 128, as amended by Act Jan. 28, 1915, § 2 (Comp. St. 1916, § 1120), where plaintiff in trademark infringement suit was allowed appeal from decree of Circuit Court of Appeals, and brought certiorari, and, pursuant to stipulation, transcript of record filed for purposes of appeal was treated as return to writ, appeal must be dismissed, and cause will be determined on writ of certiorari. United Drug Co. v. Theodore Rectanus Co., 39 S. Ct. 48.

11. Scope of review and determination of cause.—Federal Supreme Court, having corrected on certiorari error of Circuit Court of Appeals dismissing writ of error to review conviction on refusal of plaintiff in error to elect whether to pursue that writ or one sued out in the Supreme Court, will dispose of the case on the merits, because of doubt arising from certificate as to jurisdiction of question as to which there was no foundation. Lamar v. U. S., 36 S. Ct. 535, 241 U. S. 103, 60 L. Ed. 912, affirming judgment 227 F. 1019, 141 C. C. A. 668.

Petitions for certiorari to the Circuit Court of Appeals will be dismissed, when in progress of case facts are shown which, if disclosed on application, would have led to a refusal. Furness, Withy & Co. v. Yang-Tsze Ins. Ass'n, 37 S. Ct. 141, 242 U. S. 430, 61 L. Ed. 409, dismissing certiorari Yang-Tsze Ins. Ass'n v. Furness, Withy & Co., 215 F. 859, 132 C. C. A. 201.

Certiorari to the Circuit Court of Appeals to review judgment in proceeding to recover damages on sinking of ship will be dismissed, where a later final decree in proceedings for limitation of liability was based on express compromise. Id.

On certiorari to review a decision of the Circuit Court of Appeals, matters not relied upon as basis for the petition will not be considered. Alice State Bank v. Houston Pasture Co., 38 S. Ct. 496, 247 U. S. 240, 62 L. Ed. 1096, reversing judgment 227 F. 1015, 141 C. C. A. 662.

12. Instructions as to applications for writs of certiorari under Acts of March 3, 1891, and September 6, 1916.

The following are the requirements on applications for writs of certiorari:

Petitions are docketed in this court, as ——, Petitioner, v. ——, Respondent.

Before the petition will be docketed there must be furnished this office:

(1) An original petition with written signature of counsel.

(2) A certified copy of the transcript of the record, including all proceedings in the United States Circuit Court of Appeals or other appellate court.

(3) An order for appearance of counsel for petitioner, signed by a member of the bar of this court.

(4) A deposit of twenty-five ($25) on account of costs.

Before submission of the petition there must be furnished:

(1) Proof of service of notice of date fixed for submission and copies of petition and brief upon counsel for the respondent. Notice of the date of submission of the petition, together with a copy of the petition and brief, if any, in support of the same must be served on counsel for the respondent at least two weeks before such date except where the counsel to be notified resides west of the Rocky Mountains, in which case the time shall be at least three weeks.

(2) Thirty (30) printed copies of the petition and brief in support of petition, if any such brief is to be filed under one cover.

(3) At least nine (9) uncertified copies of the record, which must contain all of the proceedings in the United States Circuit Court of Appeals or other appellate court as well as those in the trial court. These copies may be made up by using copies of the record as printed for the appellate court and adding thereto printed copies of the proceedings in that court. If a sufficient number of records thus made up cannot be obtained, making it necessary to reprint the record for use on the hearing of the petition, fifty (50) copies must be printed under my supervision in order that, should the petition be granted, there may be a sufficient number for use on the final hearing.

Monday being motion day, some Monday must be fixed upon by counsel for petitioner for the submission of the petition. No oral argument is permitted on such petitions but they may be called up and submitted in open court by counsel for petitioner, or by some

attorney in his behalf or on request of counsel for the petitioner, after due notice to opposing counsel and filing of such notice, the clerk may submit such petition.

If a respondent desires to oppose a petition, thirty (30) copies of a brief for such respondent must be filed. These briefs must bear the name of a member of the bar of this court who should also enter an appearance for the respondent. It is not necessary, however, for such counsel to be present in court when the petition is submitted.

All papers in the case must be filed not later than the Saturday preceding the Monday fixed for the submission of the petition.

James D. Maher,
Clerk Supreme Court of the United States.

§ 1218. (Jud. Code, § 241.) Appeals and writs of error in other cases.

See Eichel v. United States Fidelity & Guaranty Co., 38 S. Ct. 47, 245 U. S. 102, 62 L. Ed. 177, affirming decree United States Fidelity & Guaranty Co. v. Eichel, 241 F. 357, 154 C. C. A. 237; Southern Pac. Co. v. Stewart, 38 S. Ct. 130, 245 U. S. 359, 62 L. Ed. 345, dismissing writ of error 233 F. 956, 147 C. C. A. 630.

I. JURISDICTION DEPENDENT ON CONSTRUCTION AND OPERATION OF STATUTE AND NATURE AND CHARACTER OF DECISIONS

2. Jurisdiction in general.—Act Jan. 28, 1915, amending Jud. Code, § 246, governing appeals from Hawaiian Supreme Court takes away from the United States Supreme Court authority given by this section to review decision of Circuit Court of Appeals on error to Hawaiian Supreme Court, where there was no federal question and no diversity of citizenship. Inter-Island Steam Nav. Co. v. Ward, 37 S. Ct. 1, 242 U. S. 1, 61 L. Ed. 113, dismissing writ of error 232 F. 809, 147 C. C. A. 3.

5. Judgments or decrees reviewable in general.—See Kansas City Southern R. Co. v. Guardian Trust Co., 36 S. Ct. 334, 240 U. S. 166, 60 L. Ed. 579, affirming decrees Central Imp. Co. v. Cambria Steel Co., 201 F. 811, 120 C. C. A. 121, and 210 F. 696, 127 C. C. A. 184.

Judgments or decrees made final, see ante, § 1120, and notes thereunder.

Contention in suit between citizens of different states that orders of state court on which defendant relied as justifying custody of plaintiff's property were entered without due process of law gives federal Supreme Court jurisdiction to review whole case. Chaloner v. Sherman, 37 S. Ct. 136, 242 U. S. 455, 61 L. Ed. 427, affirming judgment 215 F. 867, 132 C. C. A. 96.

II. AMOUNT IN CONTROVERSY

(A) Necessity and requisites of jurisdictional amount in general

6. Necessity of jurisdictional amount.—Under this section a writ of error seeking to have reviewed only so much of a judgment of the Circuit Court of Appeals as affirmed the recovery of six penalties of $150 each for as many separate violations of the Hours of Service Act must be dismissed. San Pedro, L. A. & S. L. R. Co. v. U. S., 38 S. Ct. 498, 247 U. S. 307, 62 L. Ed. 1129, dismissing writ of error and denying certiorari 220 F. 737, 136 C. C. A. 343.

(C) Causes of action as affecting amount in controversy

34. Habeas corpus.—Question as to jurisdictional amount necessary under Judicial Code, § 241, to sustain appeal to Supreme Court, does not arise in habeas corpus. Horn v. Mitchell, 37 S. Ct. 293, 243 U. S. 247, 61 L. Ed. 700, dismissing appeal 232 F. 819, 147 C. C. A. 13.

V. SCOPE AND EXTENT OF REVIEW AND DISPOSITION OF CAUSE

56. Question of fact.—Concurrent findings by master and two lower courts, as to entryman's agreement that title should inure to the benefit of another, held, not to be disturbed unless plainly erroneous. Causey v. U. S., 36 S. Ct. 365, 240 U. S. 399, 60 L. Ed. 711, affirming decree 203 F. 1022, 121 C. C. A. 663.

A decree of the Circuit Court of Appeals will be affirmed where the essential question is one of fact and the evidence, though sharply conflicting, sustains the conclusion reached. Varner v. New Hampshire Sav. Bank, 36 S. Ct. 409, 240 U. S. 617, 60 L. Ed. 828, affirming judgment New Hampshire Savings Bank v. Varnér, 216 F. 721, 132 C. C. A. 631.

Facts are not in controversy on writ of error to Circuit Court of Appeals to review judgment which reversed with instructions to dismiss a judgment for plaintiffs in an action for treble damages as result of combination to restrain trade in violation of Act July 2, 1890 (U. S. Comp. St. 1916, § 8829), where case was decided on theory that combination was not such unreasonable restraint as was necessary to make it illegal. Thomsen v. Cayser, 37 S. Ct. 353, 243 U. S. 66, 61 L. Ed. 597, reversing judgment

Union Castle Mail S. S. Co. v. Thomsen, 190 F. 536, 111 C. C. A. 368 and Id., 190 F. 1022, 111 C. C. A. 674.

Judgment based on facts will not be reversed, where there is substantial evidence to support conclusion twice reached by the Circuit Court of Appeals that the verdict was sustained by sufficient evidence. Chesbrough v. Woodworth, 37 S. Ct. 579, 244 U. S. 72, 61 L. Ed. 1000, affirming judgment 221 F. 912, 137 C. C. A. 482.

§ 1219. (Jud. Code, § 242.) Appeals from Court of Claims.

1. Construction and operation in general.—Judgments of the District Courts, in the exercise of the power conferred on them, concurrently with the Court of Claims, by the Tucker Act of March 3, 1887, to decide claims against the United States, are reviewable exclusively and directly by the Supreme Court, and this remedy is unaffected by the general distribution of appellate power by Judiciary Act 1891, or by the Judicial Code; implications of repeal being prevented by sections 294, 295, thereof (Comp. St. 1916, §§ 1271, 1272), and Tucker Act, § 4 (Comp. St. 1916, § 1574), being excepted from the repealing clause. J. Homer Fritch, Inc., v. U. S., 39 S. Ct. 158.

10. Scope and extent of review in general.—A fact which the Court of Claims states that it does not find stands unproved in the federal Supreme Court on appeal. Ackerlind v. U. S., 36 S. Ct. 438, 240 U. S. 531, 60 L. Ed. 783, reversing judgment 49 Ct. Cl. 635.

Findings of fact by Court of Claims on claim arising out of contract for manufacture of rapid fire guns are conclusive on Supreme Court. Saalfield v. U. S., 38 S. Ct. 397, 246 U. S. 610, 62 L. Ed. 895, affirming judgment Brown v. Same, 51 Ct. Cl. 22.

§ 1220. (Jud. Code, § 243.) Time and manner of appeals from the Court of Claims.

10. Disposition of appeal or cause.—Failure of the Court of Claims to find certain facts which it had assumed in its decision does not require a sending back of the case where the facts not found are not controverted. Ackerlind v. U. S., 36 S. Ct. 438, 240 U. S. 531, 60 L. Ed. 783, reversing judgment 49 Ct. Cl. 635.

A judgment of the Court of Claims for damages for destruction of plantation by building of dike across it by the government will be reversed for more particular findings, where those rendered do not fairly distinguish between injuries caused by the United States and those caused by the state. U. S. v. Archer, 36 S. Ct. 521, 241 U. S. 119, 60 L. Ed. 918, reversing judgment Archer v. U. S., 47 Ct. Cl. 248.

§ 1221. (Jud. Code, § 244. Repealed.)

See Graham v. O'Ferral, 236 F. 717, 150 C. C. A. 49.

Cited without definite application, Guerini Stone Co. v. P. J. Carlin Const. Co., 36 S. Ct. 300, 60 L. Ed. 636.

§ 1222. (Jud. Code, § 245.) Writs of error and appeals from the Supreme Courts of Arizona and New Mexico.

Appellate jurisdiction.—Denial of rights under Const. U. S. Amends. 5, 6, presents questions within jurisdiction of federal Supreme Court over Supreme Court of state of New Mexico in a case appealed to the territorial Supreme Court. Lovato v. State of New Mexico, 37 S. Ct. 107, 242 U. S. 199, 61 L. Ed. 244, affirming judgment Territory v. Lobato, 134 P. 222, 17 N. M. 666.

§ 1223. (Jud. Code, § 246, as amended, Act Jan. 28, 1915, c. 22, § 2.) Writs of error and appeals from the Supreme Court of Hawaii and the Supreme Court of Porto Rico.

See Henna v. Sauri & Subira, 237 F. 145, 150 C. C. A. 291; Richardson v. Fajardo Sugar Co., 237 F. 195, 150 C. C. A. 341.

Allowance of appeal.—An appeal to the federal Supreme Court from the Supreme Court of Porto Rico, which was prayed within the statutory time, will not be dismissed because not allowed by the court within that time. Cardona v. Quinones, 36 S. Ct. 346, 240 U. S. 83, 60 L. Ed. 538.

Decisions reviewable.—Act Jan. 28, 1915, amending Jud. Code, § 246, governing appeals from Hawaiian Supreme Court, takes away from the United States Supreme Court authority given by Jud. Code, § 241, to review decision of Circuit Court of Appeals on error to Hawaiian Supreme Court, where there was no federal question and no diversity of citizenship. Inter-Island Steam Nav. Co. v. Ward, 37 S. Ct. 1, 242 U. S. 1, 61 L. Ed. 113, dismissing writ of error 232 F. 809, 147 C. C. A. 3.

Record.—The facts cannot be reviewed by the federal Supreme Court on appeal from the Porto Rico Supreme Court, where the evidence is not in the record, except as shown in the opin-

ion of the court below or in a statement of facts prepared by that court for the purposes of the appeal. Cardona v. Quinones, 36 S. Ct. 346, 240 U. S. 83, 60 L. Ed. 538.

Legal propositions, ignoring or disputing the findings of fact on which the conclusions of the court below are based, cannot be urged in the federal Supreme Court as grounds for reversal of a decree of the Porto Rico Supreme Court, where the record is such that the facts cannot be reviewed. Id.

Scope of review and disposition of cause.—The action of the Supreme Court of Porto Rico as to matters of local law in respect to procedure will not be disturbed by the federal Supreme Court, unless error clearly appears. Cardona v. Quinones, 36 S. Ct. 346, 240 U. S. 83, 60 L. Ed. 538.

A decision of the Porto Rico Supreme Court that under its Civil Code (sections 1110–1112) one who signs a note as a principal debtor is governed by the form, and cannot show himself to be a surety, relating to a matter of the local law, will not be disturbed by a reviewing court, unless clearly erroneous. Sola v. Cintron & Aboy, 237 F. 61, 150 C. C. A. 263.

§ 1225a. (Act Aug. 29, 1916, c. 416, § 27.) Appeals and writs of error from the Supreme Court of the Philippine Islands.

Mode of review.—Appeal, not writ of error, is proper mode in reviewing in federal Supreme Court decree of Supreme Court of Philippine Islands in a suit by a wife for divorce, alimony, and division of property. De La Rama v. De La Rama, 36 S. Ct. 518, 241 U. S. 154, 60 L. Ed. 932.

Appeal is a proper method of reviewing, in federal Supreme Court, under Act July 1, 1902, § 10, a decree of the Supreme Court of the Philippine Islands in equity suit. Montelibano v. La Compania General De Tabacos De Filipinas, 36 S. Ct. 617, 241 U. S. 455, 60 L. Ed. 1099.

A writ of error and not an appeal was the proper method by which to review a judgment of the Supreme Court of the Philippines in a proceeding to register title to land. Gauzon v. Compania General De Tobacos de Filipinas, 38 S. Ct. 46, 245 U. S. 86, 62 L. Ed. 165.

Where the answer to an action at law on a contract was in effect a bill in equity, seeking reformation and incidentally to enjoin the action at law, the proceeding was converted into an equitable one, and hence appeal, instead of writ of error, was the appropriate method for review. Philippine Sugar Estates Development Co. v. Government of Philippine Islands, 38 S. Ct. 513, 247 U. S. 385, 62 L. Ed. 1177.

Scope and extent of review and disposition of cause.—Federal Supreme Court will not reverse decree of Supreme Court of the Philippine Islands, where objection is not presented to the court below nor assigned as error on appeal. De La Rama v. De La Rama, 36 S. Ct. 518, 241 U. S. 154, 60 L. Ed. 932.

Taking date of divorce decree as date for liquidating wife's claim for division of conjugal property held not erroneous on appeal from decree of the Supreme Court of the Philippine Islands, because there was no formal decree of property, and no inventory filed. De La Rama v. De La Rama, 36 S. Ct. 518, 241 U. S. 154, 60 L. Ed. 932.

Concurrent views of two lower courts that certain contracts created an agency will not be disturbed by federal Supreme Court on appeal from Supreme Court of Philippine Islands unless clearly erroneous. Montelibano v. La Compania General De Tabaços De Filipinas, 36 S. Ct. 617, 241 U. S. 455, 60 L. Ed. 1099.

Conclusions of fact by Supreme Court of Philippine Islands in proceeding to register title to land held not reviewable when supported by the record. Gauzon v. Compania General De Tobacos de Filipinas, 38 S. Ct. 46, 245 U. S. 86, 62 L. Ed. 165.

On appeal from the Supreme Court of the Philippine Islands, the judgment of that tribunal, based on a construction of the local laws, will be deferred to. Ibanez v. Hongkong & Shanghai Banking Corporation, 38 S. Ct. 410, 246 U. S. 621, 62 L. Ed. 903.

The Supreme Court will defer to declaration of local law by courts of Philippine Islands, particularly when their decision is in accordance with rule obtaining in other jurisdictions. Ibanez v. Hongkong & Shanghai Banking Corporation, 38 S. Ct. 413, 246 U. S. 627, 62 L. Ed. 907.

While Supreme Court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute, the construction will not be deferred to, where clearly erroneous. Philippine Sugar Estates Development Co. v. Government of Philippine Islands, 38 S. Ct. 513, 247 U. S. 385, 62 L. Ed. 1177.

Where the Supreme Court of the Philippine Islands reversed a judgment on a question of law, but did not dispose of the contention made under Code Civ. Proc. Philippine Islands, § 497, par. 2, that the denial of a new trial prayed on the ground of the insufficiency of the evidence to support the findings was error, the Supreme Court of the United States, on appeal, may review evidence and finally dispose of case. Id.

§ 1227. (Jud. Code, § 250.) Appeals and writs of error from the Court of Appeals of the District of Columbia.

10. Construction of any law of the United States drawn in question.—Federal Supreme Court has jurisdiction of writ of error to Court of Appeals of District of Columbia, where construction of Employers' Liability Act, as amended by Act April 5, 1910 (U. S. Comp. St. 1916, §§ 8662, 8665), is questioned. Washington Ry. & Electric Co. v. Scala, 37 S. Ct. 654, 244 U. S. 630, 61 L. Ed. 1360, affirming judgment 45 App. D. C. 484.

Under this section the Supreme Court has no jurisdiction to review on writ of error a judgment of the Court of Appeals of District of Columbia, which was not final and was rendered in a case arising under the criminal laws, though the construction of a federal law was drawn in question, as was the jurisdiction of the court wherein the proceedings were begun. Hartranft v. Mullowny, 38 S. Ct. 518, 247 U. S. 295, 62 L. Ed. 1123, dismissing writ of error, 43 App. D. C. 44.

11. Judgments and decrees made final.—Under Judicial Code, § 251, Court of Appeals of District of Columbia cannot certify questions to Supreme Court in cases in which its judgments or decrees are not final under this section, especially in view of section 239. United States ex rel. Arant v. Lane, 38 S. Ct. 94, 245 U. S. 166, 62 L. Ed. 223.

Judgments or decrees of Court of Appeals of District Columbia held not final in cases involving interpretation of act general in character or general duty or power of officer under law of the United States as distinguished from local authority. Id.

Judgment of Court of Appeals of District of Columbia, affirming judgment quashing certiorari directed to police court, wherein criminal prosecution was begun, held not to be final judgment, reviewable by United States Supreme Court on writ of error, under this section, despite authority of Court of Appeals, under Code of Law D. C. 1901, § 226, to review interlocutory orders. Hartranft v. Mullowny, 38 S. Ct. 518, 247 U. S. 295, 62 L. Ed. 1123, dismissing writ of error 43 App. D. C. 44.

12. Mode of review.—Certiorari directed to judge of police court of District of Columbia, wherein prosecution under Food and Drug Act had been begun, held part of original prosecution; hence judgment of Court of Appeals of District of Columbia, affirming order quashing writ, could not, under this section be reviewed by United States Supreme Court on writ of error. Hartranft v. Mullowny, 38 S. Ct. 518, 247 U. S. 295, 62 L. Ed. 1123, dismissing writ of error 43 App. D. C. 44.

§ 1228. (Jud. Code, § 251.) Certiorari to Court of Appeals, District of Columbia.

Judicial precedent.—Cases in which controversies were determined on certificates of Court of Appeals of District of Columbia, where no question was raised concerning the power to certify, held not authoritative on the question as to the power to certify. United States ex rel. Arant v. Lane, 38 S. Ct. 94, 245 U. S. 166, 62 L. Ed. 223.

Finality of judgment.—Under Judicial Code, § 251, Court of Appeals of District of Columbia cannot certify questions to Supreme Court in cases in which its judgments or decrees are not final under section 250, especially in view of section 239. United States ex rel. Arant v. Lane, 38 S. Ct. 94, 245 U. S. 166, 62 L. Ed. 223.

Under this section, writ of certiorari to review judgments of Court of Appeals of District of Columbia held not limited to cases in which final judgment has been entered, but only to cases in which the judgment when entered is final. George A. Fuller Co. v. Otis Elevator Co., 38 S. Ct. 180, 245 U. S. 489, 62 L. Ed. 422, reversing judgment Otis Elevator Co. v. George A. Fuller Co., 44 App. D. C. 287.

Presentation of question in court below.—Certiorari to Court of Appeals of the District of Columbia will be dismissed, where question on which certiorari was prayed was not before the court below and no exception was taken as to ruling of the court on such exception. Tyrrell v. District of Columbia, 37 S. Ct. 361, 243 U. S. 1, 61 L. Ed. 557, denying certiorari District of Columbia v. Tyrrell, 41 App. D. C. 463.

§ 1228a. (Act Sept. 6, 1916, c. 448, § 6.) Appellate jurisdiction; time for application.

This section, which provides that "no writ of error, appeal, or writ of certiorari intended to bring up any cause for review by the Supreme Court shall be allowed or entertained unless duly applied for within three months after entry of the judgment or decree complained of," may be regarded as having superseded the provisions of U. S. Comp. St. 1916, §§ 1648, 1649 (Act March 3, 1891, c. 517, § 6, and R. S. 1008), as to the time for taking appeals or writs of error to the Supreme Court, from and after thirty days after its approval, except that the right of review under existing laws in respect of judgments and decrees entered before this section took effect was to remain

unaffected for the period of six months thereafter, but such right was to cease thereafter (see § 7 of said Act Sept. 6, 1916, c. 448, 39 Stat. 728).

Cited without definite application,
Glasgow Nav. Co. v. Munson S. S. Line, 38 S. Ct. 315, 62 L. Ed. 919.

§ 1229. (Jud. Code, § 252.) Appellate jurisdiction under the bankruptcy act.

Cited without definite application,
Swift & Co. v. Hoover, 37 S. Ct. 56, 61 L. Ed. 175.

RULES OF THE SUPREME COURT OF THE UNITED STATES

These rules were republished March 1, 1918. Any changes made thereby in the rules as published in Comp. St. 1916, pp. 1807–1840 are set forth or indicated below in the notes to the respective rules.

Notes of Decisions

Construction of rules in general.—It is not within the province of an inferior court to question the validity of a rule of the Supreme Court, its function being only to construe the rule; and such a construction of the rules of the Supreme Court as will apparently make them valid should be adopted. Audiffren Refrigerating Mach. Co. v. General Electric Co. (D. C.) 245 F. 783.

RULE 2

Disbarment of attorneys.—On proceeding to disbar a member of the bar of the Supreme Court of the United States on ground of disbarment by state court, opportunity should be given to point out any ground which would prevent Supreme Court from giving effect to finding of state court establishing want of fair private and professional character. Selling v. Radford, 37 S. Ct. 377, 243 U. S. 46, 61 L. Ed. 585.

Loss by member of the bar of the Supreme Court of his fair private and professional character held adequate reason for taking away his right to continue to be a member of such bar. Id.

Want of fair private and professional character in member of the bar of the Supreme Court of the United States arising from the act of the highest court of the state, disbarring him from practice for professional misconduct, will be recognized by federal Supreme Court unless the state procedure was wanting in due process of law, or the proof was insufficient. Id

RULE 8

4. Contents of record or transcript.—The federal Supreme Court will look only to certified transcript to ascertain what rulings on evidence were made by the trial court. San Antonio & A. P. Ry. Co. v. Wagner, 36 S. Ct. 626, 241 U. S. 476, 60 L. Ed. 1110, affirming judgment (Tex. Civ. App.) 166 S. W. 24.

The rules of the Supreme Court do not require the Court of Claims to incorporate in its record anything more than the ultimate facts established by the record, and the appellate court is to determine whether any omitted question of fact is one so necessary to the decision that it will remand the cause for that purpose. Winton's Estate v. Amos, 52 Ct. Cl. 90.

RULE 9

3. Extension of time.—Federal Supreme Court will extend the time for filing the record in order that an opportunity may be given to conform to the court's views as to what the record should be. U. S. v. United States Steel Corporation, 36 S. Ct. 408, 240 U. S. 442, 60 L. Ed. 731.

RULE 10. PRINTING RECORDS

Section 9 of this rule, as set forth in Comp. St. 1916, p. 1819, was changed by substituting for the word "errors," in the third sentence thereof, before the words "so stated," the word "points."

RULE 21

Section 8 of this rule, as set forth in Comp. St. 1916, p. 1825, was changed by inserting before the last three words, "cases are cited," the word "the."

Notes of Decisions

Omission of specification of errors.—Failure to plead or prove that plaintiff, in an action under Safety Appliance Acts and the Employers' Liability Act, was employed in interstate commerce when injured, is not a "plain error" which the federal Supreme Court will notice on writ of error under rule 21, par. 4, although not assigned. San Antonio & A. P. Ry. Co. v. Wagner, 36 S. Ct. 626, 241 U. S. 476, 60 L. Ed. 1110, affirming judgment (Tex. Civ. App.) 166 S. W. 24.

RULE 23

Allowance of interest.—Allowance of interest, on decree for division of property from date of divorce decree is within discretion of the court notwithstanding success of the husband in reducing on appeal the amount which was allowed the wife. De La Rama v. De La Rama, 36 S. Ct. 518, 241 U. S. 154, 60 L. Ed. 932.

Interest may be allowed by state court on a judgment for plaintiff under Employers' Liability Act from the time it was rendered, if judgment is affirmed on appeal. Louisville & N. R. Co. v. Stewart, 36 S. Ct. 586, 241 U. S. 261, 60 L. Ed. 989, affirming judgment Same v. Stewart's Adm'x, 174 S. W. 744, 163 Ky. 823.

Grounds for award of damages.—Though it was an abuse of discretion by auditor of the Canal Zone to prosecute a writ of error from Supreme Court to review a judgment issuing writ of mandamus against him to compel payment without deduction of salary of judge of the district court of the Canal Zone as fixed by Act Aug. 24, 1912, c. 390, held that, as matter did not involve a money judgment, rule 23 (Comp. St. 1916, p. 1827) as to damages will not be enforced. Smith v. Jackson, 38 S. Ct. 353, 246 U. S. 388, 62 L. Ed. 788, affirming judgment 241 F. 747, 154 C. C. A. 449.

Cited without definite application, Consolidated Rubber Tire Co. v. Diamond Rubber Co. of New York (D. C.) 232 F. 508.

RULE 24

Costs to or against United States.—Costs on appeal to federal Supreme Court, in case in which United States is party, should not on reversal be granted to United States because of Supreme Court rule 24, giving costs to prevailing party; it not applying where United States is party. Oregon & C. R. Co. v. U. S., 37 S. Ct. 443, 243 U. S. 549, 61 L. Ed. 890.

RULE 26

Reassignment of causes.—Case in federal Supreme Court on writ of error to state court which cannot be decided on the merits without involving decision in boundary suit pending, will be reassigned for hearing at the same time as the hearing on the boundary suit. Cissna v. State of Tennessee, 37 S. Ct. 108, 242 U. S. 195, 61 L. Ed. 243.

RULE 29

Necessity of bond.—Under Rev. St. § 1000 (Comp. St. 1916, § 1660), writ of error, but for Supreme Court rule 29 of which rule 13 for Circuit Courts of Appeals (Comp. St. 1916, p. 1292) is a copy, can be perfected and cause heard without any security at all, except for costs. Rederiaktiebolaget Amie v. Universal Transp. Co., 245 F. 282, 157 C. C. A. 474.

Amount of bond.—Under Supreme Court rule 29, of which rule 13 for Circuit Courts of Appeals is a copy, held that, though no supersedeas bond was given when writ of error was taken, it is, under Rev. St. § 1000 (Comp. St. 1916, § 1660), mere irregularity, and any circuit judge or judge of Circuit Court of Appeals may, after expiration of 60-day period prescribed by section 1007 (section 1666), fix amount of supersedeas bond. Rederiaktiebolaget Amie v. Universal Transp. Co., 245 F. 282, 157 C. C. A. 474.

Liability on bond.—In view of Supreme Court rule 29 and Circuit Court of Appeals rule 13, a supersedeas bond covers any money not otherwise secured, awarded by the judgment or decree appealed from, as well as costs or damages on appeal, and so includes costs in the lower court. Pacific Coast Casualty Co. v. Harvey (C. C. A.) 250 F. 952.

Enforcement of bond.—In view of Supreme Court rule 29, enforcement of a supersedeas bond given on appeal from a decree of the Circuit Court of Appeals, reversing a decree of the District Court, cannot be denied on the theory that such intermediate decree could embrace nothing to be superseded, where it awarded costs in favor of the successful party and was affirmed by the Supreme Court. Pacific Coast Casualty Co. v. Harvey (C. C. A.) 250 F. 952.

RULE 31

Narrative form.—Though record conformed to Act Cong. Feb. 13, 1911, and Supreme Court rule 31, held, that transcript without statement in narrative form, required by equity rule 75 (Comp. St. 1916, p. 2527), could not be approved. U. S. v. Motion Picture Patents Co. (D. C.) 230 F. 541.

RULE 37

The heading of this rule was changed from that set forth in U. S. Comp. St. 1916, p. 1839, to read as follows: "Cases Certified and Petitions for Writs of Certiorari."

Section 4 of this rule, as set forth in Comp. St. 1916, p. 1841, was changed to read as set forth below.

4. An application for a writ of certiorari will be deemed in time when the petition therefor, accompanied by the printed record and brief, is filed within the period prescribed by law, provided this is followed by submitting the petition in open court on some motion day not later than the first one which follows a period of four weeks after such filing. Notice of the date of submission and copies of the petition and brief must be served as required by section 3 of this rule.

Notes of Decisions

Statement of facts in certificate.—Certificate from Circuit Court of Appeals, not stating the facts, but merely that there was evidence tending to establish the facts as claimed by each party, and assuming facts as a basis of questions, held not in proper form, under Supreme Court rule 37 (Comp. St. 1916, p. 1839). Ricaud v. American Metal Co., 38 S. Ct. 312, 246 U. S. 304, 62 L. Ed. 733.

Under Judicial Code, § 239 (Comp. St. 1916, § 1216) providing for certification of questions of law from Circuit Court of Appeals, and that Supreme Court may give instruction on the questions certified, or order whole record sent up for consideration and decision, and Supreme Court Rule 37, providing that the certificate shall contain a proper statement of the facts on which the certified questions arise, the certificate by itself, and without reference to transcript, must state the pertinent facts necessary for answering the questions. Dillon v. Strathearn S. S. Co., 39 S. Ct. 83.

Defects in specification of questions.—Though a certificate from Circuit Court of Appeals was deficient in specification and somewhat wanting in precision, the court considers it its duty to answer the questions, where the matters not specified were not in dispute and the want of precision not so fundamental as to mislead or confuse. Boston Store of Chicago v. American Graphophone Co., 38 S. Ct. 257, 246 U. S. 8, 62 L. Ed. 551, Ann. Cas. 1918C, 447.

Cited without definite application, Cleveland-Cliffs Iron Co. v. Arctic Iron Co., 39 S. Ct. 91.

In addition to the rules set forth in Comp. St. 1916, pp. 1807–1841, the republished rules contain the following:

RULES IN REFERENCE TO APPEALS FROM THE COURT OF CLAIMS

REGULATIONS PRESCRIBED BY THE SUPREME COURT OF THE UNITED STATES UNDER WHICH APPEALS MAY BE TAKEN FROM THE COURT OF CLAIMS TO SAID SUPREME COURT

RULE 1

In all cases hereafter decided in the Court of Claims in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court upon the following record, and none other:

1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

2. A finding by the Court of Claims of the facts in the case established by the evidence in the nature of a special verdict, but not the evidence establishing them; and a separate statement of the conclusions of law upon said facts, upon which the court founds its judgment

or decree. The finding of facts and conclusions of law to be certified to this court as a part of the record.

OCTOBER TERM, 1882

Ordered, that rule 1, in reference to appeals from the Court of Claims, be, and the same is hereby, made applicable to appeals in all cases heretofore or hereafter decided by that court under the jurisdiction conferred by the act of June 16, 1880, c. 243, "to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes."

RULE 2

In all cases in which judgments or decrees have heretofore been rendered, where either party is by law entitled to an appeal, the party desiring it shall make application to the Court of Claims by petition for the allowance of such appeal. Said petition shall contain a distinct specification of the errors alleged to have been committed by said court in its rulings, judgment, or decree in the case. The court shall, if the specification of the alleged error be correctly and accurately stated, certify the same, or may certify such alternations and modifications of the points decided and alleged for error as, in the judgment of said court, shall distinctly, fully, and fairly present the points decided by the court. This, with the transcript mentioned in rule 1 (except the statement of facts and law therein mentioned), shall constitute the record on which those cases shall be heard in the Supreme Court.

RULE 3

In all cases an order of allowance of appeal by the Court of Claims, or the Chief Justice thereof in vacation, is essential, and the limitation of time for granting such appeal shall cease to run from the time an application is made for the allowance of appeal.

RULE 4

In all cases in which either party is entitled to appeal to the Supreme Court, the Court of Claims shall make and file their finding of facts, and their conclusions of law therein, in open court, before or at the time they enter their judgment in the case.

RULE 5

In every such case each party at such time before trial and in such form as the court may prescribe, shall submit to it a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the finding of facts.

For instructions by the clerk of the Supreme Court as to applications for writs of certiorari, see note to § 1214, ante.

For rules for practice and procedure under the Copyright Act of 1909, see note to § 9546, post.

CHAPTER ELEVEN—PROVISIONS COMMON TO MORE THAN ONE COURT

Sec.
1233. Exclusive jurisdiction of United States courts.
1233a. United States courts not to have jurisdiction on ground of incorporation of railroad company by Act of Congress.
1237. Salary of judges after resignation.
1239. Power to issue writs.
1241. Injunctions; in what cases granted.
1242. Injunctions to stay proceedings in State courts.
1243. Injunctions based upon alleged unconstitutionality of State statutes.
1243a. Preliminary injunctions and temporary restraining orders.
1243b. Security upon issue of restraining order or interlocutory order of injunction.
1243c. Requisites and effect of injunction or restraining order.
1243d. Restraining orders or injunctions in cases between employers and employés.
Sec.
1244. When suits in equity may be maintained.
1245. Power to administer oaths and punish contempts.
1245a. Contempt constituting also criminal offense.
1245b. Proceedings to punish contempt.
1245d. Provisions limited to contempts specifically embraced therein.
1246. New trials.
1249. Parties may manage their causes personally or by counsel.
1251a. Amendments to pleadings in suits at law which should have been brought in equity, or vice versa.
1251b. Equitable defenses and equitable relief in actions at law; review of judgments or decrees in such cases.
1251c. Amendments to show jurisdiction based on diverse citizenship of parties.

§ 1233. (Jud. Code, § 256, as amended, Act Oct. 6, 1917, c. 97, § 2.) Exclusive jurisdiction of United States courts.

Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any State. (40 Stat. 395.)

This paragraph was amended by Act Oct. 6, 1917, c. 97, § 2, cited above, by inserting therein the words "and to claimants the rights and remedies under the workmen's compensation law of any State."

Notes of Decisions

I. JURISDICTION OF OFFENSES COGNIZABLE UNDER AUTHORITY OF UNITED STATES

4. Jurisdiction of state courts in general.—Jurisdiction of federal courts over prosecution against one charged with unlawful possession of smoking opium is not exclusive, and, where he appeared to have obtained it from source having no apparent connection with direct importation, United States district attorney may allow offense to be dealt with under state health statutes. United States v. Ah Hung (D. C.) 243 F. 762.

In so far as disloyal slanders or libels cause or tend to cause breaches of the peace, they are offenses against the state, and can be prosecuted only in the state courts. U. S. v. Hall (D. C.) 248 F. 150.

Courts of this state have no jurisdiction to punish Mexican soldiers killing a United States soldier incidental to a battle in Texas between Mexican and United States troops during a state of war between this country and Mexico. Arce v. State (Tex. Cr. App.) 202 S. W. 951.

III. ADMIRALTY AND MARITIME JURISDICTION

See notes under Const. art. 3, §§ 1, 2.

29. Exclusive, concurrent, and conflicting jurisdiction in general.—State legislation affecting general maritime law held invalid, under Const. art. 3, § 2, article 1, § 8, giving Congress power to make all necessary laws, and Judicial Code, §§ 24, 256, giving federal District Courts exclusive jurisdiction of civil causes of admiralty jurisdiction. Southern Pac. Co. v. Jensen, 37 S. Ct. 524, 244 U. S. 205, 61 L. Ed. 1086, reversing judgment Jensen v. Southern Pac. Co., 109 N. E. 600, 215 N. Y. 514, L. R. A. 1916A, 403, Ann. Cas. 1916B, 276; Clyde S. S. Co. v. Walker, 37 S. Ct. 545, 244 U. S.

255, 61 L. Ed. 1116, reversing judgment In re Walker, 109 N. E. 604, 215 N. Y. 529, Ann. Cas. 1916B, 87.

Jurisdiction of an action for accounting, as such, is in state courts, and not in admiralty; but admiralty will take an accounting which is a necessary incident to the main relief asked, that being within its jurisdiction. Fischer v. Carey, 159 P. 577, L. R. A. 1917A, 1100.

Where defendant vessel lay to in front of complainant's wharf for 37 days, waiting her turn to unload, she continued to be carrier, rendering complainant's action to enforce lien for wharfage one against vessel in maritime service, cognizable only by United States admiralty courts. McMorran v. The Millinokett (Mich.) 157 N. W. 421.

30. Saving of common-law or statutory remedy.—See, also, notes under § 991(3) and Const. art. 3, §§ 1, 2.

Prior to the amendment of October 6, 1917, it was held that the New York Workmen's Compensation Act was invalid, as applying to ocean-going steamship, as conflicting with Const. art. 1, § 8, and article 3, § 2, and Judicial Code, §§ 24, 256, and inconsistent with Rev. St. §§ 4283–4285 (Comp. St. 1916, §§ 8021–8023) and Act June 26, 1884, § 18. Southern Pac. Co. v. Jensen, 37 S. Ct. 524, 244 U. S. 205, 61 L. Ed. 1086, reversing judgment Jensen v. Southern Pac. Co., 109 N. E. 600, 215 N. Y. 514, L. R. A. 1916A, 403, Ann. Cas. 1916B, 276; Clyde Steamship Co. v. Walker, 37 S. Ct. 545, 244 U. S. 255, 61 L. Ed. 1116, reversing judgment In re Walker, 109 N. E. 604, 215 N. Y. 529, Ann. Cas. 1916B, 87. It was further held that a state Workmen's Compensation Act did not cover injuries sustained by member of crew of vessel while in foreign port, though employed on the vessel as a barber. Hartman v. Toyo Kisen Kaisha S. S. Co. (D. C.) 244 F. 567. And that a Compensation Act, though of optional character, does not apply to injuries received in course of employment to discharge cargo of coal from vessel engaged in interstate commerce and lying in navigable waters; maritime and admiralty jurisdiction being in federal courts under Const. U. S. art. 3, § 2, and Judicial Code, U. S. § 256, cl. 3. Duart v. Simmons, 121 N. E. 10, 231 Mass. 313. But in another case it was held that, since "common-law remedy," as employed in Judiciary Act, means any remedy with or without action or jury which is a substitute for a suit at law whereby a liability is imposed after due process of law, the Workmen's Compensation Act is within its saving clause, and is entitled to respect in admiralty courts; a state having power to create new rights or remedies, and enforce those rights in her own courts, without regard to admiralty. North Pacific S. S. Co. v. Industrial Acc. Commission of California (Cal.) 163 P. 199.

Since the amendment of October 6, 1917, it has been held that while, when enacted, a Workmen's Compensation Law, so far as making it applicable to longshore work in loading and unloading cargoes, was unconstitutional, as an invasion of admiralty jurisdiction, it became effective in that respect, without re-enactment, when by Act Cong. Oct. 6, 1917, § 2, recourse to rights and remedies under state Workmen's Compensation Law was permitted. Cimmino v. John T. Clark & Son (Sup.) 172 N. Y. S. 478. And that a Workmen's Compensation Act, which withdraws from private controversy all remedy for injuries received in hazardous work, and excludes every other remedy, does not extend to employés on a vessel in navigable waters, and the Industrial Insurance Commission cannot collect from an employer premiums on account of such employés, notwithstanding Act Cong. Oct. 6, 1917, amending this section by saving to suitors in admiralty any common law remedy, and rights and remedies under the Workmen's Compensation Act. Puget Sound Bridge & Dredging Co. v. Industrial Ins. Commission (Wash.) 177 P. 788.

Despite Judiciary Act, § 9 (Jud. Code, §§ 24, 256), giving district courts exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, saving to suitors the right of common-law remedy, where the common law is competent to give it, the rights of a seaman injured while in service of the ship must be measured according to rules of the maritime law, and cannot be measured by the common law. Chelentis v. Luckenbach S. S. Co., 38 S. Ct. 501, 247 U. S. 372, 62 L. Ed. 1171, affirming judgment 243 F. 536, 156 C. C. A. 234.

A person who has a cause of action of admiralty cognizance has always been entitled to seek his remedy in either the common-law courts, where they are competent to give it, or in the admiralty courts. The Erie Lighter 108 (D. C.) 250 F. 490.

In view of the federal Judiciary Act of 1789, granting admiralty jurisdiction to the federal District Court and saving to suitors common-law remedies, while state Legislatures cannot in terms enlarge jurisdiction of admiralty, they may create new rights over matters within the jurisdiction of admiralty. North Pacific S. S. Co. v. Industrial Acc. Commission of California (Cal.) 163 P. 199.

Under Act March 3, 1911, c. 231, § 24, 36 Stat. 1091 (U. S. Comp. St. 1916, § 991[3]), giving federal district courts original jurisdiction of admiralty causes, but saving to suitors right to a common-law remedy, where common law is competent to give it, a state common-law court has jurisdic-

tion of action in personam by seaman for personal injuries occurring off Alaskan coast and arising from vessel's unseaworthiness. Larson v. Alaska S. S. Co. (Wash.) 165 P. 880.

44. **Personal injuries.**—The circuit court, and not the federal courts of admiralty, had jurisdiction of an action for personal injuries received by plaintiff in jumping from defendant's launch to a pier at command of the "master" in charge of the launch. Gordon v. Drake (Mich.) 159 N. W. 340.

A ship need not be in interstate or foreign commerce to make contract of employment relative thereto maritime, and claim of employé for injury within jurisdiction of admiralty, to exclusion of State Industrial Commission. Sullivan v. Hudson Nav. Co., 169 N. Y. S. 654, 182 App. Div. 152, order affirmed Doey v. Clarence P. Howland Co., 120 N. E. 53, 224 N. Y. 30, and Anderson v. Johnson Lighterage Co., 120 N. E. 55, 224 N. Y. 539, and Keator v. Rock Plaster Mfg. Co., 120 N. E. 56, 224 N. Y. 540, certiorari denied State Industrial Commission of State of New York v. Clarence P. Howland, 39 S. Ct. 11, 248 U. S. 574, 63 L. Ed. —, and Same v. Johnson Lighterage Co., 39 S. Ct. 11, 248 U. S. 574, 63 L. Ed. —, and Same v. Rock Plaster Mfg. Co., 39 S. Ct. 12, 248 U. S. 574, 63 L. Ed. —.

45. **Causing death.**—An action for death occurring on the high seas on a vessel owned in Massachusetts may be maintained in the Massachusetts courts. Souden v. Fore River Shipbuilding Co., 112 N. E. 82, 223 Mass. 509.

46. **Liens.**—The furnishing of materials for the building of a vessel is not a "maritime contract," and the foreclosure of a lien for such materials was properly brought in the state court. Siler Mill Co. v. Charles Nelson Co. (Wash.) 162 P. 590.

48. **Claims for wages.**—Claim of carpenter against his employer, altering ship in navigable waters to fit it for cargo of grain, is within jurisdiction of admiralty, to the exclusion of the State Industrial Commission, in view of Const. U. S. art. 3, § 2, and Judiciary Act Sept. 24, 1789, § 9, continued in Judicial Code, §§ 24 and 256 (U. S. Comp. St. 1916, §§ 991, 1233). Doey v. Clarence P. Howland Co., 120 N. E. 53, 224 N. Y. 30.

51. **Partition and sale of vessel.**—Admiralty has exclusive jurisdiction to appoint a receiver for and decree sale of a ship, because of differences between the owners as to management, though it may not decree a sale because of the paramount principle in admiralty of right of control in the majority. Fischer v. Carey, 159 P. 577, 173 Cal. 185, L. R. A. 1917A, 1100.

V. CASES ARISING UNDER PATENT OR COPYRIGHT LAWS

(A) *Patent laws*

See, also, notes under §§ 991, 9464, et seq., and Const. art. 3, § 2, cl. 1.

57. **Jurisdiction of state courts in general.**—Const. U. S. art. 1, § 8, and Judicial Code, § 256, held not to deprive state court of jurisdiction of action based on unlawful use of plaintiffs' trade secrets and injury to plaintiffs' business, by threatening their customers with infringement suits, where defendants had not secured any patent. Aronson v. Orlov, 116 N. E. 951, 228 Mass. 1, certiorari denied Orlov v. Aronson, 38 S. Ct. 61, 62 L. Ed. 536.

60. **Infringements.**—A bill and answer were in the ordinary forms employed in patent suits, except that the ultimate issue was whether plaintiffs were entitled to damages in the form of fixed royalties, instead of an indefinite sum in the form of profits, and an injunction was prayed restraining defendant from further using infringing furnaces until it should pay plaintiffs such fixed sum. Held, in view of subdivision 5 of this section and section 991, that the District Court had jurisdiction, though the sum involved was less than $3,000, as the bill showed that plaintiffs invoked the aid of the patent laws, and the suit might be said to have arisen under those laws. Swindell v. Youngstown Sheet & Tube Co. (C. C. A.) 230 F. 438.

(B) *Copyright laws*

66. **Infringements.**—The state courts will refuse damages for the infringement of an unpublished play by motion pictures subsequent to the copyright of other motion pictures, where the federal courts have not determined the portion of damages due to infringement of the copyrighted scenes. O'Neill v. General Film Co., 157 N. Y. S. 1028, 171 App. Div. 854, modifying judgment (Sup.) 152 N. Y. S. 599.

Equity has no jurisdiction to issue a permanent injunction against infringement of copyright, over which federal courts have exclusive jurisdiction. Bobbs-Merrill Co. v. Universal Film Mfg. Co. (Sup.) 160 N. Y. S. 37.

VI. BANKRUPTCY PROCEEDINGS

See notes under §§ 991, 9585, 9586, et seq., and Const. art. 3, § 2, cl. 1.

VIII. SUITS AGAINST AMBASSADORS OR OTHER PUBLIC MINISTERS

See, also, notes under Const. art. 3, § 2, cls. 1, 2.

85. **Jurisdiction of state courts.**—Under Const. U. S. art. 3, § 2, subds. 1, 2, article 3, § 1, and article 6, subd. 2, and Judicial Code, 1911, § 24, subd. 18, and section 256, subd. 8, New York Su-

preme Court held to have no jurisdiction of wife's action for separation, under Code Civ. Proc. N. Y. § 1762, as against husband, consul for republic of Peru, so that service of summons would be vacated and complaint dismissed. Higginson v. Higginson (Sup.) 158 N. Y. S. 92, 96 Misc. Rep. 457.

§ 1233a. (Act Jan. 28, 1915, c. 22, § 5.) United States courts not to have jurisdiction on ground of incorporation of railroad company by Act of Congress.

Suits arising under laws of the United States.—Since enactment of this section, suit by or against railroad incorporated under act of Congress is one arising under the laws of the United States, unless there was reason therefor other than that the company was thus incorporated. Bankers' Trust Co. v. Texas & P. Ry. Co., 36 S. Ct. 569, 241 U. S. 295, 60 L. Ed. 1010.

A suit to foreclose mortgage of railroad incorporated under federal laws does not arise under laws of the United States so as to be within jurisdiction of federal court, since the enactment of this section. Id.

Removal from state courts.—Under this section the fact that a railroad company was incorporated by congressional act does not entitle it to remove an action from the state to the federal courts. Texas & Pac. Ry. Co. v. Hanson (Tex. Civ. App.) 189 S. W. 289.

Under this section a passenger's suit for injuries was not removable to the federal court on the ground that it involved a question of law arising under a federal statute, although the cause of action arose prior to enactment of such statute but the action was not brought until thereafter. Texas & P. Ry. Co. v. Mercer (Tex. Civ. App.) 195 S. W. 263.

§ 1237. (Jud. Code, § 260, as amended, Act Feb. 25, 1919, c. 29, § 6.) Salary of judges after resignation.

When any judge of any court of the United States, appointed to hold his office during good behavior, resigns his office after having held a commission or commissions as judge of any such court or courts at least ten years continuously, and having attained the age of seventy years, he shall, during the residue of his natural life receive the salary which is payable at the time of his resignation for the office that he held at the time of his resignation. But, instead of resigning, any judge other than a justice of the Supreme Court, who is qualified to resign under the foregoing provisions, may retire, upon the salary of which he is then in receipt, from regular active service on the bench, and the President shall thereupon be authorized to appoint a successor; but a judge so retiring may nevertheless be called upon by the senior circuit judge of that circuit and be by him authorized to perform such judicial duties in such circuit as such retired judge may be willing to undertake, or he may be called upon by the Chief Justice and be by him authorized to perform such judicial duties in any other circuit as such retired judge may be willing to undertake, or he may be called upon either by the presiding judge or senior judge of any other such court and be by him authorized to perform such judicial duties in such court as such retired judge may be willing to undertake.

In the event any circuit judge, or district judge, having so held a commission or commissions at least ten years continuously, and having attained the age of seventy years as aforesaid, shall nevertheless remain in office, and not resign or retire as aforesaid, the President, if he finds that any such judge is unable to discharge efficiently all the duties of his office by reason of mental or physical disability of permanent character, may, when necessary for the efficient dispatch of business, appoint, by and with the advice and consent of the Senate an additional circuit judge of the circuit or district judge of the district to which such disabled judge belongs. And the judge so retiring voluntarily, or whose mental or physical condition caused the President to appoint an additional judge, shall be held and treated as if junior in commission to the remaining judges of said court, who shall, in the order of the seniority of their

respective commissions, exercise such powers and perform such duties as by law may be incident to seniority. In districts where there may be more than one district judge, if the judges or a majority of them can not agree upon the appointment of officials of the court, to be appointed by such judges, then the senior judge shall have the power to make such appointments.

Upon the death, resignation, or retirement of any circuit or district judge, so entitled to resign, following the appointment of any additional judge as provided in this section, the vacancy caused by such death, resignation, or retirement of the said judge so entitled to resign shall not be filled. (40 Stat. 1157.)

This section was amended by Act Feb. 25, 1919, c. 29, § 6, cited above, to read as set forth above. This amendment consisted in adding to the section all that part following the first sentence thereof, as set forth above.

Section 7 of said Act Feb. 25, 1919, c. 29, provides that the act shall take effect and be in force on and after the first day of the month next following its approval.

§ 1239. (Jud. Code, § 262.) Power to issue writs.

See notes under § 1211.

I. CONSTRUCTION OF PROVISION

1. Authority and power to issue writs.—In view of this section a District Court has jurisdiction to issue a writ of venire facias against a defendant. U. S. v. Philadelphia & R. Ry. Co. (D. C.) 237 F. 292.

A writ of venire facias is in its very nature an ad respondendum proceeding, giving defendant who is indicted his day in court, in order that his defense may be heard, and the writ will not be quashed, because it called for an answer, instead of a plea. Id.

In absence of rule of federal court, a common-law writ will proceed in accordance with the settled practice at common law. Universal Transp. Co. v. National Surety Co. (D. C.) 252 F. 293.

II. SCIRE FACIAS

4. To revive judgment.—A writ of fieri facias may be taken out at the pleasure of the party recovering a judgment at any time within 10 years after rendition. Roger v. J. B. Levert Co., 237 F. 737, 150 C. C. A. 491.

6½. Abolition of writ by state statute.—Under Judicial Code, § 262 (Comp. St. 1916, § 1239), empowering District Courts to issue writs of scire facias, they may do so in a state which has abolished the writ. Universal Transp. Co. v. National Surety Co. (D. C.) 252 F. 293.

7. Procedure and practice.—In view of this section and section 1591, providing for the amendment of writs for any defect or want of form, a scire facias issued out of the federal District Court for Tennessee to recover on a bail bond may be amended to show the missing jurisdictional fact that the court admitted the offender to bail. Ewing v. U. S. (C. C. A.) 240 F. 241.

III. MANDAMUS

See notes under § 1211.

9. Correction of errors of lower courts.—Mandamus does not lie to correct errors in rulings which are reviewable on appeal. In re John J. Gibson Co., 233 F. 751, 147 C. C. A. 517.

A writ of mandamus will not be granted to require a District Judge to correct alleged errors occurring on the trial of a cause, where they can be brought up for review by appeal. In re Duncan, 249 F. 155, 161 C. C. A. 207, certiorari denied Ex parte Duncan, 38 S. Ct. 427, 247 U. S. 508, 62 L. Ed. 1241.

11. Issuance in aid or exercise of jurisdiction—In aid of appellate jurisdiction.—Where clerk of Circuit Court of Appeals declined, without required deposit to secure costs, to file record on appeal by seamen from a decree dismissing their libel to enforce payment of wages, Supreme Court, in view of its ultimate power to review the cause on merits and the effect of the refusal, may issue a writ of mandamus to compel filing of record without deposit. In re Abdu, 38 S. Ct. 447, 247 U. S. 27, 62 L. Ed. 966.

The Circuit Courts of Appeals have no power to issue writs of mandamus or prohibition by virtue of the fact alone that they have appellate jurisdiction to review judgments and decrees of the District Courts; but the exercise of that jurisdiction rests upon the fact that the issuance thereof is auxiliary to and is necessary for the protection of the appellate jurisdiction of the court issuing the same, which might otherwise be defeated by the unauthorized action of the court below. Hammond Lumber Co. v. United States Dist. Court for District of Columbia (C. C. A.) 240 F. 924.

11½. —— Settlement of bill of exceptions.—A trial judge cannot be com-

pelled by mandamus to sign a bill of exceptions, purporting to contain a summary of the testimony in narrative form, unless it contains the substance of all the material testimony given on the trial and his return that it does not do so is conclusive; but he may be required to settle such portion of the proposed bill, aside from the testimony, as correctly sets forth the proceedings. Black v. Youmans, 245 F. 460, 157 C. C. A. 622.

Where bill of exceptions was presented during term, and no unjustifiable delay on part of moving party appeared, and only objection to settlement was that bill was not timely presented, moving party is entitled to writ of mandamus directing signing of bill. In re Federal Life Ins. Co., 248 F. 908, 161 C. C. A. 26.

12. —— Payment and enforcement of judgments in general.—The officials of the Treasury Department are charged with a ministerial duty in paying out money appropriated to satisfy a judgment of the Court of Claims, and may be compelled to make payment by mandamus. McAdoo v. Ormes, 47 App. D. C. 364.

13. —— Enforcement of judgments against municipal corporations.—Holders of bonds of irrigation district held entitled to mandamus to compel levy of assessment against lands of district to raise money to pay judgment on interest coupons. Norris v. Montezuma Valley Irr. Dist., 248 F. 369, 160 C. C. A. 379, reversing judgment (D. C.) 240 F. 825, and certiorari denied Montezuma Valley Irr. Dist. v. Norris, 39 S. Ct. 10, 63 L. Ed. —.

Under a statute requiring the proper officers of a city to issue warrants in payment of judgments recovered against the city on presentation of the record of the judgment and its satisfaction, it is no defense to an action in mandamus to compel the issuance of such warrants that the city is without funds to pay them. Symons v. U. S. (C. C. A.) 252 F. 109.

14. —— Enforcement of judgments against counties.—Proceedings for the enforcement of a judgment against a county, although erroneous in form, held sufficient to authorize the court to issue a writ of mandamus, which was the proper procedure. Clearwater County v. Pfeffer, 236 F. 183, 149 C. C. A. 373.

16. —— Execution of mandate and trial after remand.—Writ of mandamus, asked for in connection with appeal and writ of prohibition, held to be denied as presumptively District Court, on being advised of appellate court's views, would give proper relief. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

On application for mandamus to prevent a lower court after remand from exercising jurisdiction, neither merits of main case nor whether action of trial court is equitable, is involved, but the sole inquiry is whether that court is without jurisdiction. In re Griggs, 233 F. 243, 147 C. C. A. 249, denying rehearing 227 F. 795, 142 C. C. A. 319.

Petition held to state no ground for writ of mandamus to compel District Judge to comply with mandate of Circuit Court of Appeals. Spann v. Smith, 245 F. 858, 158 C. C. A. 198.

20. Compelling performance of acts by public officers—Particular official acts and duties.—Order of Secretary of Interior recognizing the adopted children of deceased Indian allottee as his heirs, though made final and conclusive by Act June 25, 1910, did not exhaust his power so as to permit mandamus to interfere with his action in reopening the matter for further consideration. Lane v. United States ex rel. Mickadiet, 36 S. Ct. 599, 241 U. S. 201, 60 L. Ed. 956, reversing judgment United States of America ex rel. Mickadiet v. Lane, 43 App. D. C. 414.

Bona fide purchaser of certificates issued under Choctaw-Chickasaw Agreement confirmed by Act July 1, 1902, and held for cancellation for fraud, held not entitled to writ of mandamus to compel the issuance of a patent. Duncan Townsite Co. v. Lane, 38 S. Ct. 99, 245 U. S. 308, 62 L. Ed. 309, affirming judgment Lane v. Duncan Townsite Co., 44 App. D. C. 63.

Under Act Oct. 22, 1913, c. 32, mandamus will not issue for reinstatement of deputy marshal not required to give a bond, as the marshal could avoid the writ by demanding bond and then revoking the appointment. U. S. v. Lapp, 244 F. 377, 157 C. C. A. 3.

Mandamus will not issue to control discretion of United States marshal in removing deputy marshal under Act Oct. 22, 1913, c. 32. Id.

Mandamus to the Secretary of the Interior to compel him to issue a patent based on a fraudulent registration in the roll of members of the Chickasaw Nation of Indians held not to lie. Lane v. Duncan Townsite Co., 44 App. D. C. 63.

Under Act Cong. March 3, 1891, § 7, where nothing is required of the Secretary of the Interior except to issue a patent mandamus will lie to compel action. Hoglund v. Lane, 44 App. D. C. 310.

Where the Commissioner of Patents rules in an interference proceeding that the issue is not patentable to one of the parties because he has shown no invention over the disclosure of prior patents granted to him, and accordingly dissolves the interference, but re-

fuses to award priority of invention to the other party, the question involved is one calling for the exercise of judgment and discretion by the Commissioner, and his action cannot be reviewed or controlled by mandamus. Aufiero v. Ewing, 44 App. D. C. 328.

Mandamus to compel the Commissioner of Patents to vacate an order declaring an interference cannot be granted on the ground that the discontinuance of a prior interference is res judicata as to the present interference, but that defense can be raised and preserved at all stages of the interference proceeding. United States ex rel. International Money Machine Co. v. Newton, 47 App. D. C. 449.

21. Performance of acts by corporations.—Federal court is without jurisdiction to issue writ of mandamus against corporation to compel compliance with franchise obligations. State of Washington v. Tacoma Ry. & Power Co. (C. C.) 244 F. 989.

Mandamus held a proper remedy for failure and refusal of street car company to operate cars on tracks maintained under franchises. State of Washington v. Puget Sound Traction, Light & Power Co. (D. C.) 243 F. 748.

22. Compelling exercise of judicial powers and functions.—Where after argument judge transferred case to equity side of court, held, mandamus would not lie to compel him to grant jury trial. Ex parte Mason, 244 F. 154, 156 C. C. A. 582.

A court can be compelled to act one way or the other in matters properly before it, for that is its duty; but it cannot be compelled to make a particular decision, when it has power or discretion to act otherwise. Primos Chemical Co. v. Fulton Steel Corporation (D. C.) 254 F. 454.

23. Procedure and questions of practice.—Rule to show cause why mandamus should not issue where federal District Court has exceeded its power by suspending indefinitely sentence to imprisonment is properly directed to judge to compel vacation of order, rather than to clerk of court to compel issue of commitment. Ex parte U. S., 37 S. Ct. 72, 242 U. S. 27, 61 L. Ed. 129, L. R. A. 1917E, 1178, Ann. Cas. 1917B, 355.

Owner of judgment against a county was guilty of no culpable laches or breach of duty, for which the court in its discretion should refuse mandamus to compel payment, though for 30 years after original judgment, during which the county amassed other large indebtedness, he did nothing except to obtain renewal judgments; application for mandamus being a year after the last judgment, and limitations for issue of execution being 10 years. Bunch v. U. S. (C. C. A.) 252 F. 673.

One writ of mandamus against all officers of a county charged with any duty in the co-operative or separate steps of levying, collecting, and paying a tax to satisfy a judgment against the county is proper, being in reality a proceeding against the county. Id.

IV. CERTIORARI

24. Authority to issue.—See notes under § 1120 in original annotated edition.

Law courts have general superintending control over inferior tribunals by certiorari, which is not entirely taken away by statutory declaration that judgment shall be final. Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280.

The writ of certiorari may be used to bring up the record, where basis for a writ of habeas corpus is shown; but the law courts have no power to issue such writ to an executive or administrative board, for the sole purpose of reviewing the correctness of its decision. Ex parte Platt (D. C.) 253 F. 413.

25. Review of particular proceedings.—Certiorari will not issue to review the action of local and district draft boards in making determination as to deferred classification under executive regulations promulgated under the Selective Service Act, for the act creates a system for executive enforcement, and proceedings of the draft boards, as to those within scope of the act, are not in the same category as those of quasi judicial tribunals. In re Kitzerow (D. C.) 252 F. 865.

Certiorari, which, under this section, a federal court may issue wherever appropriate, will not be issued to review classification by a local board under the Selective Service Act, because it is an executive body, because there is no power in the court to substitute its opinion on a question of fact for that of the board, and because there is remedy by habeas corpus, which is not a discretionary writ, as is certiorari. U. S. v. Rauch (D. C.) 253 F. 814

VI. INJUNCTION

Injunction in general, see notes under § 1241 et seq.

29. Issuance in aid of jurisdiction.—See Landon v. Public Utilities Commission of Kansas (D. C.) 234 F. 152.

Court in which suit to foreclose railroad mortgage was brought held not authorized to prevent trustee from bringing suit in another jurisdiction against the mortgagor and another company to enforce a collateral agreement. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

Though an injunction was denied, the court has jurisdiction to preserve the status quo, pending appeal or final de-

termination, though dismissing the bill. Toledo Newspaper Co. v. U. S., 237 F. 986, 150 C. C. A. 636, affirming judgment U. S. v. Toledo Newspaper Co. (D. C.) 220 F. 458.

In suit to compel assignment of patents pursuant to agreement to assign future inventions, injunction against use of the patents or inventions held proper. Chadeloid Chemical Co. v. H. B. Chalmers Co., 243 F. 606, 156 C. C. A. 304.

An order of a court of equity for the protection of its prior jurisdiction of the subject-matter of a suit, restraining parties from prosecuting an action in another court, is not an interference with the jurisdiction of the latter tribunal. Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478, order reversed Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457.

Whether the federal court, which appointed a receiver of a railroad company, will enjoin a suit against the company in the state court, must be determined by the federal court alone, subject to review by the appellate federal tribunals. Jackson v. Parkersburg & O. V. Electric Ry. Co. (D. C.) 233 F. 784.

Where federal court first took possession of property of railroad company by its receiver, sale of company's property in an earlier suit begun in the state court, in which possession was not taken, may be enjoined. Id.

Where a creditor, suing in the state court, delayed for over two years after a federal court took possession of the property of a railroad company in seeking to sell the company's property to satisfy his lien, he was guilty of laches, warranting injunction against his proceeding further. Id.

VII. SEIZURE

31. Authority to issue writ of seizure.—While it would seem that power to do so ought to exist, no authority resides in or has been conferred upon a District Judge to issue a search warrant for the seizure of letters, writings, etc., used or intended to be used in a scheme to defraud through the mails. U. S. v. Jones (D. C.) 230 F. 262.

IX. PROHIBITION

35. Power to issue writ.—See notes under § 1120 in original annotated edition.

Prohibition will not issue by the Supreme Court against proceedings in an action in a District Court on the ground that claims asserted therein were barred by the statute of limitations. Ex parte Southwestern Surety Ins. Co., 38 S. Ct. 430, 247 U. S. 19, 62 L. Ed. 961.

Court in which suit to foreclose railroad mortgage was brought held not authorized to prevent trustee from bringing suit in another jurisdiction against the mortgagor and another company to enforce a collateral agreement. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

Where an order in a foreclosure suit requiring certain parties to become parties and interplead was in excess of the court's jurisdiction, the writ of prohibition was properly invoked. Id.

On application for writ of prohibition to prevent a lower court from exercising jurisdiction, neither merits of main case nor whether action of trial court is equitable is involved, but the sole inquiry is whether that court is without jurisdiction. In re Griggs, 233 F. 243, 147 C. C. A. 249, denying rehearing 227 F. 795, 142 C. C. A. 319.

A writ of prohibition to an inferior court will not issue, unless it is clearly shown that petitioner is without other remedy, and that such court is about to exceed its jurisdiction. Hammond Lumber Co. v. United States District Court for District of Oregon, 240 F. 924, 153 C. C. A. 610.

The Circuit Courts of Appeals have no power to issue writs of mandamus or prohibition by virtue of the fact alone that they have appellate jurisdiction to review judgments and decrees of the District Courts; but the exercise of that jurisdiction rests upon the fact that the issuance thereof is auxiliary to and is necessary for the protection of the appellate jurisdiction of the court issuing the same, which might otherwise be defeated by the unauthorized action of the court below. Id.

A Circuit Court of Appeals is without power to issue a writ of prohibition to a District Court, where the alleged want of jurisdiction of the latter is over the subject-matter alone. Id.

XV. WARRANT OF ARREST

42. Warrant outside district.—District Court held not authorized to issue warrant for arrest of defendant in another state, under this section, even though the contempt proceeding under which writ was issued was a criminal one. Mitchell v. Dexter, 244 F. 926, 157 C. C. A. 276.

§ 1241. (Jud. Code, § 264.) Injunctions; in what cases granted.

Issuance in aid of jurisdiction, see notes under § 1239.

Notes of Decisions

I. NATURE OF INJUNCTION AND FORM OF REMEDY

5. As preventive remedy.—Injunctions are granted to prevent, not to redress, injuries. National Circle, Daughters of Isabella, v. National Order of Daughters of Isabella (D. C.) 252 F. 815.

7. Injunction in aid of actions or proceedings.—See notes under § 1239, ante.

8. Mandatory injunctions.—A mandatory injunction will not ordinarily be issued to require defendant to perform some act exposing it to prosecution for violation of criminal laws; such injunctions usually being issued only to compel defendant to do some act restoring status quo. Gaines v. Baltimore & C. S. S. Co. (D. C.) 234 F. 786.

Equity has power to grant a mandatory injunction to compel the removal of a party wall, constructed in violation of the rights and against the known opposition of the adjoining owner, so far as it encroaches upon his land. Mann v. Boyts, 47 App. D. C. 356.

The officials of the Treasury Department are charged with a ministerial duty in making payment to one in whose favor an appropriation has been made to satisfy a judgment of the Court of Claims, and a court of equity, with jurisdiction to appoint a receiver of the fund, may compel its delivery through a mandatory injunction. McAdoo v. Ormes, 47 App. D. C. 364.

II. GROUNDS OF RELIEF IN GENERAL

9½. In general.—Granting of injunction is ordinarily a harsh remedy, and such relief will only be granted in clear case. U. S. v. Honolulu Consol. Oil Co. (D. C.) 249 F. 167.

10. Nature and existence of rights requiring protection.—To justify a perpetual injunction in respect to the use of the waters of a public river, the right must be clearly proven and definitely established. Trujillo & Mercado v. Succession of Rodriguez, 233 F. 208, 147 C. C. A. 214.

11. Actual or anticipated violation of rights.—Right to injunction against activities of one attempting to secure support of employés to enable those whom he represented to close the employer's mine unless he would make it a union mine held not dependent on whether such person had power or authority to shut down the mine. Hitchman Coal & Coke Co. v. Mitchell, 38 Sup. Ct. 65, 245 U. S. 229, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, reversing decree Mitchell v. Hitchman Coal & Coke Co., 214 F. 685, 131 C. C. A. 425, which reversed decree Hitchman Coal & Coke Co. v. Mitchell (D. C.) 202 F. 512. Mandate stayed 38 S. Ct. 190.

Injunction in stockholder's suit to restrain turning over of assets to another corporation will be denied, where the plan has been abandoned. Shera v. Carbon Steel Co. (D. C.) 245 F. 589.

14. Irreparable injuries.—Preliminary injunction against proceedings by regents of state university to condemn land, on the ground of state law authorizing taking without due process and denying equal protection of laws, held properly denied, in the exercise of wise discretion; allegation of irreparable loss and damage appearing fanciful, in view of detailed circumstances. Cavanaugh v. Looney, 39 S. Ct. 142, 63 L. Ed. —.

15. Inadequacy of remedy at law.—See, also, notes under § 1244.

16. Prevention of multiplicity of suits.—Generally, in order to make multiplicity of suits a ground for interposition of equity, more than one suit must have been commenced, or at least about to be begun, and such interposition must be necessary as protection from continued and vexatious litigation. General Film Co. v. Sampliner (C. C. A.) 252 F. 443.

Where complainant asserted rights under many different deeds, and no single action at law would determine controversies between parties, held that, pending disposition of suit in equity, maintenance of actions at law, other than single action of trespass already begun, should be enjoined, to avoid multiciplicity of suits. United Timber Corporation v. Bivens (D. C.) 248 F. 554.

A court of equity will not entertain a bill by complainant against a large number of parties, to whom he had sold corporate stock, and who had begun separate actions to recover for fraud on the theory equity will restrain a multiplicity of suits, where proof as to nonreliance on the misrepresentations, etc., would not be binding on all the various parties. Robinson v. Wemmer (D. C.) 253 F. 790.

17. Objections to relief in general.—Unlawful practices of sugar refiner in its business cannot defeat its right to restrain enforcement of Act La. No. 10 of 1915, regulating its business, which, it asserts, violates its rights under federal Constitution. McFarland v. American Sugar Refining Co., 36 S. Ct. 498, 241 U. S. 79, 60 L. Ed. 899, affirming decree American Sugar Refining Co. v. McFarland (D. C.) 229 F. 284.

Party engaged in collecting and rating

business held not guilty of false and fraudulent representations, so as to defeat injunctive relief, on theory that he did not come into court with clean hands. Cropper v. Davis, 243 F. 310, 156 C. C. A. 90.

Injunction against corporation's payment of bonuses to officers will not be denied merely because president filed disclaimer, not signed by other officers. Shera v. Carbon Steel Co. (D. C.) 245 F. 589.

III. SUBJECTS OF PROTECTION AND RELIEF BY INJUNCTION

(A) *Restraining actions or legal proceedings*

21. Commencement or prosecution of civil actions or proceedings.—See Sanitary Street Flushing Mach. Co. v. Studebaker Corporation (D. C.) 229 F. 591.

An action of ejectment would not be enjoined, and the litigation taken over by a court of equity, on the ground that, if an accounting should be decreed, a court of law would be without jurisdiction, where the defendant in the ejectment action, seeking the injunction, did not concede that there ever would be an accounting, especially where the account was short, and no reason was apparent why it could not be adjusted by a jury. Weber v. Hertzell (C. C. A.) 230 F. 965.

Suit on assigned cause of action will not be enjoined on the ground it is in bad faith, vexatious, and an abuse of court's process, because of judgment for defendants in former action on same assignment, to which action defendant was not a party, unless such judgment clearly and conclusively estopped subsequent action; so held in a case where time for seeking review of such judgment had not expired. General Film Co. v. Sampliner (C. C. A.) 252 F. 443.

Where a party has a good defense at law to a purely legal demand, he must be left to that means of defense, unless he alleges and proves special circumstances showing that he may suffer irreparable damage, if he is denied a preventive remedy. Id.

Where landowner, admitting that grantee in timber deeds had right of way over premises, but asserting that right to enter and remove timber had expired, began action at law for damages on account of alleged trespass by grantee in entering and cutting timber on lands not embraced in right of way, maintenance thereof will not be enjoined, for proof of grantee's title to timber and right of entry would be complete defense available as well at law as in equity. United Timber Corporation v. Bivens (D. C.) 248 F. 554.

Upon broad principles of equity, a chancery court should decline to entertain a suit to nullify, or which in its effect would nullify, an order of an independent court of concurrent jurisdiction, involving the same parties and subject-matter. Amusement Syndicate Co. v. El Paso Land Improvement Co. (D. C.) 251 F. 345.

24. Actions or proceedings in other courts.—It is the general rule that one will not be restrained by injunction from proceeding with a pending suit in equity in state courts, unless it clearly appears that complete relief cannot be obtained in such pending suit. American Seeding Mach. Co. v. Dowagiac Mfg. Co., 241 F. 875, 154 C. C. A. 577.

26. Collection or enforcement of judgments.—Party seeking to enjoin sale under decree establishing mechanic's lien because lienor held collateral security held bound to show payment or tender and demand for return of the security. McGraw v. Walsh, 232 F. 122, 146 C. C. A. 314.

Where creditor's judgment against surety might be reversed on decision of writ of error pending in United States Supreme Court, and claims exceeded penalty of bond, enforcement of judgment will be enjoined pending determination of percentage, if any, to which creditor was entitled. American Surety Co. of New York v. Mills, 232 F. 841, 147 C. C. A. 35.

Where, after judgment against a defendant for breach of a covenant of seisin, title of plaintiff was made good by the running of limitations, defendant held entitled to maintain a suit in equity to enjoin enforcement of the judgment. Mather v. Stokely, 236 F. 124, 149 C. C. A. 334.

A debtor, released from his debts by the judgment of a court having jurisdiction, to avail himself of the judgment when sued upon a prior debt, may plead it as a defense, and it affords no basis for an injunction to stay the action. Pell v. McCabe (D. C.) 254 F. 356.

27. Restraining execution levy or sale.—A promise to dismiss a pending criminal prosecution is against public policy and void, and therefore equity will enjoin the execution of a judgment rendered on a confession of judgment executed by the judgment debtor in consideration of the dismissal of a pending criminal prosecution against her brother. Chambers v. Buroughs, 44 App. D. C. 168, certiorari denied Burroughs v. Chambers, 36 S. Ct. 284, 239 U. S. 649, 60 L. Ed. 485.

A court of equity will not, at the instance of the defendant in an action at law, enjoin the execution of a judgment against him in that action, from which judgment he took an appeal, which he afterwards abandoned, on the ground that error was committed in the exclusion of evidence on the trial

of such action. Harlan v. Morgan, 44 App. D. C. 332.

(B) Protection of property and rights therein by injunction

34. Transfer of securities or instruments for payment of money.—Under Civ. Code Cal. § 309, prohibiting a corporation from buying in its own stock, defendant, which received notes for purchase price of stock of complainant, a California corporation, will be enjoined from disposing of them pending trial. First Nat. Bank of Portland, Or., v. E. J. Dodge Co., 233 F. 74, 147 C. C. A. 144.

37. Restraining fraudulent conveyances or transactions.—Could decree of state court against executor for devastavit be deemed as giving complainant right to appropriation of sureties' property, it would carry with it superior right to satisfaction out of property, and hence suit in federal court to enjoin disposition could not be maintained; complainant already having adequate remedy. Gillispie v. Riggs (D. C.) 248 F. 843.

Equity is without jurisdiction to restrain, at the instance of the plaintiff in a pending action of tort, the conveyance by the defendant in that action of his property for the alleged purpose of defeating the collection of a possible recovery in the tort action. Friedling v. Freedman, 44 App. D. C. 191.

38. Trespass or injuries to real property in general.—Injunctive relief, restraining railroad company from disturbing telegraph company's possession of easement for its line pending condemnation, held not warranted. Western Union Telegraph Co. v. Louisville & N. R. Co. (C. C. A.) 250 F. 198.

A court of equity, at the instance of proper parties, has power to restrain the threatened wrongful destruction or removal of tombs, vaults, monuments, or bodies from a cemetery, or wrongful injury thereto or to the burial premises. Chew v. First Presbyterian Church of Wilmington, Del. (D. C.) 237 F. 219.

39. Repeated or continuing trespasses on real property.—Where defendant repeatedly trespassed on island in which plaintiff had leasehold interest, and which he used for propagation of foxes, and damages for subsequently threatened trespasses would be difficult of ascertainment, plaintiff is entitled to injunction, although not to damages, as defendant previously merely removed his own foxes from the island. Whelpley v. Grosvold (C. C. A.) 249 F. 812.

40. Trespass or unlawful interference with mines or minerals.—A court of equity has jurisdiction of a suit by the United States to enjoin the taking of petroleum from land which it claims to own, and which constitutes its chief value, and where complainant also owns adjoining oil lands. El Dora Oil Co. v. U. S., 229 F. 946, 144 C. C. A. 228.

Equity held without jurisdiction of a suit against purchasers in the usual course of business of oil unlawfully extracted by others from public lands, the remedy being at law. U. S. v. Midway Northern Oil Co. (D. C.) 232 F. 619.

44. Cutting or removal of timber.—Standing timber, purchased from owner of land, with license to cut and remove it, so far partakes of nature of real property that right of removal will be protected by injunction where the landowner's continuous interference might prevent removal within time limited, for action for damages for trespass would be inadequate. United Timber Corporation v. Bivens (D. C.) 248 F. 554.

46. Injuries to trade or business.—Complainant held entitled to an injunction restraining defendant, a competing manufacturer, from using a secret process of complainant, disclosed to him by a former employé of complainant in violation of his contract of employment. Nulomoline Co. v. Stromeyer, 249 F. 597, 161 C. C. A. 523, reversing decree (D. C.) 245 F. 195.

(C) Protection of contracts and rights thereunder

47. Disclosure or use of trade secrets.—Defendant will not be enjoined from selling sugar as made by him to persons in the trade, because of disclosure to him by a former employé of plaintiff of its process of manufacture and its customers, and sale to them by him as broker of defendant's sugar; there being nothing more to connect defendant with the disclosure or use of the information. Nulomoline Co. v. Stromeyer (D. C.) 245 F. 195.

49. Negative or restrictive covenants or stipulations.—Merchant's contract containing negative covenant, not to sell on his premises during the term of the contract any other make of patterns than plaintiff's, held not so clear as to permit of enforcement by injunction; the term being indefinite. Standard Fashion Co. v. Magrane Houston Co. (C. C. A.) 251 F. 559.

Provision in contract by writer that publisher should have option on future work held not restrictive covenant, warranting restraining author from disposing of subsequent work to another publisher. Kennerley v. Simonds (D. C.) 247 F. 822.

Court of equity will infer negative covenant in contract of employment, where equity and justice require; but such covenant, to be interfered with by injunction, must be clearly implied and understood by all parties, and

should not be implied unless indispensable to carry out their intention. Id.

50. Breaches of contracts which may be restrained.—Where a contract between the United States and defendant for manufacture of torpedoes provided that defendant would not make use of any device the design for which was furnished to it by the United States in any torpedo constructed for any person or other governments, and would not exhibit such device, the United States could restrain exhibition of a balanced turbine torpedo, whether or not patentable or within the prior art, or known to defendant, plans for which the government furnished defendant; "furnish" meaning to supply, while "invent" means to create. E. W. Bliss Co. v. U. S., 39 S. Ct. 42, 63 L. Ed. —.

Where defendant, contracting to manufacture torpedoes for the United States, engaged not to exhibit any device for which the design was furnished to it by the United States, the latter could restrain it from exhibiting a device incorporated in a torpedo which was first communicated or suggested verbally, and then by letter, unaccompanied by blueprints of design. Id.

51. Contracts for personal services.—It is not ground for an injunction that an employer, in the legitimate interest of his business and by fair means, induced an employé of another to enter his own service, where the employé violated no contract in doing so. Triangle Film Corporation v. Artcraft Pictures Corporation (C. C. A.) 250 F. 981.

53. Covenants as to use of premises.—Injunction is an appropriate remedy to enforce a restrictive covenant imposed on lands by common grantor for benefit of his several grantees. Crocker v. Ingersoll Engineering & Constructing Co., 249 F. 31, 161 C. C. A. 91.

Where the owner of land, who had granted the timber, together with rights of way for removal, denied the grantee access to the lands, asserting the period for removal had expired without extension, held that, as the grantee's rights had not been determined, equity had jurisdiction to enjoin the owner from denying access, etc., there being no adequate remedy at law. United Timber Co. v. Bivens (D. C.) 253 F. 968.

54. Inducing breach of contract.—A press association held entitled to an injunction against acts of a competitor in inducing its members to violate their contracts of membership. Associated Press v. International News Service, 245 F. 244, 157 C. C. A. 436, modifying order (D. C.) 240 F. 983. Certiorari granted International News Service v. Associated Press, 38 S. Ct. 10, 245 U. S. 644, 62 L. Ed. 528.

(D) Protection of corporate property and interests therein

55. Infringement of corporate franchise.—Where a telegraph company, which maintained interstate lines on a railroad right of way, terminated its agreement with the railroad company, and after the Alabama courts have adjudged that the telegraph company had no right to condemn an easement on that part of the railroad right of way located in Alabama, the federal courts for Kentucky will not, on the theory that the telegraph system was unitary and that the company had an easement over part of the right of way in Alabama, enjoin interference with the lines covered by the Alabama decision. Louisville & N. R. Co. v. Western Union Telegraph Co. (C. C. A.) 252 F. 29.

57. Management of corporate affairs or business.—The rule is imperative that the operation of state statutes governing railroad passenger rates should not be enjoined, unless the confiscatory character of the rate is clear; and this rule is especially applicable to injunctions before final hearing. Winthrop v. Fellows (D. C.) 230 F. 702.

The showing made on application by the trustee in a railroad mortgage, which was in process of foreclosure, for a preliminary injunction restraining the enforcement of a passenger rate statute, considered, in connection with the report of the receivers of the earnings of the road under the statute for the preceding year, and held insufficient to establish the fact that the road operating under the statute would not earn a fair return upon an investment representing the sum necessary to be realized at the sale of the property to cover complainant's mortgage debt and precedent liens, and therefore not to warrant the granting of an injunction on the ground of threatened confiscation in whole or in part of the mortgage bond investment in question. Id.

58. Disposition of corporate funds or property.—Courts of equity will interfere at the suit of a minority stockholder, where the directors of a corporation have voted themselves as officers salaries which are excessive. Wight v. Heublein, 238 F. 321, 151 C. C. A. 337, affirming decree Heublein v. Wight (D. C.) 227 F. 667.

Equity can enjoin the payment of salaries voted by directors of a corporation to themselves as officers for so long as such salaries are excessive in view of the services rendered and the condition of the business. Id.

(E) Restraining acts of public officers, boards and municipalities

59. Official acts which may be restrained in general.—Remedy for review and correction of errors of public officers constituting inferior quasi judicial tribunals on matters pertaining to their jurisdiction, held at law by cer-

tiorari and not by injunction. Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280.

Where refusal of municipal officer to grant permit, required as prerequisite for exhibition of moving picture, amounts in law to abuse of discretion, whereby property rights are or will be injuriously affected, court of equity has jurisdiction to enjoin such officer from refusing permit. Fox Film Corporation v. City of Chicago (D. C.) 247 F. 231, order affirmed City of Chicago v. Fox Film Corporation (C. C. A.) 251 F. 883.

60. State boards and officers.—See Landon v. Public Utilities Commission of Kansas (D. C.) 234 F. 152.

Federal District Court has jurisdiction to enjoin enforcement by state of provisions of Laws S. D. 1915, c. 275, prohibiting dealing in corporate stock without state sanction, which act is assailed as repugnant to federal Constitution. Caldwell v. Sioux Falls Stockyards Co., 37 S. Ct. 224, 242 U. S. 559, 61 L. Ed. 493.

State officers enforcing tax laws may be enjoined by federal court from enforcing state taxes on intangible property of public service corporation in violation of the federal Constitution because of discrimination in value of property on which taxes are based. Greene v. Louisville & I. R. Co., 37 S. Ct. 673, 244 U. S. 499, 61 L. Ed. 1280, Ann. Cas. 1917E, 88; Louisville & N. R. Co. v. Greene, 37 S. Ct. 683, 244 U. S. 522, 61 L. Ed. 1291, Ann. Cas. 1917E, 97, modifying decree Same v. Bosworth (D. C.) 230 F. 191; Illinois Cent. R. Co. v. Greene, 37 S. Ct. 697, 244 U. S. 555, 61 L. Ed. 1309, affirming decree Same v. Bosworth (D. C.) 209 F. 465.

Where members of a state public service commission were without authority proceeding to regulate rates of private corporation, members as individuals could be enjoined from so proceeding. De Pauw University v. Public Service Commission of Oregon (D. C.) 247 F. 183.

61. National officers or bureaus.—Giving effect to unauthorized demand by Secretary of the Interior under Act June 25, 1910, that grantee in railway land grant should make advance deposit of cost of surveying township within grant may be enjoined, where statute contemplates that when demand is not complied with rights in granted land shall cease, where there are millions of acres of unsurveyed lands within primary limits of such grants. Santa Fé Pac. R. Co. v. Lane, 37 S. Ct. 714, 244 U. S. 492, 61 L. Ed. 1275, reversing decree 43 App. D. C. 497.

Board of Tea Appeals, appointed under Act March 2, 1897, as amended by Act May 16, 1908 (Comp. St. 1916, § 8786), may be enjoined from applying illegal tests to tea imported by complainants. Waite v. Macy, 38 S. Ct. 395, 246 U. S. 606, 62 L. Ed. 892, affirming decree Macy v. Browne, 224 F. 359, 140 C. C. A. 45, which reversed (D. C.) 215 F. 456.

Though action against postmaster to enjoin him from excluding publication from mails pursuant to direction of Postmaster General is not technically one against the sovereign, courts will not by injunction interfere, except in clearest cases, with action of great executive departments of government in interpreting laws affecting government. Masses Pub. Co. v. Patten, 245 F. 102, 157 C. C. A. 398.

Equity has jurisdiction to grant injunction against order of Postmaster General excluding publication from mails solely to prevent irreparable pecuniary damage. Id.

Person denied fair hearing on claim of exemption under Conscription Act is not entitled to an injunction, there being a full and adequate remedy at law for the enforcement of personal rights. Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280.

As a local board provided for by the Selective Service Act is a public body, exercising quasi judicial functions in passing on the right of exemption, a court of chancery has no jurisdiction to interfere with such a board's exercise of its function. Bonifaci v. Thompson (D. C.) 252 F. 878.

The Secretary of the Interior and the Commissioner of the General Land Office will not be enjoined, in a suit in equity by the locator of an unpatented mining claim who states that he is satisfied and does not and may never desire a patent, from proceeding to determine the character of the claim (construing sections 2318 to 2348, Rev. St. [Comp. Stat. 1916. §§ 4613–4616, 4618–4620, 4622, 4623, 4626–4632, 4642–4653, 4658–4660]). Lane v. Cameron, 45 App. D. C. 404.

A decision of the Secretary of the Interior construing the provision of Act April 27, 1904, § 5, for the disposal of lands ceded by the Crow Indians, to the effect that the provisions of the homestead laws as to residence and cultivation are applicable to an entry of such lands, is within his discretionary powers, and a cancellation of the entry in accordance therewith will not be enjoined. Keusch v. Lane. 47 App. D. C. 577.

(F) Protection of public in general and use of navigable waters and public places or property

75. Enforcement of municipal ordinances.—The proof of the inadequacy of a street car fare rate proposed by a city may be so clear and convincing that the courts are warranted in enjoining its imposition in advance of putting it in operation. Henry L. Doherty & Co. v. Toledo Rys. & Light Co. (D. C.) 254 F. 597.

Where the authorities of the city of

Toledo proposed to take action to compel the Toledo Railways & Light Company, which was operating without a franchise, to sell 11 tickets for 50 cents, held, that such action, under the circumstances, would work a confiscation of the company's property, and so would be enjoined in advance; the company being entitled to charge for its service a sum which would give a fair return. Id.

76. Enforcement of statutes.—The violation by a railroad company of a statute of Porto Rico regulating rates affords ground for injunctive relief, and the federal District Court for Porto Rico, where it has jurisdiction of the parties, has power to grant such relief. People of Porto Rico v. American R. Co. of Porto Rico (C. C. A.) 254 F. 369.

Enforcement of Laws Kan. 1917, c. 166, §§ 1, 2, denouncing sale of cigarettes and advertisement of same, may be enjoined in so far as it applies to interstate commerce in newspapers published without state advertising cigarettes. Post Printing & Publishing Co. v. Brewster (D. C.) 246 F. 321.

Where act declared unlawful sale and advertisement of cigarettes, state officials will not be enjoined from enforcement of law, if valid, merely because its provisions did not apply to a particular newspaper company or its employés, for that matter could be presented in defense to criminal prosecution. Id.

(G) Protection of personal rights and restraining boycotts and combinations

78. Publication of libel.—Equity will not restrain by injunction the publication in the public press of a libel, even though its effect will be to injure complainant in reputation, property, or business. Willis v. O'Connell (D. C.) 231 F. 1004.

81. Interference with occupation or right to engage in business.—Operator of nonunion mine held entitled to enjoin the unionizing of the miners, as well as the unionizing of the mine, assuming that there was a distinction between the two; and it was immaterial that employment was at will and terminable by either party at any time. Hitchman Coal & Coke Co. v. Mitchell, 38 S. Ct. 65, 245 U. S. 229, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, reversing decree Mitchell v. Hitchman Coal & Coke Co., 214 F. 685, 131 C. C. A. 425, which reversed decree Hitchman Coal & Coke Co. v. Mitchell (D. C.) 202 F. 512, mandate stayed, 38 S. Ct. 190.

That employés were at liberty to quit the employment at pleasure did not deprive the employer of its right to injunctive relief against interference with its employés by third persons seeking to unionize them; and defendants' efforts to induce plaintiff's employés to join the union, so that by threats of a strike they could compel the unionization of the plant, held not lawful methods of inducing parties to join the union, but to give plaintiff a right to an injunction. Eagle Glass & Mfg. Co. v. Rowe, 38 S. Ct. 80, 245 U. S. 275, 62 L. Ed. 286, reversing decree Hill v. Eagle Glass & Mfg. Co., 219 F. 719, 135 C. C. A. 417.

(H) Restraining criminal acts and prosecutions

84. Criminal acts in general.—As, under Webb-Kenyon Act (Comp. St. 1916, § 8739), Act S. C. Feb. 20, 1915 (29 St. at Large, p. 140), regulating shipments of intoxicating liquors into state, is invalid only if interfering with some essential constitutional right, a carrier will not by mandatory injunction be required to deliver interstate shipment of liquor in violation of act; its constitutionality being at least doubtful. Gaines v. Baltimore & C. S. S. Co. (D. C.) 234 F. 786.

85. Criminal prosecutions.—A court of equity may enjoin the enforcement of an unconstitutional statute or ordinance, which will involve a direct invasion of property rights, although such enforcement is through a criminal prosecution. Yee Gee v. City and County of San Francisco (D. C.) 235 F. 757. And see Weyman-Bruton Co. v. Ladd, 231 F. 898, 146 C. C. A. 94.

IV. ACTIONS AND PROCEEDINGS FOR INJUNCTIONS

90. Parties to proceedings.—The grantee of a prior grantee of standing timber held entitled to maintain a suit in equity to enjoin the cutting of the same by another. Crown Orchard Co. v. Dennis, 229 F. 652, 144 C. C. A. 62, reversing decree (D. C.) 220 F. 516.

A stockholder in a corporation is an indispensable party to a suit to enjoin him from voting his stock at a stockholders' meeting. General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

To a suit by a stockholder to enjoin the corporation from entering into an illegal merger with another corporation the latter held not a necessary party. Id.

Saloon keeper, closing saloon at 10 p. m. as provided in order of Minnesota Public Safety Commission, held not entitled to enjoin enforcement of the order, as the order was directed only against city councils and other governing bodies. Cook v. Burnquist (D. C.) 242 F. 321.

Under Laws Wash. 1913, p. 584, the state has no interest in tidelands located within a port district, and hence, in suit by district to enjoin one asserting ownership from exercising control over such lands, is not a party in interest.

Port of Seattle v. Oregon & W. R. Co. (D. C.) 242 F. 986.

92. Sufficiency of bill or complaint.—See Lyle v. Perry (D. C.) 250 F. 307.

Sale under decree establishing mechanic's lien held not to be enjoined on allegation of misappropriation by lienor of collateral security made on information and belief without stating source and nature of information. McGraw v. Walsh, 232 F. 122, 146 C. C. A. 314.

A bill to stay prosecution of actions at law pending trial and decision of a test case held not to state grounds for equitable relief. Galion Iron Works Co. v. Ohio Corrugated Culvert Co., 244 F. 427, 157 C. C. A. 53.

A bill by a stockholder to enjoin the corporation from doing an illegal act held sufficient on its face against a motion to dismiss. General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

A bill held insufficient to give equity jurisdiction to enjoin libelous publications on the ground of irreparable injury and inadequacy of legal remedy. Willis v. O'Connell (D. C.) 231 F. 1004.

Petition of receivers for an injunction to restrain the payee of a note, to which they allege they have an equitable defense, from disposing of collateral, held sufficient. Grasselli Chemical Co. v. Ætna Explosives Co. (D. C.) 247 F. 603.

In suit by person deprived of opportunity to earn stock under contract, prayer that selling, or incumbering of company's property in violation of his rights be restrained held too vague and indefinite. Wright v. Barnard (D. C.) 248 F. 756.

96. Presumptions and evidence to sustain bill.—In a suit to restrain interference with the sale of plaintiff's tobacco, under Laws N. D. 1913, c. 271, prohibiting sale of snuff, evidence held to show that the tobacco was not a snuff, but a fine cut chewing tobacco. Weyma-Bruton Co. v. Ladd, 231 F. 898, 146 C. C. A. 94.

97. Dismissal before hearing.—Where pending suit to compel removal of obstructions from Columbia river in front of fishing sites on Sand Island, Supreme Court decided that such island was in Oregon, District Court of Washington, held to have erred in retaining the case against plaintiff's motion to dismiss. McGowan v. Columbia River Packers' Ass'n, 38 S. Ct. 129, 245 U. S. 352, 62 L. Ed. 342, affirming decree Columbia River Packers' Ass'n v. McGowan, 219 F. 365, 134 C. C. A. 461.

Bill by receiver of railroad to restrain action at law for damages from overflow due to embankment erected by railroad held properly dismissed. Owen v. Alford, 232 F. 357, 146 C. C. A. 405.

Mere possibility of future litigation resulting from dismissal of suit, in which plaintiff's motion for preliminary injunction, made on bill and affidavits, was denied, does not amount to prejudice to defendant, precluding court from dismissing suit on plaintiff's motion. Orr v. Coca-Cola Co., 247 F. 452, 159 C. C. A. 506.

Action of court in granting plaintiff's motion to dismiss without prejudice to new suit, after denial of preliminary injunction moved for on bill and affidavits, held not abuse of court's discretion. Id.

98. Hearing and relief awarded.—On final hearing on bill to enjoin and have declared void act imposing license taxes, matters not raised by pleadings cannot be considered on final hearing. Union Sulphur Co. v. Reed (D. C.) 249 F. 172.

V. PRELIMINARY AND INTERLOCUTORY INJUNCTIONS

(A) *Grounds and proceedings to procure*

99. Nature and scope of remedy.—Equity is sedulous to prevent use of preliminary injunction or appointment of receiver to perform function of ejectment. Folk v. U. S., 233 F. 177, 147 C. C. A. 183.

100. Right to preliminary injunction in general.—Pending appeal from interlocutory decree ordering assignment of patents to complainant, complainant held not to be enjoined from suing for infringement of such patents. Chadeloid Chemical Co. v. H. B. Chalmers Co., 242 F. 71, 155 C. C. A. 15.

Under the evidence now produced, held, that plaintiff, purchaser of bonded whisky, was after termination of contract entitled to preliminary injunction, preventing defendant from excluding plaintiff from use of defendant's bottling house for bottling whisky previously bought. Thompson v. Balke, 245 F. 841, 158 C. C. A. 181.

Preliminary injunctions should not issue, unless a reasonably clear case of necessity and otherwise irreparable injury is made out. Louisville & N. R. Co. v. Western Union Telegraph Co. (C. C. A.) 252 F. 29.

The granting of a temporary injunction restraining a municipality from enforcing against a telephone company an ordinance prohibiting the collection of increased rates until underground installation of wires held proper, though company should be required to make deposit instead of giving bond, to secure patrons in case restitution of increase should be ordered. City of Amarillo v. Southwestern Telegraph & Telephone Co. (C. C. A.) 253 F. 638.

The balance of convenience or hardship frequently is a factor of controlling importance in cases of substantial doubt existing at the time of granting or refusing a preliminary injunction.

Chew v. First Presbyterian Church of Wilmington, Del. (D. C.) 237 F. 219.

Minority stockholders held, on showing made, entitled to preliminary injunction to restrain reorganization by majority. MacArthur v. Port of Havana Docks Co. (D. C.) 247 F. 984.

As preliminary injunction may be issued to maintain status quo, defendant, which contracted to sell ores to complainant, may, pending disposition of suit for specific performance, be restrained by preliminary injunction from selling to any other person or corporation; it appearing that denial of relief would work great injury to complainant. American Smelting & Refining Co. v. Bunker Hill & Sullivan Mining & Concentrating Co. (D. C.) 248 F. 172.

A bill alleging that syndicate managers represented to investors that a block of stock could be purchased at $7 per share, but that they actually purchased for $3.50 per share, stated a cause of action entitling complainants to a preliminary injunction. Gregg v. Megargel (D. C.) 248 F. 960.

Where plaintiff company sold toys manufactured by defendant company, securing customers and aiding in building up a joint business, after defendant has terminated the relation, and pending final decree in plaintiff's suit, the latter is entitled to preliminary injunction restraining further interference by defendant with its trade through threats of litigation for infringement of patent rights. Baker & Bennett Co. v. John C. Dettra & Co. (D. C.) 251 F. 406.

In cases wherein the facts are contested, the courts will not grant relief by preliminary injunction, but will await action until the time for final decree. Id.

Temporary injunction against carrying out of contract by county court concerning custody of county funds held not coram non judice and void. Barrett v. Stoddard County (Mo. App.) 183 S. W. 644.

101. Grounds for denial of temporary injunctions.—Where complainant acquired a few shares after shareholders had been notified of a plan to dispose of corporate property and dissolve corporation, a preliminary injunction on affidavits that sale would violate state and federal laws held properly refused. Venner v. Pennsylvania Steel Co. of New Jersey, 233 F. 407, 147 C. C. A. 343.

Suit held not maintainable, in the absence of a necessary party, to the extent of granting a temporary injunction, as defendant, by reason of the injunction not being binding on such absent party, might lose his rights under a contract. Virginia C. Mining, Milling & Smelting Co. v. Corrigan, 242 F. 809, 155 C. C. A. 397.

Where a telegraph company, after terminating the arrangement under which it maintained lines on a railroad right of way, was denied right of condemnation in Alabama, held, that preliminary injunction against the railroad company's interference with telegraph lines will not be granted, because the government has assumed control of railroads, etc., where the railroad company agreed not to take any action interfering with the telegraph system without governmental approval. Louisville & N. R. Co. v. Western Union Telegraph Co. (C. C. A.) 252 F. 29.

A temporary injunction to restrain the transfer of stock on the corporation's books will not be granted, in a suit to redeem from a pledge, where the stockholder had lost a similar suit in the state court and did not explain his delay in filing the suit. Gideon v. Representative Securities Corporation (D. C.) 232 F. 184.

Temporary injunction to protect property of street railroad company from strikers held properly denied, it not appearing defendants were destroying property, etc. Puget Sound Traction, Light & Power Co. v. Whitley (D. C.) 243 F. 945.

Where injunction had been issued against defendant's principal, and by its terms it restrained, not only principal, but its agents, injunction against defendant to protect rights, which complainant asserted in suit against principal, will not, on that ground, be granted, for first time injunction extended to defendant. Société Anonyme Du Filtre Chamberland Système Pasteur v. Consolidated Filters Co. (D. C.) 248 F. 358.

The rule as to balancing of injuries, to be considered in some cases upon application for preliminary injunction, does not apply where the right and its breach are clear. Marquette Cement Mining Co. v. Oglesby Coal Co. (D. C.) 253 F. 107.

102. Discretion of court in granting or refusing temporary injunction.—The granting or dissolution of an interlocutory injunction rests in the sound discretion of the court, which may take into consideration the relative damage which the respective parties will sustain if it be granted or refused. Kemmerer v. Midland Oil & Drilling Co., 229 F. 872. 144 C. C. A. 154.

The granting of an interlocutory injunction is within the sound discretion of the trial court. Crane v. Johnson (D. C.) 233 F. 334.

Along with fixed rules of law. as to issuance of preliminary injunction. it is essential that court exercise sound discretion in view of attendant facts and conditions. American Smelting & Refining Co. v. Bunker Hill & Sullivan Mining & Concentrating Co. (D. C.) 248 F. 172.

108. Affidavits for injunction.—An injunction pendente lite will not be grant-

ed on averments on information and belief that the defendant was guilty of fraud. National Circle, Daughters of Isabella, v. National Order of the Daughters of Isabella (D. C.) 232 F. 907.

109. Use and effect of answer.—Where an answer under oath, denying the equities of a bill, is filed, a temporary injunction cannot be granted on the bill, for the sworn answer is evidence on behalf of the defendant, and rebuts the allegations contained in the bill. Water Co. of Tonopah v. Public Service Commission of Nevada (D. C.) 250 F. 304.

110. Counter affidavits and other evidence.—The operation of an order of a governing body charged with the duty of fixing water rates for municipal corporations should not be suspended by the issuance of a temporary injunction, unless complainant furnishes substantial evidence that the rate fixed is confiscatory. Water Co. of Tonopah v. Public Service Commission of Nevada (D. C.) 250 F. 304.

115. Orders on application.—Order granting a preliminary injunction restraining enforcement of judgment issued in suit to secure set-off of cross-claim construed, and held not adjudication of right of set-off, but to remain in force until the judgment on the cross-claim became final. J. L. Owens Co. v. Officer, 244 F. 47, 156 C. C. A. 475.

An order granting a preliminary injunction, when clear and unambiguous, cannot be narrowed or broadened by the terms of the writ or supporting bond. Id.

A temporary restraining order, made on application for a temporary injunction in any suit pending, is not a final determination, which renders the issues involved res judicata. Santowsky v. McKey, 249 F. 51, 161 C. C. A. 111.

(B) Continuing, modifying, or dissolving

117. Discretion of court.—The granting or dissolution of an interlocutory injunction rests in the sound discretion of the court, which may take into consideration the relative damage which the respective parties will sustain if it be granted or refused. Kemmerer v. Midland Oil & Drilling Co., 229 F. 872, 144 C. C. A. 154.

The granting or dissolution of an interlocutory injunction rests in the sound judicial discretion of the court of original jurisdiction. Lion Tractor Co. v. Bull Tractor Co., 231 F. 156, 145 C. C. A. 344.

118. Ground for continuing injunction.—A telegraph company, which maintained interstate lines on a railroad right of way, terminated its agreement with the railroad company and sought to condemn easements in the several states, but condemnation was refused in Alabama. Held, that the federal court for Kentucky, which had enjoined the railroad company from interfering with the existing lines pending condemnation, will not continue the injunction as to the Alabama lines, particularly where the courts of that state granted an injunction covering telegraph lines on that part of the right of way wherein the telegraph company asserted an existing easement. Louisville & N. R. Co. v. Western Union Telegraph Co. (C. C. A.) 252 F. 29.

VI. JUDGMENTS OR ORDERS, VIOLATIONS THEREOF, AND LIABILITIES ON BONDS IN PROCEEDINGS

125. Final judgment, order, or decree.—Railway company securing injunction restraining enforcement of state rate-making law as confiscatory cannot avoid final decree of dismissal as an estoppel in subsequent suit by the state to recover excess passenger fares by asserting that as the state was not a party to the prior suit the injunction did not operate against the rate-making power so far as the state was concerned. State of Missouri v. Chicago, B. & Q. R. Co., 36 S. Ct. 715, 241 U. S. 533, 60 L. Ed. 1148.

Dismissal of bill seeking to enjoin enforcement of railway rates fixed by state as confiscatory should be without prejudice to another suit, if after fair test they are found confiscatory. Darnell v. Edwards, 37 S. Ct. 701, 244 U. S. 564, 61 L. Ed. 1317, modifying decree (D. C.) 209 F. 99.

In injunction suit by the United States to restrain its contractor for the manufacture of torpedoes from exhibiting devices furnished by the United States, decree should not include devices not used in the existing torpedo, where the contractor does not display disposition to violate its trust, but the exclusion, should be without prejudice to the government's right to obtain injunction against disclosure on proof of intention to use them. E. W. Bliss Co. v. U. S., 39 S. Ct. 42, 63 L. Ed. —.

A suit to enjoin and restrain a continuation of a trespass, and to prevent waste, begun by the true owner, who was out of possession, cannot be treated and made to serve a purpose of one to remove the cloud from title. U. S. v. Brookshire Oil Co. (D. C.) 242 F. 718.

Court of equity, upon denial of injunctive relief, held not authorized to effect an equitable condemnation of an easement for a telegraph company's lines over a railroad right of way. Western Union Telegraph Co. v. Louisville & N. R. Co. (D. C.) 243 F. 687.

127. Violation of orders and punishment therefor.—See Delaware, L. & W. R. Co. v. Frank (C. C. A.) 230 F. 988.

Defendant held guilty of contempt

in violating an injunction against strikers which prohibited interference with employés. Oates v. U. S., 233 F. 201, 147 C. C. A. 207.

In contempt proceeding against defendant in water rights suit for violation of final decree therein, question whether party not a defendant, who transferred to defendant his right to irrigate, had no such right, so that defendant, his successor, received none, could not be tried. Hanley v. Pacific Live Stock Co., 234 F. 522, 148 C. C. A. 288.

Where river, on which lay lands involved in water rights suit, had been subject to overflows, defendant, for permitting its water to flow as it was wont, or from draining his land by a ditch when necessary, could not be held in contempt for violation of the decree enjoining him from impeding the flow of the river as it was wont. Id.

Where decree in water rights suit provided that defendant should have use of so much water as might run out of a river through overflow of its banks without obstruction, defendant was not guilty of contempt for permitting an overflow which he did no act to induce, but endeavored to prevent by closing gaps. Id.

Defendant in water rights suit held not guilty of willful contempt, though negligent in permitting board and brush at his dam to obstruct flow of river for three weeks, until notified of fact. Id.

While dismissal of bill and temporary injunction will not relieve those who violated temporary injunction from effects of their disobedience, or purge their contempt, it may be considered in determining equities. Shuler v. Raton Waterworks Co., 247 F. 634, 160 C. C. A. 44.

Where, at suit of waterworks company in federal court, municipality was temporarily restrained from supplying water to inhabitants, and it enacted ordinance vacating franchise of waterworks company and began suit in state court, held that officials and attorneys participating in enactment of ordinance should not be adjudged guilty of contempt in violating spirit of order. Id.

128. Liabilities on bonds or undertakings.—Where, pending appeal from order enjoining mortgage foreclosure sale under statutory proceedings in state court, settlement of question involved was effected, appellants cannot, appeal being dismissed, assert any rights for damages or costs on injunction bond. Clark v. Fairbanks, 249 F. 431, 161 C. C. A. 405.

§ 1242. (Jud. Code, § 265.) Injunctions to stay proceedings in State courts.

1. Construction of provision in general.—This section was intended to give the force of positive law to the rules of comity between such tribunals and to preserve the independence of each, and extends not only to orders of the federal court, directly restraining proceedings of the federal court, but to all orders of the state court which necessarily have that effect. Amusement Syndicate Co. v. El Paso Land Improvement Co. (D. C.) 251 F. 345.

A suit by the Director General of Railroads to enjoin sale of land owned by a railroad under execution issued on a judgment of a state court, on the theory that, having taken possession of the same, it was exempt from process under act of March 21, 1918, post, § 3115¾j, is a suit of a civil nature arising under the laws of the United States, etc., of which the federal District Court has jurisdiction, for it must be deemed that Act March 21, 1918, modified this section. United States Railroad Administration v. Burch (D. C.) 254 F. 140.

This section should be given such an interpretation as will effectuate its obvious purpose of preventing unseemly conflict between state and federal courts. Hyattsville Building Ass'n v. Bouic, 44 App. D. C. 408.

1½. —— Courts of United States.—The Supreme Court of the District of Columbia is a court of the United States within the meaning of this section. Hyattsville Building Ass'n v. Bouic, 44 App. D. C. 408.

3. —— Proceedings in court.—This section applies to the entire proceedings in a state court, and to injunctions directed to parties engaged in proceedings in the state court, so that, where, in a suit by a trustee holding the legal title to land to compel defendant to remove structures, the state court issued an injunction restraining the trustee from interfering with such structures, the federal court cannot on a suit by the beneficiary of the trust, issue an injunction compelling defendant to remove. Amusement Syndicate Co. v. El Paso Land Improvement Co. (D. C.) 251 F. 345.

A foreclosure proceeding in Maryland by mortgagee of land in that state, under article 66, Code Pub. Civ. Laws Md., which provides, among other things, that a sale under a power of sale in a mortgage can only be made after the giving of a bond approved by the judge or clerk of a court of equity, and must be reported to the court, whereupon there shall be the same proceeding on such report as if the sale were made by a trustee under decree of the court, and that the court has power to hear and determine any objections to a sale by any parties interested, and to confirm or set aside the sale, is a proceeding in a court of a

state, which a United States court is prohibited from staying. Hyattsville Building Ass'n v. Bouic, 44 App. D. C. 408.

6. Prosecution of pending actions.—The federal courts have no authority to stay proceedings in the state courts, while they are in progress and before they are concluded by the final judgment or decree, save in the aid of bankruptcy proceedings or their own previously acquired jurisdiction. Smith v. Jennings, 238 F. 48, 151 C. C. A. 124, reversing order Jennings v. Smith (D. C.) 232 F. 921.

One against whom numerous suits were begun in state court cannot maintain a bill in federal court to restrain multiplicity of suits, on the ground that the venue of the state court was hostile to him, but, if entitled to protection on that ground, must seek it in the state court. Robinson v. Wemmer (D. C.) 253 F. 790.

7. Effect of prior acquisition of jurisdiction by federal court.—Where a federal court first obtains jurisdiction of the subject-matter in controversy, it may enjoin all proceedings in a state court, commenced afterward, which would have the effect of defeating or impairing its jurisdiction, or the lawful effect of its orders or decrees, or titles which it has made in the exercise of that jurisdiction. Looney v. Eastern Texas R. Co., 38 S. Ct. 460, 247 U. S. 214, 62 L. Ed. 1084, dismissing appeal Eastern Texas R. Co. v. Railroad Commission of Texas (D. C.) 242 F. 300; Swift v. Black Panther Oil & Gas Co., 244 F. 20, 156 C. C. A. 448; Sherman Nat. Bank of New York v. Shubert Theatrical Co. (D. C.) 238 F. 225; St. Louis-San Francisco Ry. Co. v. McElvain (D. C.) 253 F. 123.

A federal District Court could not, after its decree enjoining enforcement of rates fixed by a state for intrastate traffic on interstate railway and restraining suits for overcharges had been reversed by Supreme Court, prevent persons not parties to suit from suing in state courts to recover such overcharges. St. Louis, I. M. & S. Ry. Co. v. McKnight, 37 S. Ct. 611, 244 U. S. 368, 61 L. Ed. 1200, affirming decree Bellamy v. St. Louis, I. M. & S. Ry. Co., 220 F. 876, 136 C. C. A. 442.

A federal court will restrain proceedings in a state court only to enforce its decree or judgment or to protect its jurisdiction already acquired before the proceedings in the state court were begun. Waldo v. Wilson, 231 F. 654, 145 C. C. A. 540, reversing decree Wilson v. Waldo (D. C.) 221 F. 505 and certiorari denied Id., 36 S. Ct. 724, 241 U. S. 673, 60 L. Ed. 1231.

It is no defense to a dependent injunction suit to prevent the nullification or impairment of the just legal effect of the adjudication, decree, or sale made by order of a federal court, or the title to property granted thereunder, that the defendant proposes to do so by means of a subsequent action at law and the trial by a jury of the issues already adjudged by such court. St. Louis-San Francisco Ry. Co. v. McElvain (D. C.) 253 F. 123.

8. Enforcement of judgment, or sale under execution or attachment.—The federal courts, by virtue of their general equity powers, have jurisdiction to enjoin the enforcement of a judgment in the state courts upon the usual principles under which a court of equity will enjoin enforcement of a judgment. United States Railroad Administration v. Burch (D. C.) 254 F. 140.

10. Proceedings after removal of cause to federal court.—Nonresident defendant may, its petition for removal having been denied, file transcript in federal court, and, it appearing that joinder of resident as defendant was fraudulent and that declaration did not state cause of action against both, secure order enjoining further proceedings in state court. Baker v. Jacksonville Traction Co. (D. C.) 247 F. 718.

Where defendant's filing of a petition for removal of cause to federal court and tender of bond effectually removed it though the state court declined to order removal, the federal court may protect its jurisdiction by injunction restraining plaintiffs and their attorneys from further prosecuting the action in the state court. Muir v. Louisville & N. R. Co. (D. C.) 247 F. 888.

11. Enforcement of state statutes.—See, also, notes under § 1243.

While federal courts may enjoin proceedings by state officials under act violative of federal Constitution, it should not be done, except in a case reasonably free from doubt, and when necessary to prevent great and irreparable injury. Cavanaugh v. Looney, 39 S. Ct. 142.

The fact that a state statute can be enforced only by criminal prosecutions does not defeat the jurisdiction of equity to enjoin unlawful interference with property rights by unauthorized criminal proceedings under the statute. Weyman-Bruton Co. v. Ladd, 231 F. 898, 146 C. C. A. 94.

One convicted of violating a state school law, after opportunity to present his defense, cannot maintain suit in a federal court to enjoin proceedings for subsequent violation, on theory that state decisions were erroneous and denied due process of law, in violation of Const. Amend. 14. Gillen v. Board of Public Education of City of Philadelphia (D. C.) 250 F. 649.

12. Enforcement of ordinances.—In suit to enjoin enforcement of an ordinance, where it was admitted that it could not and would not be enforced except through judicial proceedings, the decree will be modified to exclude find-

ing as to validity of franchises and limit relief to injunction against enforcement otherwise than by court proceedings, and against the claim that continued operation of cars pending final adjudication amounted to acceptance of ordinance. City of Cincinnati v. Cincinnati & Hamilton Traction Co., 38 S. Ct. 153, 245 U. S. 446, 62 L. Ed. 389.

13. **Interference with receivers.**—A federal court, which first obtained jurisdiction over land having oil leases thereon, under which its receiver was receiving the royalties, has power by injunction to restrain enforcement of a judgment for royalties obtained against the lessee in a state court. Swift v. Black Panther Oil & Gas Co., 244 F. 20, 156 C. C. A. 448.

A federal court, which by its receiver had taken possession of land in foreclosure, can enjoin the prosecution by third persons in a state court of a suit to enforce an alleged prior lien. Oppenheimer v. San Antonio Land & Irrigation Co., 246 F. 934, 159 C. C. A. 206.

A federal court, having appointed a receiver of a railroad company, may, in aid of its own jurisdiction, enjoin proceedings against the company in state courts. Jackson v. Parkersburg & O. V. Electric Ry. Co. (D. C.) 233 F. 784.

15. **Assessment or collection of taxes.**—Discriminatory taxation, contravening the state Constitution, may be redressed by injunction in federal courts, when discrimination results from actions by different assessing boards, whose assessments are not subject to any process established by state. Greene v. Louisville & I. R. Co., 37 S. Ct. 673, 244 U. S. 499, 61 L. Ed. 1280, Ann. Cas. 1917E, 88.

State as well as franchise taxes based on assessment of intangible property of public service corporation may be enjoined by federal court for discrimination arising out of systematic undervaluation of other taxable property. Louisville & N. R. Co. v. Greene, 37 S. Ct. 683, 244 U. S. 522, 61 L. Ed. 1291, Ann. Cas. 1917E, 97, modifying decree Same v. Bosworth (D. C.) 230 F. 191; Illinois Cent. R. Co. v. Same, 37 S. Ct. 697, 244 U. S. 555, 61 L. Ed. 1309, affirming decree Same v. Bosworth (D. C.) 209 F. 465.

17. **Criminal proceedings.**—A federal court cannot enjoin a multiplicity of prosecutions, under a valid state statute prohibiting traffic in intoxicating liquor, for traffic in liquor claimed to be nonintoxicating. Central Consumers' Co. of New Jersey v. Austin (D. C.) 238 F. 616. See, also, Gillen v. Board of Public Education of City of Philadelphia (D. C.) 250 F. 649.

22. **Bankruptcy proceedings.**—See Pollack v. Meyer Bros. Drug Co. (C. C. A.) 233 F. 861.

Bankruptcy court can enjoin insolvency proceedings pending in state courts within four months after their commencement. Ohio Motor Car Co. v. Eiseman Magneto Co., 230 F. 370, 144 C. C. A. 512, certiorari denied National Carbon Co. v. Ohio Motor Car Co., 36 S. Ct. 724, 241 U. S. 673, 60 L. Ed. 1231.

Cited without definite application, Davis v. Hayden (C. C. A.) 238 F. 734.

§ 1243. (Jud. Code, § 266, as amended, Act March 4, 1913, c. 160.) Injunctions based upon alleged unconstitutionality of State statutes.

Construction in general.—A District Judge is without jurisdiction of application for interlocutory injunction against state commissioner of agriculture acting under state statute alleged to be unconstitutional without calling in two other judges and giving notice to the Governor and Attorney General, and no appeal will lie from an order denying injunction on the merits where this section was not complied with. Crescent Mfg. Co. v. Wilson, 242 F. 462, 155 C. C. A. 238, dismissing appeal (D. C.) 233 F. 282.

Determination of validity of statute.—The federal District Court, composed, under statutory requirements of judge of the District Court, judge of another district, and a Circuit Judge, is not, on application for an interlocutory injunction against enforcement of a state statute, called upon to decide the merits of the case. Crane v. Johnson (D. C.) 233 F. 334.

A federal court, organized pursuant to this section, will not, on an application for a preliminary injunction, undertake to determine the validity of a state statute under the state Constitution. Jackson v. Cravens (D. C.) 235 F. 212, appeal dismissed (C. C. A.) 238 F. 117; Cook v. Burnquist (D. C.) 242 F. 321.

On application to three judges for temporary injunction against enforcement of state railroad rates so far as in conflict with order of Interstate Commerce Commission, held, that it was not necessary to pass upon the merits. Eastern Texas R. Co. v. Railroad Commission of Texas (D. C.) 242 F. 300.

The court may prevent a breach of contract by city in reducing rates; it may hold a statute unconstitutional, as confiscatory, if a proceeding is brought under this section; but it cannot abrogate a contract by holding unconstitutional the law under which the contract was made, and thereupon enlarg-

ing the terms of the contract, in order to avoid the consequences of ceasing to act under the contract. Nor should the court order its receivers to treat the public unequally by allowing them to collect an excess fare from those passengers who do not refuse to pay. Gas & Electric Securities Co. v. Manhattan & Queens Traction Corp. (D. C.) 253 F. 453.

Acts of state officers.—The threatened enforcement by state officers, of a statute attacked as repugnant to the federal Constitution may be enjoined by a federal court, where the statute, if exerted against complainants, will produce irreparable injury. Rast v. Van Deman & Lewis Co., 36 S. Ct. 370, 240 U. S. 342, 60 L. Ed. 679, reversing order Van Deman & Lewis Co. v. Rast (D. C.) 214 F. 827; Tanner v. Little, 36 S. Ct. 379, 240 U. S. 369, 60 L. Ed. 691, reversing decree Little v. Tanner (D. C.) 208 F. 605; Pitney v. State of Washington, 36 S. Ct. 385, 240 U. S. 387, 60 L. Ed. 703; Crane v. Johnson (D. C.) 233 F. 334. See, also, Hebe Co. v. Calvert (D. C.) 246 F. 711.

Enforcement of rate regulations and orders of commissions.—See Landon v. Public Utilities Commission of State of Kansas (D. C.) 242 F. 658.

A preliminary injunction, suspending the enforcement of a state statute fixing railroad rates, refused where the statute had been in force for a number of years, and it appeared that the case could be heard on its merits within a very short time. Ann Arbor R. Co. v. Fellows (D. C.) 236 F. 387.

Freight charges collected in excess of Rev. St. Mo. 1909, §§ 3241, 3242, prescribing maximum freight rates, may be recovered after dissolution of the federal injunction against the statute's enforcement. White v. Delano, 191 S. W. 1012, 270 Mo. 16.

Appeals to Supreme Court.—The federal Supreme Court, on appeal from District Court to review denial, on hearing before three judges, of interlocutory injunction to restrain enforcement of order of state Public Service Commission as repugnant to federal Constitution, has jurisdiction to review entire case. Van Dyke v. Geary, 37 S. Ct. 483, 244 U. S. 39, 61 L. Ed. 973, affirming order (D. C.) 218 F. 111.

Where, despite temporary injunction issued by federal District Court restraining him from instituting suits against carriers to enforce state rates in conflict wth those prescribed by Interstate Commerce Commission, Attorney General for Texas began suit in state court, a second injunction restraining prosecution must be deemed in aid of District Court's jurisdiction, and so is not appealable under this section, on theory that it was issued on ground state statutes were unconstitutional. Looney v. Eastern Texas R. Co., 38 S. Ct. 460, 247 U. S. 214, 62 L. Ed. 1084, dismissing appeal Eastern Texas R. Co. v. Railroad Commission of Texas (D. C.) 242 F. 300.

A litigant denied temporary injunction by the court, where the District Judge had called to his assistance a Circuit Judge and another District Judge, must appeal to the Supreme Court, and cannot, under section 129, Comp. St. 1916, § 1121, appeal to the Circuit Court of Appeals. Jackson v. Cravens, 238 F. 117, 151 C. C. A. 193, dismissing appeal (D. C.) 235 F. 212.

Cited without definite application, Cavanaugh v. Looney, 39 S. Ct. 142; Copper Queen Consol. Min. Co. v. Jones (D. C.) 237 F. 131; Kansas City, C. C. & St. J. Ry. Co. v. Barker (D. C.) 242 F. 310; St. Joseph Gas Co. v. Barker (D. C.) 243 F. 206; Brooklyn Heights R. Co. v. Straus (D. C.) 245 F. 132.

§ 1243a. (Act Oct. 15, 1914, c. 323, § 17.) Preliminary injunctions and temporary restraining orders.

Applicability.—See Supreme Council of Royal Arcanum v. Hobart, 244 Fed. 385, 157 C. C. A. 11.

§ 1243b. (Act Oct. 15, 1914, c. 323, § 18.) Security upon issue of restraining order or interlocutory order of injunction.

Restraining order to protect jurisdiction.—This section does not apply to a restraining order issued to prevent the impairment or the exercise of the court's jurisdiction or the enforcement of its orders. Swift v. Black Panther Oil & Gas Co., 244 F. 20, 156 C. C. A. 448.

§ 1243c. (Act Oct. 15, 1914, c. 323, § 19.) Requisites and effect of injunction or restraining order.

Persons affected by injunction.—In suit against officers of labor unions, personal relief by injunction against persons who, pending the suit, succeeded the original parties as officers held erroneous; the suit not being a representative one within equity rule 38 (Comp. St. 1916, p. 2513). Hitchman Coal & Coke Co. v. Mitchell, 38 S. Ct. 65, 245 U. S. 229, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, reversing decree Mitchell v. Hitchman

Coal & Coke Co., 214 F. 685, 131 C. C. A. 425, which reversed decree Hitchman Coal & Coke Co. v. Mitchell (D. C.) 202 F. 512. Mandate stayed 38 S. Ct. 190.

§ 1243d. (Act Oct. 15, 1914, c. 323, § 20.) Restraining orders or injunctions in cases between employers and employés.

Suits arising prior to act.—See Paine Lumber Co. v. Neal, 37 S. Ct. 718, 61 L. Ed. 1256; Hitchman Coal & Coke Co. v. Mitchell, 38 S. Ct. 65, 245 U. S. 229, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, reversing decree Mitchell v. Hitchman Coal & Coke Co., 214 F. 685, 131 C. C. A. 425, which reversed decree Hitchman Coal & Coke Co. v. Mitchell (D. C.) 202 F. 512, mandate stayed 38 S. Ct. 190; Eagle Glass & Mfg. Co. v. Rowe, 38 S. Ct. 80, 245 U. S. 275, 62 L. Ed. 286, reversing decree Hill v. Eagle Glass & Mfg. Co., 219 F. 719, 135 C. C. A. 417.

Effect of statute.—This section legalizes a secondary boycott, at least in so far as it rests on or consists of refusing to work for any one who deals with principal offender. Duplex Printing Press Co. v. Deering (C. C. A.) 252 F. 722.

This section does not legalize any act which was previously unlawful. Kroger Grocery & Baking Co. v. Retail Clerks' International Protective Ass'n, Local No. 424 (D. C.) 250 F. 890.

Unlawful acts.—Under Interstate Commerce Act, § 3 (Comp. St. 1916, § 8565), and section 10 as amended by Act March 2, 1889, § 2 (Comp. St. 1916, § 8574), and despite this section, striking members of labor union will be enjoined from interfering with complainant's transportation business by violence, etc., complainant being a common carrier, and also a carrier of the mails, though strikers may peaceably persuade complainant's employés to leave its service, etc. Alaska S. S. Co. v. International Longshoremen's Ass'n of Puget Sound (D. C.) 236 F. 964.

Temporary injunction to protect property of street railroad company from strikers held properly denied, it not appearing defendants were destroying property, etc. Puget Sound Traction, Light & Power Co. v. Whitley (D. C.) 243 F. 945.

Members of a union and the union itself are properly enjoined, on suit by one to whom their employer was under contract to deliver machines, where such union laborers by unlawful violence, etc., prevented other employés from working, thus precluding delivery of machines. Niles-Bement-Pond Co. v. Iron Molders' Union, Local No. 68 (D. C.) 246 F. 851.

Evidence held insufficient to warrant the granting of an injunction to restrain acts of officers of a labor organization under this act. Duplex Printing Press Co. v. Deering (D. C.) 247 F. 192, decree affirmed (C. C. A.) 252 F. 722.

The action of employés of a company conducting 140 retail grocery stores in St. Louis, in going on a strike at a time when they knew it would necessitate the closing for the time of a majority of the stores, and would result in the loss of a large quantity of perishable foodstuffs (which in fact amounted to $36,000 in value), in afterward entering the stores and using opprobrious epithets and threatening language to the employés, and in congregating in numbers in front of the stores and using harsh, offensive, and insulting language to customers and intending customers, many of whom were women and children, to enforce a boycott, held unlawful, and to authorize a federal court to grant an injunction, under this section, on the ground that it was "necessary to prevent irreparable injury to property, or to a property right," of the employer, and also because such acts were in violation of the Food Conservation Act Aug. 10, 1917, c. 53, § 4, which makes it unlawful "knowingly to commit waste or willfully to permit preventable deterioration of any necessaries in or in connection with their production, manufacture, or distribution," or to conspire or combine "to restrict distribution of any necessaries." Kroger Grocery & Baking Co. v. Retail Clerks' International Protective Ass'n (D. C.) 250 F. 890.

—— Strike for closed shop.—Where union employés of open shop go out on strike for closed shop, employer's action for injunction against officers and members of union organizations to which strikers belong is within this section. Duplex Printing Press Co. v. Deering (C. C. A.) 252 F. 722.

Parties affected by injunction.—A decree in a strike suit enjoining defendants "and all other persons whatsoever who may have acquired notice, information, or knowledge of this judgment" from interfering by threats, violence, or intimidation with complainant's employés binds persons having notice who, although not parties, were in privity with the defendants, but persons not parties nor privies, who ten years later took part in another and unrelated strike as members of the same labor union are not amenable to such decree, although served with notice. Tosh v. West Kentucky Coal Co. (C. C. A.) 252 F. 44.

All members of a trade union held responsible, and subject to injunction, restraining unlawful acts of some of the members, which they approved. Kroger Grocery & Baking Co. v. Retail Clerks' International Protective Ass'n, Local No. 424 (D. C.) 250 F. 890.

§ 1244. (Jud. Code, § 267.) When suits in equity may be maintained.

I. NATURE AND EXTENT OF EQUITY JURISDICTION

3. Distinction between law and equity maintained.—Equity has jurisdiction to administer common-law remedies only as incidental to some equity. Blue Ridge Electric Co. v. American Bank Note Co., 237 F. 755, 150 C. C. A. 509, reversing decree American Bank Note Co. v. Blue Ridge Electric Co. (D. C.) 230 F. 911.

Jurisdiction at law and in equity are as separate in the federal courts as though administered by different tribunals. Forty Fort Coal Co. v. Kirkendall (D. C.) 233 F. 704.

The distinction between law and equity is substantial and not technical. John A. Roebling's Sons Co. v. Kinnicutt (D. C.) 248 F. 596.

4. —— Equitable defenses not available at law.—See post, § 1251b, and notes.

While an "estoppel in pais" is called an equitable estoppel, it is a legal estoppel as well, and is not treated as a distinctively equitable defense, and can be pleaded in a law case; and hence the existence of such estoppels furnished no ground for a suit in equity to enjoin an action of ejectment and take over the litigation. Weber v. Hertzell (C. C. A.) 230 F. 965.

5. Ancillary jurisdiction.—Federal court of equity is not without jurisdiction on ground of existence of adequate remedy at law to render summary judgment under local law against sureties on appeal bond, where decree has been affirmed. Pease v. Rathbun-Jones Engineering Co., 37 S. Ct. 283, 243 U. S. 273, 61 L. Ed. 715, affirming decree 228 F. 273, 142 C. C. A. 565.

In suit to set aside assignment by corporation and determine validity of bonds in which all parties asked such determination, court, having obtained jurisdiction and control through appointment of receiver, held empowered to determine rights of parties. Williamson v. Collins, 243 F. 835, 156 C. C. A. 347.

As an incident to a suit to have a deed declared a mortgage, court of equity has jurisdiction to declare an accounting for the profits received from the property. Bolin v. Wilkes, 249 F. 705, 161 C. C. A. 615.

6. Retention of jurisdiction.—Defendants cannot defeat a partition suit because complainants asserted that their right to a leasehold in the property had been lost by noncompliance with covenants; equity having jurisdiction would dispose of the question of forfeiture. Towle v. Pullen, 238 F. 107, 151 C. C. A. 183.

Under this section, a court of equity, after denial of injunction, which was the only equitable relief sought, has no jurisdiction to proceed with cause for purpose of awarding damages to complainant. American Falls Milling Co. v. Standard Brokerage & Distributing Co., 248 F. 487, 160 C. C. A. 497.

Where federal District Court had jurisdiction of subject-matter warranting appointment of receiver of embarrassed corporation, it had authority to decide all questions arising therein, and its rulings could be questioned only by those properly parties. Scattergood v. American Pipe & Construction Co., 249 F. 23, 161 C. C. A. 83, certiorari granted Hitchcock v. Scattergood, 38 S. Ct. 583, 247 U. S. 516, 62 L. Ed. 1244.

A court of equity, having obtained jurisdiction of a suit wherein cancellation of contract of sale was sought, will retain the jurisdiction to dispose of all controversies between the parties arising out of the transaction. Fay v. Hill, 249 F. 415, 161 C. C. A. 389.

Equity having jurisdiction of suit to cancel contract between complainant and defendant, giving defendant percentage of profits which were expected to result from complainant's acquisition of a leasehold, in which transaction defendant was interested, on ground that defendant concealed a profit received from the owner, may, for purpose of doing complete justice between the parties, decree a recovery of the sum concealed by defendant. Reid v. Shaffer, 249 F. 553, 161 C. C. A. 479.

When court of equity obtains jurisdiction for equitable purposes, it will retain it to give full relief, whether legal or equitable, as to all purposes relating to subject-matter of bill. U. S. v. Ash Sheep Co. (C. C. A.) 250 F. 592.

Where the main ground of equitable jurisdiction is also the main object of the suit, as injunctive relief, and this object fails for want of proof, the case will not be retained to decide an incidental question of law. Munger Laundry Co. v. National Marking Mach. Co. (C. C. A.) 252 F. 144.

Where creditors filed their claims in a proceeding to wind up a partnership, the court of equity, which necessarily determines the validity and extent of the claims for the purpose of devoting any partnership assets to the payment thereof before distribution, will not remit claimants to another tribunal for full relief, if the partnership assets are deficient, but will give personal judgment against the partners for the deficiency. Lackner v. McKechney (C. C. A.) 252 F. 403.

A court of equity, having jurisdiction of a suit by a divorced wife to recover her interest in the community property, will retain jurisdiction of the proceeding to do complete justice; other parties having intervened and set

up their claims to such property, and the husband having died. Johnson v. Garner (D. C.) 233 F. 756.

The rule that a court of equity, taking jurisdiction of a controversy for one purpose, will dispose of all such matters in controversy, so as to render complete relief, does not mean that it will pass on claims based on a different matter, asserted in a different capacity and entirely unrelated to the subject of the primary equity. Old Dominion Trust Co. v. First Nat. Bank of Oxford, N. C. (D. C.) 252 F. 613. And see Ingersoll v. Doyle (D. C.) 247 F. 620.

Where a trust has been created as part of the consideration entering into contract, and one of the parties to whom its execution has been intrusted is fraudulently dissipating the fund expressly created to secure the faithful performance of the contract, the other party may invoke relief in equity to prevent the continuation of the fraud; and where equity thus takes jurisdiction it has jurisdiction for all purposes. Hight v. Richmond Park Imp. Co., 47 App. D. C. 518.

II. REMEDY AT LAW AS BAR TO EQUITY JURISDICTION

9. Adequacy of legal remedy.—See Special School Dist. of Ashdown, Ark., v. Jones (C. C. A.) 250 F. 440; Consolidated Fuel Co. v. St. Louis Southwestern Ry. Co. of Texas (C. C. A.) 250 F. 395; Destructor Co. v. City of Atlanta (D. C.) 232 F. 746.

If remedy at law be doubtful, a court of equity will not decline cognizance of suit on account of existence of legal remedy. Union Pac. R. Co. v. Board of Com'rs of Weld County, Colo., 38 S. Ct. 510, 247 U. S. 282, 62 L. Ed. 1110, reversing decree. 222 F. 651, 138 C. C. A. 175, which denies rehearing 217 F. 540, 133 C. C. A. 392.

The mere fact that a defendant cannot be compelled to pay a judgment at law cannot make the plaintiff's remedy there inadequate, or his injury irreparable, in such sense as to give a federal court of equity jurisdiction. Willis v. O'Connell (D. C.) 231 F. 1004.

To defeat the jurisdiction of equity on the ground of an adequate remedy at law, the remedy at law must be as complete, practical, and efficient to the ends of justice and its prompt administration as a remedy in equity. Wright v. Barnard (D. C.) 233 F. 329; Fredenberg v. Whitney (D. C.) 240 F. 819; St. Louis-San Francisco Ry. Co. v. McElvain (D. C.) 253 F. 123.

A legal remedy, to be adequate and to exclude the jurisdiction of equity, must be a remedy which the party himself controls and can assert at the moment. Fredenberg v. Whitney (D. C.) 240 F. 819.

10. Constitutional right to jury trial.—See Parkerson v. Borst (C. C. A.) 251 F. 242.

12. Effect of state remedial laws.—Provisions of Constitution or statutes of a state cannot enlarge jurisdiction of a federal court of equity, as restricted by this section. McLaughlin v. St. Louis Southwestern Ry. Co., 232 F. 579, 146 C. C. A. 537, certiorari denied St. Louis Southwestern Ry. Co. v. McLaughlin, 36 S. Ct. 727, 60 L. Ed. 1233.

Despite this section, the several states cannot, save in so far as federal courts apply their remedies, restrict equitable jurisdiction of federal courts, which, unless abridged by Congress, is coextensive with that of English Court of Chancery at time of Revolution. Nevada-California Power Co. v. Hamilton (D. C.) 235 F. 317.

An adequate remedy at law, which can be administered only in a state court, is not sufficient to compel a federal court to dismiss an equitable cause over which its jurisdiction is complete, and relegate the complainant for his only alternative relief to a state court. Id.

17. Mandamus as remedy.—Where a telephone company's service was being interrupted during a strike by acts of unknown individuals, the remedy of subscribers by mandamus to compel a restoration of the service is not sufficiently speedy, and is inadequate. Stephens v. Ohio State Telephone Co. (D. C.) 240 F. 759.

18. Multiplicity of suits.—Collection of taxes on property claimed to be exempt will not be enjoined, on ground that it would avoid multiplicity of suits, for it will be assumed that tax officers will act in a practical way, and taxes for one year, being defeated, will not subsequently assert rights of taxation. City Council of Augusta, Ga., v. Timmerman, 233 F. 216, 147 C. C. A. 222, affirming decree City Council of Augusta v. Same (D. C.) 227 F. 171.

The legal remedy of each one of a large number of telephone subscribers for the interruption of the service for which he contracted does not, under Judicial Code, § 267, prevent a suit in equity by several subscribers on behalf of all to compel a restoration of the service. Stephens v. Ohio State Telephone Co. (D. C.) 240 F. 759.

Plaintiff, suing to enjoin suit on note and to have same canceled, together with contract alleged to have been obtained through fraud, held not entitled to maintain suit in equity on ground of multiplicity of causes of action. Bronson v. Cook (D. C.) 247 F. 601.

It is no conspiracy for two or more persons, each having a separate and independent cause of action against a

third, to agree that they will simultaneously, by independent and separate suits proceed against their adversary, for there is no other way in which they could individually make their contentions than by separate suit; hence, though such persons so agreed and employed the same attorney, it is no ground for equitable relief in favor of the person sued. Robinson v. Wemmer (D. C.) 253 F. 790.

A bill "quia timet" is very limited, and goes to protect an existing possession which has been already established once after an attack at law, and which is again threatened, thereby threatening such a multiplicity of suits as equity will recognize. Pell v. McCabe (D. C.) 254 F. 356.

The fact that a comprehensive and adequate decree may be entered covering the whole controversy between the parties, and a multiplicity of suits thereby avoided, will justify a court of equity taking jurisdiction of the controversy. Royal Trust Co. of Montreal v. Gardiner, 44 App. D. C. 570.

III. INSTANCES OF ADEQUACY OF REMEDIES

19. Accounting.—Equity held to have jurisdiction of a suit on the bonds of an insolvent contractor to recover for materials furnished; other creditors being interested and a complicated accounting being necessary. Dewey Portland Cement Co. v. Texas Bldg. Co., 234 F. 622, 148 C. C. A. 388.

20. Administration of estates of decedents or incompetents.—Where the state law authorized administration by next of kin, or, in their absence, by creditors, and persons not related to or creditors of deceased obtained administration, equity would interpose to protect the endangered rights of citizens of another state. Jennings v. Smith (D. C.) 232 F. 921.

26. Breach of contract.—A court of equity held, on the evidence, without jurisdiction to render a money decree against a defendant corporation, based on the claim that defendant had assumed the indebtedness of another corporation, the liability in such case being purely a legal one, and where it further appeared that complainant's claim had never been adjudicated, was disputed by defendant, and that the alleged original debtor was not a party to the suit. Blue Ridge Electric Co. v. American Bank Note Co. (C. C. A.) 237 F. 755.

Merchant's covenant not to sell or permit to be sold on its premises during contract term any other patterns, and not to sell specified patterns except at label prices, being auxiliary to performance of agreements which could not be specifically enforced, could not be enforced by injunction until such relief was shown to be clearly necessary to prevent substantial injustice, in absence of adequate remedy at law. Standard Fashion Co. v. Magrane Houston Co. (C. C. A.) 251 F. 559.

Where the owner of land, who had granted the timber, together with rights of way for removal, denied the grantee access to the lands, asserting the period for removal had expired without extension, held that, as the grantee's rights had not been determined, equity had jurisdiction to enjoin the owner from denying access, etc., there being no adequate remedy at law. United Timber Co. v. Bivens (D. C.) 253 F. 968.

See, also, Montgomery Traction Co. v. Montgomery Light & Water Power Co., 229 F. 672, 144 C. C. A. 82, affirming decree (D. C.) 219 F. 963.

27. Cancellation of instruments.—While assumpsit is the proper remedy for the recovery of a liquidated sum withheld by one joint adventurer from his associates in the transaction, recourse may be had to equity, where the amount is unliquidated and there is also a prayer for cancellation of the written contract between the parties relating to the transaction. Reid v. Shaffer, 249 F. 553, 161 C. C. A. 479.

Equity has jurisdiction to cancel an instrument which is clearly illegal, but which on its face is valid, and so is capable of a wrongful and vexatious use, where such cancellation is necessary to protection to parties otherwise liable to injury, actual or threatened, from the fact that the instrument is outstanding. General Film Co. v. Sampliner (C. C. A.) 252 F. 443.

Plaintiff is not entitled to maintain suit to cancel note, etc., on ground of fraud, where she could present fraud alleged in action at law. Bronson v. Cook (D. C.) 247 F. 601.

The federal District Court for Virginia may entertain suit on equity side to vacate release of West Virginia judgment, despite this section. Williams v. Miller (D. C.) 249 F. 495.

A bill in equity to set aside an exchange of real estate for fraud of the plaintiff's brokers in effecting the exchange will not be dismissed upon the ground that an action at law would have afforded the plaintiff adequate relief. Bradley v. Davidson, 47 App. D. C. 266.

31. Cloud on title to real estate.—There is a legal presumption that a cloud on the title to real property inflicts such injury upon the persons interested therein as will give a court of equity jurisdiction of a suit for that purpose without proof of other damage. Elder v. Western Mining Co., 237 F. 966, 150 C. C. A. 616.

The general equity rule that a bill to remove cloud from title can only be filed by one in possession does not prevent the maintenance of such a bill by one not in possession, where there are other grounds for equitable relief.

General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

32. **Conversion.**—Bill held not to state a cause of action cognizable in equity, but in effect one for conversion cognizable at law. Parkerson v. Borst (C. C. A.) 251 F. 242.

34. **Eminent domain.**—Where landowners, seeking injunction to restrain drain construction, failed to ask temporary restraining order, and, pending trial and appeal, the drain was completed, the landowners should be left to their action for damages. Woodlawn Trust & Savings Bank v. Drainage Dist. No. 2 of Dakota County, Neb. (C. C. A.) 251 F. 568.

Court of equity held not the proper tribunal for condemnation of right to maintain telegraph lines on railroad right of way. Western Union Telegraph Co. v. Nashville, C. & St. L. Ry. (D. C.) 243 F. 694.

34½. **Corporation management.**—Suit to charge directors of corporation with personal liability for the corporation's misappropriation of funds held properly brought in equity. Virginia-Carolina Chemical Co. v. Ehrich (D. C.) 230 F. 1005.

Where there is mismanagement by corporate directors, or premature disposal of corporate property on liquidation, creditors and stockholders liable to be injured thereby will be given relief in equity. Bassett v. Bickford Bros. Co. (D. C.) 232 F. 895.

A court of equity held to have power to retain jurisdiction of a suit by minority stockholders to enjoin a consolidation until its effect in actual operation is shown. Simon Borg & Co. v. New Orleans City R. Co. (D. C.) 244 F. 617.

35. **Creditors' suit.**—A simple contract creditor, who has no lien or security of any kind, and who asserts no right to subject any specific property to the payment of his debt, cannot invoke the aid of equity for the collection of his claim, and is not entitled to have conveyances by his debtors set aside on the theory that they were made to hinder. Gillespie v. Riggs (C. C. A.) 253 F. 943.

Courts of equity have jurisdiction to entertain suits in the nature of creditors' bills for the purpose of administering estates, marshaling assets, and adjusting equities. U. S. v. Minor (C. C. A.) 254 F. 57.

Liability of director of corporation, whose debts exceed subscribed capital stock, in violation of Civ. Code Cal. § 309, held enforceable only in equity. In re La Jolla Lumber & Mill Co. (D. C.) 243 F. 1004.

A suit by corporate creditor against a director of a Montana corporation under Rev. Codes Mont. § 3827, based on the director's incurring debts beyond the prescribed capital stock, is properly brought in equity. Boomer v. Rowe (D. C.) 244 F. 307.

36. **Enforcement of decree for payment of money.**—Since Comp. St. 1916, § 1608, as to duration of lien of judgments, does not apply to the government, suit will not lie to subject property to judgments, as goverment has complete and adequate remedy by issuance of fi. fa. or execution. U. S. v. Minor (D. C.) 243 F. 953.

Could decree of state court against executor for devastavit be deemed as giving complainant right to appropriation of sureties' property, it would carry with it superior right to satisfaction out of property, and hence suit in federal court to enjoin disposition could not be maintained; complainant already having adequate remedy. Gillispie v. Riggs (D. C.) 248 F. 843.

36¼. **Estoppel.**—Defense that judgment for defendant, on its defense of champerty in assignment to plaintiff, was equitable estoppel in subsequent action at law against a defendant, who was not a party to the former action, but was in privity with defendant therein, is as available in federal courts in the subsequent action, as in new suit in equity. General Film Co. v. Sampliner (C. C. A.) 252 F. 443.

36½. **Forfeiture.**—Equity views forfeiture with disfavor, and will only interfere, to work a forfeiture and ascertain damages, where the remedies at law are plainly and substantially inadequate. Semidey v. Central Aguirre Co., 239 F. 610, 152 C. C. A. 444.

36¾. **Former adjudication.**—The defense of res judicata is as much a defense at law as in equity, and there is no necessity for a preliminary decree in equity establishing such defense. Weber v. Hertzell, 230 F. 965, 145 C. C. A. 159.

The effect of a previous adjudication that the assignment was champertous, made in favor of a party with whom defendant was in privity, at the suit of the same plaintiff, is as available in suit at law as in equity. General Film Co. v. Sampliner (C. C. A.) 252 F. 443.

37. **Fraud.**—Fraud which enters into the execution of an instrument may be proven in law as well as in equity; and a release, unless a sealed instrument, may be attacked in an action in which it is set up by proof of the fraud. Southern Ry. Co. v. Clark, 233 F. 900, 147 C. C. A. 574.

In an action at law on a contract of subscription to the stock of a corporation, the defense that the subscription was obtained by fraud is open to defendant. Columbia-Knickerbocker Trust Co. v. Abbot, 247 F. 833, 160 C. C. A. 55, certiorari denied 39 S. Ct. 6.

A suit, in view of pleadings, evidence, and findings, held not one to dissolve a corporation, but one within the power of a court of equity, to re-establish the

status prior to fraud. Tevander v. Ruysdael (C. C. A.) 253 F. 918.

A complaint by a bondholder, seeking to foreclose a mortgage given to secure bonds, which alleged that the trustee had refused to act, that the mortgagor was in default, and that the holders of a majority in interest of the bonds had conspired to defraud other bondholders, and apply funds, properly applicable to payment of the bonds, to payment of unsecured indebtedness, held to state a cause of action for equitable relief, notwithstanding the mortgage provided for foreclosure only upon request of a majority of the bondholders. Brown v. Denver Omnibus & Cab Co. (C. C. A.) 254 F. 560.

Implied or constructive fraud growing out of representations or concealment of or failure to disclose similar facts held sometimes ground for equitable relief without actual or constructive fraud. In re Syracuse Gardens Co. (D. C.) 231 F. 284.

That a judge, fraudulently appointed administrator, resigned his judgeship under promise to be "taken care of," and his successor vacated orders for protection of the estate, enhanced the rights of citizens of other states to equitable relief in a federal court for the protection of their alleged property rights. Jennings v. Smith (D. C.) 232 F. 921.

Fraud, to be available as a defense in a legal action, must be fraud in the factum; and, when it is committed in the negotiation, equity is the proper tribunal to grant relief. In re Hunter-Rand Co. (D. C.) 241 F. 175.

Equity held to have jurisdiction, where complainant was defrauded by agreement under which he was employed by corporation and was to receive part of stock, which was to be increased, and which the corporation and its officers failed to carry out. Wright v. Barnard (D. C.) 248 F. 756.

Equity has jurisdiction, on the ground of inadequacy of remedy at law, of suit by government, based on fraud and a trust, and involving an accounting of business for ten years, to impound dividends paid by an oleomargarine manufacturer, since insolvent, to stockholders, its officers, and directors, which but for fraud should have been paid for oleomargarine tax. U. S. v. Capital City Dairy Co. (D. C.) 252 F. 900.

38½. **Interpleader.**—A suit by a bank to have rights determined in a deposit, claimed by several parties, including itself, held in the nature of a bill of interpleader, and within the equity jurisdiction. Sherman Nat. Bank of New York v. Shubert Theatrical Co., 247 F. 256, 159 C. C. A. 350, affirming order (D. C.) 238 F. 225.

41. **Lien.**—A bill by a warehouseman claiming a lien on goods cannot be maintained for an injunction against a replevin suit between other parties, since there is an adequate remedy at law by intervention in the replevin case. Sachs v. Kinyoun, 47 App. D. C. 561.

41½. **Lost deed.**—Court of equity may be invoked by claimant of minerals to establish deed, on which his title depends, lost or destroyed by adversary, to the end that by preserving and recording he may protect himself against bona fide purchaser and show good marketable title. Midkiff v. Colton (C. C. A.) 252 F. 420.

While the mere destruction of a deed will not give equity jurisdiction, yet, where a party in possession of land has by accident lost the evidence of his title, a court of equity has jurisdiction to establish the former existence and contents of the lost document. Virginia & West Virginia Coal Co. v. Charles (D. C.) 251 F. 83.

41¾. **Mistake.**—Plaintiff, in an action at law, cannot avoid a release signed by him as such for omission of a provision of the contract by mutual mistake; his remedy in such case being in equity. Holbrook, Cabot & Rollins Corp. v. Sperling, 239 F. 715, 152 C. C. A. 549.

42. **Money demand.**—A suit by government contractor against the government and a subcontractor, whose claimed dereliction caused government to withhold part of final payment, held not within jurisdiction of equity. National Surety Co. v. Washington Iron Works (D. C.) 243 F. 260.

43½. **Nonassignability of chose in action.**—Nonassignability of cause of action is as available as defense in action at law based on such cause of action as it is available as ground in support of suit in equity to restrain prosecution of such action. General Film Co. v. Sampliner (C. C. A.) 252 F. 443.

44. **Nuisance.**—A bill in equity by a taxpayer to enjoin the excise board from granting licenses to saloon keepers, filed before the granting of the licenses, but after the board had formally voted to grant them, will not be dismissed on the ground that the plaintiff had an adequate remedy at law by certiorari, where the plaintiff was not a party to the proceedings before the excise board, and it is at last doubtful whether the remedy by certiorari was open to him. Carr v. Washington & O. D. Ry., 44 App. D. C. 533.

48½. **Quieting title.**—Rule that suit to quiet title can only be brought by one in possession has no application where legal remedy in ejectment is not available. Lancaster v. Kathleen Oil Co., 36 S. Ct. 711, 241 U. S. 551, 60 L. Ed. 1161.

A bill alleging that complainant is the owner of a tract of land, but admitting that defendant railroad company is in the exclusive possession of the entire tract, using the same for railroad purposes, held not to state a

cause of action to quiet title. Ennis-Brown Co. v. Central Pac. Ry. Co., 235 F. 825, 149 C. C. A. 137, affirming judgment (D. C.) 228 F. 46.

51. Reformation of instruments.—See Upson Nut Co. v. American Shipbuilding Co. (D. C.) 251 F. 707.

Courts of equity will reform a written contract, where, owing to mutual mistake, the language used did not fully or accurately express the agreement or intention of the parties, and the fact that the interpretation or construction of a contract presents a question of law, and therefore the mistake was one of law, is no bar to relief. Philippine Sugar Estates Development Co. v. Government of Philippine Islands, 38 S. Ct. 513, 247 U. S. 385, 62 L. Ed. 1177.

52. Relief against judgments.—A District Judge did not err in declining to entertain a motion and petition to vacate a judgment on the ground that the moving party had taken a writ of error from the Supreme Court, which was dismissed for want of jurisdiction, and that the time had elapsed within which a writ of error could be taken from the Circuit Court of Appeals, where the judgment was the one the court intended to enter and there were no clerical mistakes, and, treating the petition as a bill in equity, it was not alleged or contended that the petitioner had any equitable defense of which it could not avail itself at law, or a good defense at law of which it was prevented from availing itself by fraud, or accident unmixed with negligence of itself or its agents, as, after the term ended at which it was entered, the judgment passed beyond the control of the court, and errors therein could only be corrected by writ of error or appeal. In re National Telephone Mfg. Co. (C. C. A.) 230 F. 785.

A law court has power to set aside release of its judgment, at least when judgment creditor in executing release used a scroll. Williams v. Miller (D. C.) 249 F. 495.

53½. Sale of real property.—Equity has power to order sale of real estate, where it appears that, unless such action is taken, the property will be lost both to life tenant and remainderman, and to extinguish all interests therein, whether vested or contingent. Graff v. Rankin (C. C. A.) 250 F. 150.

54. Specific performance.—Where defendant had contracted to take electrical current from plaintiff, court held not to have exceeded powers, or abused or mistakenly exercised discretion, by enjoining it from taking current from others. Montgomery Traction Co. v. Montgomery Light & Water Power Co., 229 F. 672, 144 C. C. A. 82, affirming decree Montgomery Light & Water Co. v. Montgomery Traction Co. (D. C.) 219 F. 963.

Where it did not appear that damages would be inadequate, specific performance of a contract to convey mining claims to a corporation to be formed, and transfer a percentage of the shares to complainants, will be denied. Ellis v. Treat, 236 F. 120, 149 C. C. A. 330.

Contract by defendant to transport coal in certain vessels for complainant for term of three years held specifically enforceable in equity, where plaintiff's profits were dependent on water transportation, and a sale of the vessels would leave defendant insolvent. Great Lakes & St. Lawrence Transp. Co. v. Scranton Coal Co., 239 F. 603, 152 C. C. A. 437.

Suit to compel railroad company to issue bill of lading for transportation of carload of wheat held not within jurisdiction of federal court of equity because of there being adequate remedy at law. Northern Pac. Ry. Co. v. Van Dusen Harrington Co., 245 F. 454, 157 C. C. A. 616.

Equity held without jurisdiction of a suit for specific enforcement of a contract for the sale and delivery of coal to a railroad company. Consolidated Fuel Co. v. St. Louis Southwestern Ry. Co. of Texas (C. C. A.) 250 F. 395.

Where contract provides for giving by defendant of exclusive license to manufacture under a patent, and for plaintiff giving from time to time, as royalties increase, additional security, specific performance by defendant of the agreement should not be decreed, whereby the court assumes protracted supervision of its performance, but only the giving of the license should be ordered. Life Preserver Suit Co. v. National Life Preserver Co. (C. C. A.) 252 F. 139.

A contract for drainage work held, under the facts shown, specifically enforceable in equity. Board of Com'rs of Mattamuskeet Drainage Dist. v. A. V. Wills & Sons (D. C.) 236 F. 362.

56. Stockholders' rights and liabilities.—Stockholders' liability, under Civ. Code S. D. § 441, cannot be enforced in a federal court by a bill in equity against a number of the stockholders. Clinton Mining & Mineral Co. v. Cochran, 247 F. 449, 159 C. C. A. 503.

Ohio statute (Gen. Code, § 9034) held not to afford an adequate remedy at law, which precluded a stockholder from maintaining a suit in equity to enjoin the corporation from entering into an illegal consolidation. General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

57. Taxation.—Equity has jurisdiction of suit to enjoin enforcement of taxes on intangible property of public service corporation on ground of systematic undervaluation of other taxable property. Greene v. Louisville &

I. R. Co., 37 S. Ct. 673, 244 U. S. 499, 61 L. Ed. 1280, Ann. Cas. 1917E, 88.

A federal court of equity held without jurisdiction of a suit to enjoin enforcement of an assessment of benefits made under Road Law Ark. § 13, which provided an adequate remedy at law. McLaughlin v. St. Louis Southwestern Ry. Co., 232 F. 579, 146 C. C. A. 537, certiorari denied St. Louis Southwestern Ry. Co. v. McLaughlin, 36 S. Ct. 727, 241 U. S. 679, 60 L. Ed. 1233.

As a nonresident owner of property in South Carolina might pursue the remedy given by Civ. Code S. C. 1912, §§ 460–462, in the federal courts, because state could not prevent assertion of such right therein, the remedy was adequate, and collection of taxes levied by South Carolina will not be enjoined, since ordinarily the collection of taxes will not be enjoined, on the ground that the tax is illegal, unless complainant has no adequate legal remedy. City Council of Augusta, Ga., v. Timmerman, 233 F. 216, 147 C. C. A. 222, affirming decree City Council of Augusta v. Same (D. C.) 227 F. 171.

Where, by reason of a reduction of county taxes by the county board of equalization, taxes against a railroad company became discriminatory, held that, under Const. Ark. art. 16, § 13, and Kirby's Dig. § 3966, an injunction against collection will not be issued before application to state tax commission. McDougal v. Mudge, 233 F. 235, 147 C. C. A. 241, reversing order Mudge v. McDougal (D. C.) 222 F. 562.

Act Okl. March 10, 1909 (Comp. Laws 1909, § 7616; Rev. Laws 1910, § 7367; Sess. Laws 1910–11, c. 152), and Okl. March 11, 1915 (Laws 1915, c. 107), afford a plain, speedy, and adequate remedy to property owners complaining of the erroneous assessment of taxes; so, no relief having been sought pursuant to the statutes, the United States, as guardian of Indian allottees, cannot maintain a suit in equity to enjoin sale of allotted lands for delinquent state and county taxes. U. S. v. Board of Com'rs of Osage County, Okl. (C. C. A.) 254 F. 570.

Where a state tax statute makes adequate provision for the testing in the courts of the validity of any tax imposed thereunder, claimed to be in violation of the federal or state Constitution, a federal court will not interfere by injunction to restrain its enforcement. Baldwin Tool Works v. Blue (D. C.) 240 F. 202.

As suit in state court was necessary to enforce Act La. No. 145 of 1916, imposing license taxes on business of mining sulphur, complainant, which was engaged in that business, had adequate remedy at law, and was not entitled to have enjoined enforcement of act on ground that greater part of sulphur mined was sold in interstate and foreign commerce. Union Sulphur Co. v. Reed (D. C.) 249 F. 172.

As there is no right in Louisiana to recover a state tax paid under protest, a suit to enjoin the collection of special road taxes cannot be dismissed on the ground of an adequate remedy at law, for the remedy at law must be as practical and efficient as the remedy in equity. Lancaster v. Police Jury, Parish of Avoyelles, State of Louisiana (D. C.) 254 F. 179.

58. **Trespass.**—Standing timber purchased from owner of land, with license to cut and remove it, so far partakes of nature of real property that right of removal will be protected by injunction where the landowner's continuous interference might prevent removal within time limited, for action for damages for trespass would be inadequate. United Timber Corporation v. Bivens (D. C.) 248 F. 554.

Where plaintiffs had legal title and such possession of timber land as its character made reasonably practicable, and defendants had trespassed thereon and were continuing to do so, legal remedy held inadequate, so that bill in equity would lie. A. G. Wineman & Sons v. Reeves, 245 F. 254, 157 C. C. A. 446.

59. **Trusts.**—Plaintiffs held not entitled to invoke equitable aid to recover against the estate of a decedent for trust property which had been distributed, having an adequate remedy at law. Fidelity Trust Co. v. Alexander, 243 F. 162, 156 C. C. A. 28, reversing decree Alexander v. Fidelity Trust Co. (D. C.) 238 F. 938.

As equity will take jurisdiction to enforce trust, unsecured creditor, who had not reduced his claim to judgment, may maintain creditors' bill against debtor corporation and another, which had received funds and property devoted to payment of unsecured creditors, transferred to it in violation of trust agreement by committee appointed to manage affairs of debtor. Kentucky Wagon Mfg. Co. v. Jones & Hopkins Mfg. Co., 248 F. 272, 160 C. C. A. 350.

59½. **Waste.**—Equity has jurisdiction of a suit, the essential and primary purpose of which is to restrain waste which, if continued, would work irreparable injury to the property in controversy, although the defendant may be in possession. El Dora Oil Co. v. U. S., 229 F. 946, 144 C. C. A. 228.

IV. OBJECTIONS TO JURISDICTION

61. **Objection on court's own motion.**—Where a case is one of which either law or equity might take jurisdiction, and has been brought in equity without objection, the court is not required of its own motion to decline a hearing in equity. Ashland

Waterworks Co. v. City of Ashland (C. C. A.) 251 F. 492.

Where suit in federal court for mandatory injunction involved public questions, court may on its own motion raise question whether complainant had an adequate remedy at law. Gaines v. Baltimore & C. S. S. Co. (D. C.) 234 F. 786.

62. **Objections on appeal.**—Where the subject-matter of a suit is within the jurisdiction of a court of equity, the objection that complainant had an adequate remedy at law will not be considered when made for the first time in the appellate court. El Dora Oil Co. v. U. S., 229 F. 946, 144 C. C. A. 228; Babcock & Wilcox v. American Surety Co. of New York, 236 F. 340, 149 C. C. A. 472; City of Omaha v. Venner, 243 F. 107, 155 C. C. A. 637.

63. **Waiver of objections.**—A defendant, by failing to raise objection to jurisdiction in equity in the trial court, waives the same. El Dora Oil Co. v. U. S., 229 F. 946, 144 C. C. A. 228; Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162.

Where plaintiff in an action on a life policy made no objection to the trial on the equity side of the court of defenses based on the ground that the policy should be canceled, because a new one, naming a new beneficiary, had been issued at the request of the insured, held, that the case was not so wholly without color of equitable jurisdiction that it can be dismissed on appeal. Royal Union Mut. Life Ins. Co. v. Lloyd (C. C. A.) 254 F. 407.

CITED WITHOUT DEFINITE APPLICATION

Greene v. Louisville & I. R. Co., 37 S. Ct. 673; 61 L. Ed. 1280, Ann. Cas. 1917E, 88; Smith v. Douglas County, Neb. (C. C. A.) 242 F. 894; Northern Pac. Ry. Co. v. Van Dusen Harrington Co. (C. C. A.) 245 F. 454; U. S. v. Board of Com'rs of Osage County, Okl. (C. C. A.) 254 F. 570; Marquette Cement Mining Co. v. Oglesby Coal Co. (D. C.) 253 F. 107.

§ 1245. (Jud. Code, § 268.) Power to administer oaths and punish contempts.

II. CONTEMPT

(A) Acts constituting contempt

4. **Intent as element.**—In order that one may be held for contempt for communications with jurors, it is not necessary to prove that the communications had, or acts done, were accompanied by a wrongful intent; it being sufficient if they would have a tendency to improperly affect the action of the jury. Kelly v. U. S., 250 F. 947, affirming In re Kelly (D. C.) 243 F. 696.

5. **Contempt as offense.**—See In re Independent Pub. Co., 240 F. 849, 153 C. C. A. 535, affirming judgment (D. C.) 228 F. 787.

7. **Misbehavior in presence of court, or so near as to obstruct administration of justice—Presence of court.**—The physical nearness to the place where the court is in session of the actual commission of the act charged as a contempt is not important, but, as in the law of constructive presence in criminal cases, the misbehavior is committed where it takes effect. In re Independent Pub. Co. (C. C. A.) 240 F. 849.

10. —— **Attempt to influence jurors.**—Interference with the proceedings of a grand jury in the performance of its functions is as truly a contempt of court as is interference with the proceedings of a petit jury. U. S. v. Providence Tribune Co. (D. C.) 241 F. 524.

Lengthy conversations between counsel and jurors, drinks and other hospitality, entertainment, hopes aroused, and favors granted or promised, held contempt. In re Kelly (D. C.) 243 F. 696, affirmed Kelly v. U. S., 250 Fed. 947, 163 C. C. A. 197.

15. —— **Publications and criticisms.**—This section, which was first enacted as Act March 2, 1831, recognized and sanctioned the power of the federal courts to restrain acts tending to obstruct and prevent the untrammeled and unprejudiced exercise of judicial power, by summarily treating such acts as a contempt; so the publication of newspaper articles which tend to obstruct the administration of justice may be treated as contempt. Toledo Newspaper Co. v. U. S., 38 S. Ct. 560, 247 U. S. 402, 62 L. Ed. 1186, affirming judgment 237 F. 986, 150 C. C. A. 636, which affirmed U. S. v. Toledo Newspaper Co. (D. C.) 220 F. 458, and leave to file petition for rehearing granted 38 S. Ct. 581.

The public press is not immune from the provisions of this section, but the freedom of the press guaranteed by the Constitution is subordinate to the independence of the judiciary and a newspaper article tending to interfere with the orderly procedure of the courts or to obstruct the administration of justice in accordance with legal standards is a contempt which is committed wherever the newspaper is intended to and does in fact circulate. In re Independent Pub. Co. (C. C. A.) 240 F. 849.

The publication by a newspaper of the city in which a court is sitting of an article tending to obstruct the administration of justice in pending proceedings is within Judicial Code, § 268. U. S. v. Providence Tribune Co. (D. C.) 241 F. 524.

An article stating that certain named witnesses were taken before the grand jury, and that it was believed they had given the authorities much valuable ev-

idence, and that prescriptions had been found in their possession which would play a prominent part in the future, was sufficient interference with the grand jury proceedings to constitute contempt. Id.

18. Misbehavior of officers of court.—That sheriff, in charge of jail, from charitable motives, released, for 8 hours a day for 40 days, that he might work and support his family, a prisoner committed to his custody by United States District Court, does not excuse sheriff's contempt in violating order of commitment, or offense of escape, committed both under federal and state law. In re O'Rourke (D. C.) 251 F. 768.

24. Disobedience or resistance to lawful process, order, or command.—Newspaper publications tending to provoke resistance to an injunctional order, if made in a pending case, held to amount to contempt, within this section. Toledo Newspaper Co. v. U. S., 237 F. 986, 150 C. C. A. 636, affirming judgment U. S. v. Toledo Newspaper Co. (D. C.) 220 F. 458.

Acts of defendant held a contempt, as in violation of an injunction. Bradstreet Co. v. Bradstreet's Collection Bureau (C. C. A.) 249 F. 958.

Persons amenable to an injunctional decree are subject to proceedings for contempt for its violation, without regard to the lapse of time since the decree, especially where the proceedings are criminal in character. Tosh v. West Kentucky Coal Co. (C. C. A.) 252 F. 44.

28. —— Disobedience to injunction.—Language or conduct designed and having the natural effect to incite others to violence, in disregard of an injunction, is itself a contempt of the court. Stewart v. U. S., 236 F. 838, 150 C. C. A. 100.

32. Defenses.—Publishers of newspaper articles, which tended to obstruct the administration of justice in the federal court, by bringing pressure on federal judge to decide pending litigation in a particular way, cannot escape punishment for contempt on ground that it did not appear judge read articles, or that he was not affected thereby. Toledo Newspaper Co. v. U. S., 38 S. Ct. 560, 247 U. S. 402, 62 L. Ed. 1186, affirming judgment 237 F. 986, 150 C. C. A. 636, which affirmed U. S. v. Toledo Newspaper Co. (D. C.) 220 F. 458, and leave to file petition for rehearing granted 38 S. Ct. 581.

(B) Power to punish, and proceedings

37. Court offended.—Where a newspaper is charged with contempt in publications concerning a judge sitting in a pending suit, such judge has jurisdiction to dispose of the contempt proceedings; but, if there be sufficient time, he may call in another judge. Toledo Newspaper Co. v. U. S., 237 F. 986, 150 C. C. A. 636, affirming judgment U. S. v. Toledo Newspaper Co. (D. C.) 220 F. 458.

38. Character of proceeding as civil or criminal.—Proceedings for violation of an injunction, conducted in the name of the United States and by the district attorney, held for criminal contempt, which justified a judgment of imprisonment. Stewart v. U. S., 236 F. 838, 150 C. C. A. 100.

A proceeding in a civil suit, by an order requiring defendant to show cause why it should not be punished for contempt, for violation of an injunction previously issued therein, held one for civil and not criminal contempt. Bradstreet Co. v. Bradstreet's Collection Bureau (C. C. A.) 249 F. 958.

41. Summary proceedings—Jury trial.—Where defendant was adjudged guilty of contempt under this section for attempt to influence a juror as to his verdict, held that, record showing no demand for a jury trial, defendant could not complain that he had been denied same on theory that, as his act was also offense under Comp. St. 1916, § 10305, and state laws, he was entitled to a trial by jury under Act Cong. Oct. 15, 1914, c. 323 (Comp. St. 1916, §§ 1245a, 1245b), because section 1245e was invalid as class legislation. Couts v. U. S., 249 F. 595, 161 C. C. A. 521.

42. Moving papers.—It is not necessary that an information for criminal contempt in a federal court should pray for any specific punishment. Creekmore v. U. S., 237 F. 743, 150 C. C. A. 497.

Where the informations charging contempt were presented by the United States district attorney, the facts may be alleged on information and belief. Creekmore v. U. S., 237 F. 743, 150 C. C. A. 497; Kelly v. U. S. (C. C. A.) 250 F. 947.

43. Proof.—The court may take judicial notice of an injunction order which defendants were charged with having violated, and a reference thereto in a judgment in contempt proceedings is unnecessary. Oates v. U. S., 233 F. 201, 147 C. C. A. 207.

In criminal contempt cases, the presumption of innocence attends the accused, and he is to be adjudged guilty only upon evidence which carries conviction beyond a reasonable doubt. Oates v. U. S., 233 F. 201, 147 C. C. A. 207; Hanley v. Pacific Live Stock Co., 234 F. 522, 148 C. C. A. 288; Kelly v. U. S. (C. C. A.) 250 F. 947.

In a proceeding for contempt tried by the court, the admission of evidence in itself immaterial or irrelevant is not prejudicial error. Swepston v. U. S. (C. C. A.) 251 F. 205.

In a proceeding for civil contempt for failure to comply with an order to pay money, the burden of proof rests on defendant to show his inability to

pay, and such inability must clearly appear. Cutting v. Van Fleet (C. C. A.) 252 F. 100.

44. Purging contempt.—Where defendants did not deny the contempt charged, but merely put in a plea of not guilty and went to trial on that, they did not purge themselves of any contempt in violating the injunction. Oates v. U. S., 233 F. 201, 147 C. C. A. 207.

A disavowal on oath by a person charged with contempt of any intention to commit a contempt is not a complete defense in a federal court, but the whole matter is for determination by the court. Swepston v. U. S. (C. C. A.) 251 F. 205.

45½. Findings of fact.—A proceeding to punish for criminal contempt being one at law, those matters which are to be actually inferred, and which the opinion of the lower court assumed, will be considered as found; no specific findings being requested or made. Toledo Newspaper Co. v. U. S., 237 F. 986, 150 C. C. A. 636, affirming judgment U. S. v. Toledo Newspaper Co. (D. C.) 220 F. 458.

Under a charge of contempt, in that respondents did conspire with and permit and assist a prisoner committed to their custody to escape, respondents may be found guilty of permitting and assisting in the escape, although the charge of conspiracy is not proved. Swepston v. U. S. (C. C. A.) 251 F. 205.

An order sentencing a sheriff to jail for contempt for assisting in the escape of a prisoner committed to his custody necessarily involves a finding that the acts charged were intentional. Id.

46. Judgment and commitment.—Where defendant in a civil suit in fact appears in response to an order to show cause why it should not be punished for contempt for violation of an injunction, the court is not limited in granting relief by the prayer of complainant. Bradstreet Co. v. Bradstreet's Collection Bureau (C. C. A.) 249 F. 958.

47. Review.—A conviction for a criminal, although a summary, contempt, is not reviewable on error; but the matter may be reviewed on certiorari, issuable in the discretion of the court. Toledo Newspaper Co. v. U. S., 38 S. Ct. 560, 247 U. S. 402, 62 L. Ed. 1186, affirming judgment 237 F. 986, 150 C. C. A. 636, which affirmed U. S. v. Toledo Newspaper Co. (D. C.) 220 F. 458, and leave to file petition for rehearing granted 38 S. Ct. 581. But see Swepston v. U. S. (C. C. A.) 251 F. 205, holding that final orders imposing punishment for contempt are criminal in their nature, and reviewable by federal Circuit Courts of Appeals on writs of error, upon which matters of law only can be considered.

It is sufficient protection of defendants, charged with contempt, that the reviewing court reverses the judgments, and directs the trial court to reconsider the case, and indicates what incompetent evidence it disregarded. Oates v. U. S., 233 F. 201, 147 C. C. A. 207.

Discretion of trial court in dealing with contempts, and punishment therefor, will not be interfered with, unless grossly abused. In re Sobol, 242 F. 487, 155 C. C. A. 263.

Where not raised in lower court, objection that evidence was insufficient to warrant finding that defendant was guilty of contempt and judgment imposing punishment cannot be raised on writ of error. Couts v. U. S., 249 F. 595, 161 C. C. A. 521.

A proceeding for contempt, arising in connection with a suit in equity, for disobedience of an order made to enforce the rights of a private party, is civil, and is reviewable only by appeal. Cutting v. Van Fleet (C. C. A.) 252 F. 100.

48. —— Findings of fact.—Where defendants, who had been convicted of criminal contempt, contended in Supreme Court that there was no evidence that newspaper articles furnishing basis for prosecution tended to obstruct administration of justice, the Supreme Court will not consider weight of evidence, but simply whether evidentiary facts found by courts below had any reasonable tendency to sustain general conclusions of fact based thereon. Toledo Newspaper Co. v. U. S., 38 S. Ct. 560, 247 U. S. 402, 62 L. Ed. 1186, affirming judgment 237 F. 986, 150 C. C. A. 636, which affirmed U. S. v. Toledo Newspaper Co. (D. C.) 220 F. 458, and leave to file petition for rehearing granted 38 S. Ct. 581.

In contempt proceedings, where there were findings showing defendants' guilt, immaterial findings were not prejudicial. Oates v. U. S., 233 F. 201, 147 C. C. A. 207.

In a proceeding for criminal contempt, the finding of the trial court has the conclusiveness of a verdict, if sustained by substantial evidence, and the only question for the reviewing court is whether there was substantial evidence to support it. Oates v. U. S., 233 F. 201, 147 C. C. A. 207; Stewart v. U. S., 236 F. 838, 150 C. C. A. 100; In re Independent Pub. Co., 240 F. 849, 153 C. C. A. 535, affirming judgment (D. C.) 228 F. 787; Kelly v. U. S. (C. C. A.) 250 F. 947.

Findings that defendants in proceedings for criminal contempt were guilty of willful violation of an injunction, and that, although not parties to the injunction, they had full knowledge of the same, held sustained by the evidence.

Stewart v. U. S., 236 F. 838, 150 C. C. A. 100.

(C) *Punishment*

49. Aspects or functions of punishments for contempt.—With certain exceptions, a criminal contempt is a crime, and a criminal contempt proceeding is a criminal proceeding for all purposes, and one adjudged guilty of a criminal contempt may be properly characterized as a convict. Creekmore v. U. S., 237 F. 743, 150 C. C. A. 497.

50. Fine or imprisonment as punishment.—Under Comp. St. 1916, § 1615, costs may be assessed against defendant convicted in a criminal contempt proceeding, regardless of this section. Oates v. U. S., 233 F. 201, 147 C. C. A. 207.

A criminal contempt is an "offense," within the meaning of Comp. St. 1916, § 10527, and, where the sentence imposed exceeds a year's imprisonment, may be in a penitentiary; the place of confinement being within the court's discretion. Creekmore v. U. S., 237 F. 743, 150 C. C. A. 497.

Under Rev. St. Ohio, § 7381, enacted pursuant to recommendation of Congress, making it the duty of sheriffs to receive and keep prisoners of the United States until released by due process of law, a federal court may lawfully sentence one convicted of contempt to imprisonment in a county jail in Ohio. Swepston v. U. S. (C. C. A.) 251 F. 205.

51. Extent of fine or imprisonment.—In proceedings for contempt for violating an injunction, the sentence is within the discretion of the trial court. Oates v. U. S., 233 F. 201, 147 C. C. A. 207.

In the federal courts, where imprisonment is imposed as punishment for a criminal contempt, the length of term is within the discretion of the court. Creekmore v. U. S., 237 F. 743, 150 C. C. A. 497.

It is within the discretion of the court, in imposing a fine for a criminal contempt which made it necessary to discharge the jury and grant a continuance in a criminal case then on trial, to take into consideration the increased costs thus incurred by the government. In re Independent Pub. Co. (C. C. A.) 240 F. 849.

52. Indemnity to party injured.—A defendant, who violated an injunction obtained against him by a railroad company by selling a cut-rate ticket, and thereby presumably preventing it from selling a full-rate one, might properly, on appplication of the railroad company, be fined a sum compensating the railroad company for its loss; the fact that such fine might also act as a deterrent being no objection to its imposition. Delaware, L. & W. R. Co. v. Frank (C. C. A.) 230 F. 988.

53. Imprisonment on nonpayment of fine and costs.—If defendant should fail to pay the fine imposed, the court could further order that he be imprisoned until he paid the fine; this not being imprisonment for a fixed term as a penalty which defendant was powerless to escape, since he could escape imprisonment by obeying the order and paying the fine, or by satisfying the court that he had no money with which to do so. Delaware, L. & W. R. Co. v. Frank (C. C. A.) 230 F. 988.

Cited without definite application, Marshall v. Gordon, 37 S. Ct. 448, 61 L. Ed. 881, L. R. A. 1917F, 279, Ann. Cas. 1918B, 371; reversing U. S. v. Gordon (D. C.) 235 F. 422.

§ 1245a. (Act Oct. 15, 1914, c. 323, § 21.) Contempt constituting also criminal offense.

Right to jury trial.—See Swepston v. U. S. (C. C. A.) 251 F. 205.

Where defendant was adjudged guilty of contempt under Comp. St. 1916, § 1245, for attempt to influence a juror as to his verdict, held that, record showing no demand for a jury trial, defendant could not complain that he had been denied same on theory that, as his act was also offense under Comp. St. 1916, § 10305, and state laws, he was entitled to a trial by jury under this and the following section, because section 1245d was invalid as class legislation. Couts v. U. S., 249 F. 595, 161 C. C. A. 521.

§ 1245b. (Act Oct. 15, 1914, c. 323, § 22.) Proceedings to punish contempt.

Right to jury trial.—See Swepston v. U. S. (C. C. A.) 251 F. 205.

Where defendant was adjudged guilty of contempt under Comp. St. 1916, § 1245, for attempt to influence a juror as to his verdict, held that, record showing no demand for a jury trial, defendant could not complain that he had been denied same on theory that, as his act was also offense under Comp. St. 1916, § 10305, and state laws, he was entitled to a trial by jury under this section, because section 1245d was invalid as class legislation. Couts v. U. S., 249 F. 595, 161 C. C. A. 521.

Cited without definite application, Toledo Newspaper Co. v. U. S., 38 S. Ct. 560, 62 L. Ed. 1186; Tosh v. West Kentucky Coal Co. (C. C. A.) 252 F. 44.

§ 1245d. (Act Oct. 15, 1914, c. 323, § 24.) Provisions limited to contempts specifically embraced therein.

Validity.—See Couts v. U. S., 249 F. 595, 161 C. C. A. 521.

Cited without definite application, Toledo Newspaper Co. v. U. S., 38 S. Ct. 560, 62 L. Ed. 1186.

§ 1246. (Jud. Code, § 269, as amended, Act Feb. 26, 1919, c. 48.) New trials.

All of the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law. On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties. (40 Stat. 1181.)

This section was amended by Act Feb. 26, 1919, c. 48, cited above to read as set forth above. This amendment consisted in the addition of the second sentence, as set forth above.

Notes of Decisions

I. NATURE OF POWER TO GRANT NEW TRIAL

5. **Discretion of court.**—Review of discretion, see notes under § 1670.

The granting or refusing of a motion for new trial is in the discretion of the lower court. Maryland Casualty Co. of Baltimore, Md., v. Orchard Land & Timber Co., 240 F. 364, 153 C. C. A. 290; R. D. Cole Mfg. Co. v. Mendenhall, 240 F. 641, 153 C. C. A. 439; City of Grafton v. Gentry Bros.' Shows, 240 F. 646, 153 C. C. A. 444; Chicago, M. & St. P. Ry. Co. v. Chamberlain (C. C. A.) 253 F. 429.

6. —— **Criminal cases.**—The discretion of the trial court in granting or refusing a new trial cannot be reviewed on writ of error. Smith v. U. S., 231 F 25, 145 C. C. A. 213; Hughes v. U. S., 231 F. 50, 145 C. C. A. 238; Shepard v. U. S., 236 F. 73, 149 C. C. A. 283; Towe v. U. S., 238 F. 557, 151 C. C. A. 493; Bernal v. U. S., 241 F. 339, 154 C. C. A. 219.

An acquittal cannot be set aside by the court. Cummins v. U. S., 232 F. 844, 147 C. C. A. 38. And see Taylor v. U. S., 244 F. 321, 156 C. C. A. 607.

9½. **New trial as to particular branch of case.**—A court may order a new trial upon a particular branch of a controversy. Calaf v. Fernandez, 239 F. 795, 152 C. C. A. 581.

A federal court has power to grant a new trial as to a single issue in the case, and such procedure is proper, where the jury has found generally for plaintiff, but failed to find his damages, although shown by undisputed evidence. Original Sixteen to One Mine v. Twenty-One Mining Co. (D. C.) 254 F. 630.

II. GROUNDS FOR NEW TRIAL

(B) Misconduct of parties or counsel

12. **Improper influence on jury.**—Where accused moved for new trial on ground that deputy marshal had answered queries of jurors during deliberations, questions whether his statements were made before jury had agreed on conviction, and whether they were prejudicial, were questions of fact, on which it was proper for court to receive evidence. Chambers v. U. S., 237 F. 513, 150 C. C. A. 395.

On trial for carrying on business of liquor dealer without paying tax, counsel's reference in opening statement to an immoral resort in the same building held not misconduct justifying a vacation of the verdict. Foley v. U. S., 241 F. 587, 154 C. C. A. 363.

Statements by counsel for a plaintiff in his argument to the jury of what had been done by juries in former trials of the case was so grossly improper as to entitle defendant to a new trial. McKibben v. Philadelphia & R. Ry. Co. (C. C. A.) 251 F. 577.

12½. —— **Waiver of objection.**—An objection to argument of prosecuting counsel, first called to the attention of the court by a motion for a new trial, came too late. Smith v. U. S., 231 F. 25, 145 C. C. A. 213.

(C) Rulings and instructions

13. **Evidence.**—Admission of incompetent testimony without objection is not a ground for new trial. U. S. v. Knoell (D. C.) 230 F. 509.

A new trial granted in an action on an award of damages by the Interstate Commerce Commission, on the ground that the award, which was part of the evidence submitted to the jury, was made on an erroneous basis. Clark Bros. Coal Mining Co. v. Pennsylvania R. Co. (D. C.) 238 F. 642.

Defendant could not complain, on a motion for a new trial, that evidence to which he objected was admitted for a limited purpose, instead of generally. U. S. v. Fischer (D. C.) 245 F. 477.

The admission in evidence in a criminal case of admissions of defendant,

though erroneous, is not ground for new trial, where the fact admitted was not really in controversy, and was independently proven. U. S. v. Stilson (D. C.) 254 F. 120.

15. Objections and exceptions.—The objection that the husband of the bankrupt cannot testify in a prosecution for conspiracy to receive property of the bankrupt to facts incriminating his wife cannot be first raised on the motion for new trial. Knoell v. U. S., 239 F. 16, 152 C. C. A. 66, affirming judgment U. S. v. Knoell (D. C.) 230 F. 509.

Where no oojection was made to the admission of incompetent testimony of one of the defendants incriminating his wife, though the attention of able counsel for defendants was called to the matter by the court, the admission of such evidence is not ground for new trial. U. S. v. Knoell (D. C.) 230 F. 509.

16. Harmless error.—Error, if any, in reimpaneling jury to correct technical irregularity in sealed verdict, held a mere formality, not furnishing ground for a new trial. Kawin & Co. v. American Colortype Co., 243 F. 317, 156 C. C. A. 97.

(D) Disqualification or misconduct of jury

17. Disqualification.—Juror's ownership of one share of stock in plaintiff railway company held not cause for new trial; no prejudice being shown. Memphis St. Ry. Co. v. Illinois Cent. R. Co., 242 F. 617, 155 C. C. A. 307.

18. Misconduct.—The reading in a jury room by one of the jurors, at the request of the others, of a newspaper article giving an account of former trials of the case, and reflecting on the defendant, held to entitle defendant to a new trial after an adverse verdict. McKibben v. Philadelphia & R. Ry. Co. (C. C. A.) 251 F. 577.

That jurors, before it was put in evidence, examined a map of a railroad crossing at which deceased was killed and were heard discussing the case does not warrant new trial for misconduct. Hartwell v. Delaware, L. & W. R. Co. (D. C.) 234 F. 112.

20. Separation.—That, notwithstanding order against separation of jury, one juror left the others, and went to his office for about 20 minutes, held not ground for setting aside verdict, in absence of showing of injury. Elder v. U. S., 243 F. 84, 155 C. C. A. 614.

22. Objections at trial.—Where defendant contended that juror during course of trial asked whether he would take the stand, and based upon such occurrences a claim of unfairness on part of jury, defendant, having failed to call matter to court's attention before verdict, is not entitled to do so thereafter. Bowers v. U. S., 244 F. 641, 157 C. C. A. 89.

(E) Verdict contrary to law or evidence

23½. Verdict contrary to law.—A conviction on all of the counts for a separate criminal act in a single transaction is not available as a ground for a new trial. Orth v. U. S., 252 F. 566.

24. Verdict contrary to evidence.—The granting or refusing of a new trial for insufficiency of evidence rests in the discretion of the court. Towe v. U. S., 238 F. 557, 151 C. C. A. 493.

26. —— Sufficiency of evidence.—Conviction on uncorroborated testimony of persons convicted of crime will not be set aside on motion for new trial, unless unjust in judgment of court. U. S. v. Knoell (D. C.) 230 F. 509.

27. —— Conflicting evidence.—Verdict for defendant in personal injury action on substantially conflicting testimony held not to be set aside, though regarded as wrong by the District Judge. Stewart v. Boston & M. R. R. (D. C.) 229 F. 862.

30. Inadequate damages.—In an action for breach of contract, where the jury found that defendant broke the contract, but awarded plaintiff a much less sum than the undisputed evidence showed it was entitled to recover, held, that the verdict was so inconsistent that the refusal of the trial court to grant plaintiff a new trial was an abuse of discretion. United Press Ass'ns v. National Newspapers Ass'n (C. C. A.) 254 F. 284.

Where, in action for destruction, by railroad car, of auto, and killing of its driver, contributory negligence might well have been found, plaintiff will not be given new trial because of verdict for $1; it not clearly indicating finding of absence of contributory negligence, and inadequate damages from prejudice, passion, or misconduct. Vanek v. Chicago Great Western R. Co. (D. C.) 252 F. 871.

31. Excessive damages.—See Thrush v. Fullhart, 230 F. 24, 144 C. C. A. 322. See, also, notes under particular statutes giving cause of action for damages.

(G) Newly discovered evidence

38. Diligence.—On a motion for a new trial, in an employe's action for injuries, on the ground of newly discovered evidence, defendant filed affidavits stating that P., a witness for plaintiff, told the affiants that he had made a statement to defendant regarding the accident, but that he was going to go with the other side, because he could get more money out of the other side. Though these affidavits were taken immediately after the trial, no satisfactory reason for not interviewing the affiants before the trial was given, and, though defendant claimed to have been surprised by P.'s testimony, it did not make any suggestion of surprise and ask for further delay at the trial.

Held, that defendant had not met the burden of showing due diligence in the production of the alleged newly discovered evidence, especially as the evidence was of an impeaching character. Tomljanovich v. Victor-American Fuel Co. (D. C.) 230 F. 467.

III. MOTIONS FOR NEW TRIAL

45. **Time of filing.**—A breach of a court rule requiring motions for new trial to be made four days after entry of verdict is a mere error of procedure not affecting jurisdiction. Abbott v. Brown, 36 S. Ct. 689, 241 U. S. 606, 60 L. Ed. 1199.

A term of federal District Court, Southern District of Florida, which under Comp. St. 1916, §§ 976–978, 1061, must always be open as a court of admiralty and equity, was not brought to an end, so far as criminal business was concerned, so as to prevent granting of new trial, by adjournment in accordance with court rule requiring, pending temporary absence of the judge, the clerk be present for transaction of business under orders of the judge. Id.

48. **Determination.**—Where the court granted a new trial on motion of both plaintiff and defendant, a vacation of the order thereafter on motion of plaintiff held proper, where the evidence was not in dispute and there had already been three nisi prius hearings. Alwart Bros. Coal Co. v. Royal Colliery Co., 234 F. 20, 148 C. C. A. 36.

TECHNICAL ERRORS DISREGARDED

Civil causes

Defects in process, proceedings, and judgment.—See notes under section 1591.

— **Instructions.**—Any error in ruling in action against carrier for delay as to effect of accumulation of freight or strike, as affecting burden of proof, held not prejudicial where jury were instructed that carrier had proved strike beyond its control, and that if no negligence was shown it was not liable and burden of proof was on plaintiff. Pennsylvania R. Co. v. Olivit Bros., 37 S. Ct. 468, 243 U. S. 574, 61 L. Ed. 908, affirming judgment Olivit Bros. v. Pennsylvania R. Co., 96 A. 589, 88 N. J. Law, 376.

In an action for injuries to an employé, the omission of the court to charge, with reference to one of several grounds of negligence, that it must be the proximate cause of the injury to be actionable, held harmless. Republic Iron & Steel Co. v. Hines, 240 F. 77, 153 C. C. A. 113.

Refusal of unobjectionable requests by defendant to charge on assumption of risk held not prejudicial, in view of another request by defendant on that subject, which was given. Southern Ry. Co. v. McGuin, 240 F. 649, 153 C. C. A. 447.

Criminal prosecutions

Decisions prior to amendment of section.—See notes under statutes defining particular offenses.

Defects in indictment.—See notes to section 1691.

Presumption of prejudice.—Where order of court excluding all spectators, except relatives of defendants, members of bar, and newspaper men, deprived defendants of public trial guaranteed by Constitution, prejudice will be presumed, and affirmative injury need not be shown to justify reversal. Davis v. U. S., 247 F. 394, 159 C. C. A. 448, L. R. A. 1918C, 1164.

Prejudice will not be presumed from trivial errors, and in order to justify reversal, even in a criminal case, it must appear that the error was substantial. Linn v. U. S. (C. C. A.) 251 F. 476.

Conduct of trial in general.—Error by the trial court in holding competent evidence admissible as rebuttal, but not in chief, is not reversible. Kinser v. U. S., 231 F. 856, 146 C. C. A. 52.

Denial of request of accused's counsel to have translation of letter read to him, before same should be read in open court, held, in view of purpose of letter, not reversible error. Prdjun v U. S. (C. C. A.) 237 F. 799.

Sustaining of peremptory challenge to juror on behalf of defendants' promised immunity, and having no real interest in the defense, held not prejudicial to their codefendants. Heitler v. U. S., 244 F. 140, 156 C. C. A. 568.

Prosecutor's failure to disclose that certain defendants had been promised immunity and would testify for the government held not prejudicial to their codefendants. Id.

Examination of witnesses.—Error in permitting improper cross-examination of an impeaching witness held cured by a charge that it was stricken and that the jury should not consider it. Kinser v. U. S., 231 F. 856, 146 C. C. A. 52.

The persistence of the prosecuting atttorney in asking accused whether his signature to an exhibit was genuine, after objection, held not prejudicial, in view of the court's ruling and offer to charge. Cooper v. U. S., 232 F. 81, 146 C. C. A. 273, certiorari denied 36 S. Ct. 725, 241 U. S. 675, 60 L. Ed. 1232.

In a prosecution for counterfeiting, act of the trial court in examining accused as to admissions of guilt held harmless error. Lepper v. U. S., 233 F. 227, 147 C. C. A. 233.

Refusal of court to compel witness for government, in prosecution for violating White Slave Traffic Act, to state source of complaints that accused was

running disorderly house, held not error; witness admitting on cross-examination that his testimony to that fact was based on such complaint. Prdjun v. U. S. (C. C. A.) 237 F. 799.

In view of defendant's testimony and his denial, held that, in a prosecution for violation of § 4136b, post, by carrying into what was formerly Indian Territory intoxicating liquors, defendant was not prejudiced by questions impliedly charging him with selling whisky therein. Greer v. U. S., 240 F. 320, 153 C. C. A. 246.

Admission of evidence.—In a prosecution for using the mails to defraud, the admission of parol evidence to establish the existence of the corporation whose stock defendant sold was not prejudicial. Finnegan v. U. S., 231 F. 561, 145 C. C. A. 447.

In a prosecution for conspiracy to use mails to defraud, admission of evidence that defendants participated in a confidence game wholly disassociated with the conspiracy held prejudicial in view of the charge tending to result in a conviction on proof of other offense than the one set out in indictment. Shea v. U. S., 236 F. 97, 149 C. C. A. 307.

Evidence, in prosecution for converting and abstracting funds of national bank, held not prejudicial to defendant, though possibly immaterial. Sheridan v. U. S., 236 F. 305, 149 C. C. A. 437.

In a prosecution under § 4136b, post, for introducing intoxicating liquor from outside into that part of Oklahoma which was the Indian Territory, held that, in view of his admission, testimony that accused was engaged in hauling whisky was not prejudicial. Blackwell v. U. S., 236 F. 912, 150 C. C. A. 174.

In prosecution for rape on girl under age of consent, erroneous admission of evidence of her statement to intimate friend concerning the act held prejudicial error. Callahan v. U. S., 240 F. 683, 153 C. C. A. 481.

On trial for fraudulent use of mails, evidence of embezzlement by party against whom case had been discontinued held prejudicial. McDonald v. U. S., 241 F. 793, 154 C. C. A. 495.

The admission of evidence not prejudicing defendants was not reversible error. McKelvey v. U. S., 241 F. 801, 154 C. C. A. 503.

Admission of conversation stated to have been had on the 5th or 6th of September, or somewhere along there, as impeachment, held not erroneous, in the absence of prejudice. Pablo v. U. S., 242 F. 905, 155 C. C. A. 493.

In prosecution under Criminal Code §§ 37, 215 (Comp. St. 1916, §§ 10201, 10385), for violation of and conspiracy to violate section 215, admitting in evidence account book showing receipt of $130.000 realization charges held without prejudice. Preeman v. U. S., 244 F. 1, 156 C. C. A. 429, certiorari denied 38 S. Ct. 12, 245 U. S. 654, 62 L. Ed. 533.

Secondary evidence of contents of two telegrams held not reversible error, where latter was stricken out because government was unable to make preliminary proofs. Simpson v. U. S., 245 F. 278, 157 C. C. A. 470, certiorari denied 38 S. Ct. 133, 245 U. S. 667, 62 L. Ed. 538.

Erroneous admission of judgment roll of another prosecution against defendant which he testified had been quashed held prejudicial error. Bullard v. U. S., 245 F. 837, 158 C. C. A. 177.

Admission of hearsay evidence that sheriff had found defendant's still held harmless in view of sheriff's testimony. Id.

In prosecution for introducing intoxicating liquor into that part of Oklahoma which was formerly Indian Territory, in violation of § 4136b, post, where connection of defendants with purchase and shipment of liquor was clearly and indisputably shown, and it was proven without contradiction that one of defendants gave his check on Oklahoma bank in payment for liquors, admission of oral testimony as to amount of check and bank on which it was drawn was harmless. De Moss v. U. S. (C. C. A.) 250 F. 87.

—— **Cure by other evidence.**—Error, if any, in admitting evidence competent in chief as rebuttal, was cured by permitting defendant in surrebuttal to introduce evidence as fully as if the government's case in chief had just closed. Kinser v. U. S., 231 F. 856, 146 C. C. A. 52.

Erroneous admission of improper evidence is cured, where defendant subsequently introduced evidence to same effect. Dean v. U. S., 246 F. 568, 158 C. C. A. 538.

The admission of evidence is not ground for reversal, where the same facts were afterwards shown by defendant's testimony. Garanflo v. U. S., 246 F. 910, 159 C. C. A. 182.

Where in prosecution for conspiracy to use mails in connection with scheme to defraud, certain advertisements of one of defendants were received under stipulation, admission of other similar advertisements was not harmful. Holsman v. U. S., 248 F. 193, 160 C. C. A. 271.

In a prosecution for knowingly giving false testimony in a naturalization proceeding, the admission of a transcript of the stenographer's notes of the proceeding was harmless, where defendant himself testified to the same facts shown by the transcript. Gregorat v. U. S., 249 F. 470, 161 C. C. A. 428.

—— **Cure by striking out or instruction.**—Where court struck out statements volunteered by witness and told jury to disregard them, held, that there was no reversible error, especially where objection was to the questions

rather than the objectionable answers. Cuomo v. U. S., 231 F. 116, 145 C. C. A. 304.

Error in admitting evidence, which was not specially prejudicial, was cured by striking the testimony from the record before the witness left the stand. Kinser v. U. S., 231 F. 856, 146 C. C. A. 52.

In a prosecution for conspiring to use the mails in connection with a scheme to defraud, error in admitting evidence of a patent expert as to the scope and validity of patents of corporation, whose stock defendants were selling, held, in view of the charge, not prejudicial. Menefee v. U. S., 236 F. 826, 150 C. C. A. 88.

It is only when evidence erroneously admitted in a criminal case is of such apparent weight and so prejudicial in effect that the judicial warning against it seems light and unavailing by comparison that the error remains uncured by striking it out. Looker v. U. S., 240 F. 932, 153 C. C. A. 618.

Where court improperly admitted in evidence over objection of one of defendants, affidavit made by his alleged coconspirator which did not relate to conspiracy, error was cured by instruction that only those things said or done by one conspirator in furtherance of objects are chargeable against other conspirators. Holsman v. U. S., 248 F. 193, 160 C. C. A. 271.

Exclusion of evidence.—In prosecution for using mails in connection with scheme to defraud in establishing agencies for fire extinguishers, where government introduced evidence that representations as to extinguishers' efficacy were false, exclusion of letters strengthening defendants' belief in their efficacy held prejudicial. Hair v. U. S., 240 F. 333, 153 C. C. A. 259.

On trial for using mails in furtherance of scheme to defraud in connection with bank's reports, exclusion of evidence tending to negative fraudulent intent on part of cashier held prejudicial to other defendants, as well as to cashier. Sparks v. U. S., 241 F. 777, 154 C. C. A. 479.

The exclusion of evidence offered by defendant on trial for conspiracy held not prejudicial error. Roberts v. U. S., 248 F. 873, 160 C. C. A. 631, certiorari denied 38 S. Ct. 583, 247 U. S. 522, 62 L. Ed. 1247.

Improper argument.—Remarks of district attorney in presence of the jury, constituting misconduct held not prejudicial, because evidence was so clear and convincing that the jury could not have found otherwise than as they did. Robbins v. U. S., 229 F. 987, 144 C. C. A. 269.

Though court did not act on objection to argument, held, that there was no reversible error, unless argument was plainly unwarranted and clearly injurious to accused. Sparks v. U. S., 241 F. 777, 154 C. C. A. 479.

Improper argument of prosecutor is no ground for reversal, where jury were explicitly directed to disregard it. Phelan v. U. S., 249 F. 43, 161 C. C. A. 103.

Instructions.—Conviction under White Slave Traffic Act June 25, 1910 (Comp. St. 1916, § 8814) will not be reversed because of refusal to instruct that certain testimony was that of accomplices, to be received with caution and believed only when corroborated. Caminetti v. U. S., 37 S. Ct. 192, 242 U. S. 470, 61 L. Ed. 442, L. R. A. 1917F, 502, Ann. Cas. 1917B, 1168, affirming judgments Diggs v. Same, 220 F. 545, 136 C. C. A. 147, and Hays v. Same, 231 F. 106, 145 C. C. A. 294.

Instruction that defendants should be found guilty under all counts, if guilty under one, held harmless, where sentence was impossible under any one count. Sparks v. U. S., 241 F. 777, 154 C. C. A. 479.

Failure to charge that guilt of defendants of fraudulent use of mails was dependent on actual intent held not prejudicial as to one defendant. McDonald v. U. S., 241 F. 793, 154 C. C. A. 495.

Refusal to make defendants' guilt of fraudulent use of mails dependent on actual intent held prejudicial as to defendant whose claim of good faith was a question of fact. Id.

Where evidence showed only illicit distillation of whisky, instruction authorizing conviction on proof of distillation of rum, brandy, or whisky was harmless, though indictment specified only whisky. Bullard v. U. S., 245 F. 837, 158 C. C. A. 177.

Error cured by verdict.—Where defendant was convicted on other counts as well, and such conviction would in any event sustain the sentence imposed, the denial of a continuance to obtain testimony germane to only one of the counts, though improper, is no ground for reversal, on writ of error. Young v. U. S. (C. C. A.) 249 F. 935.

The erroneous refusal to direct an acquittal on a count under Criminal Code, § 141 (Comp. St. 1916, § 10311), for aiding a convict to escape from a federal penitentiary, was not prejudicial, where a conviction under a second count thereunder for harboring and concealing the convict to prevent his discovery and arrest was supported by the evidence, and the sentence was not in excess of the maximum provided for that offense. Orth v. U. S. (C. C. A.) 252 F. 569.

In prosecution, under Penal Code, § 215 (Comp. St. 1916, § 10385), for using mails to defraud, and for a conspiracy to commit such offense, refusal to require prosecution to elect was not prejudicial, where defendant was convicted only of the first offense and sentenced for 13 months and to pay costs, where the statute authoriz-

ed a fine of not more than $1,000, or an imprisonment of not more than five years, or both. Sidebotham v. U. S. (C. C. A.) 253 F. 417.

Sentence.—Where punishment imposed on two counts was the same and ran concurrently, defendants held not prejudiced, even though evidence did not warrant a verdict of guilty on one count. Morris v. U. S., 229 F. 516, 143 C. C. A. 584.

Where defendant was convicted under two indictments and sentenced under each verdict concurrently, the fact that the conviction under one indictment was erroneous cannot affect the sentence where it was warranted under the other indictment. Daeche v. U. S. (C. C. A.) 250 F. 566.

That defendant through a clerical error was sentenced on counts which had been withdrawn from the jury held not ground for reversal, where the punishment was not greater than might have been imposed under any one of the counts. Roberts v. U. S., 248 F. 873, 160 C. C. A. 631, certiorari denied 38 S. Ct. 583, 247 U. S. 522, 62 L. Ed. 1247.

§ 1249. (Jud. Code, § 272.) Parties may manage their causes personally or by counsel.

Attorney's authority.—Counsel may bind his client to orders and judgments made in progress of cause and in interest of client, a compromise settlement, approved by the court, being binding on the client; but he has no general power to execute a retraxit or disclaimer, or otherwise bind his client by the surrender of his rights. Glover v. Bradley, 233 F. 721, 147 C. C. A. 487, Ann. Cas. 1917A, 921.

Without special authority, an attorney cannot enter a disclaimer for his client. McFarland v. Curtin, 233 F. 728, 147 C. C. A. 494.

Remedies of client.—The remedy of a client for the disclosure by his attorney of information imparted to him in confidence, to the client's injury, is by an action at law for damages. Universal Sav. Corporation v. Morris Plan Co. of New York (D. C.) 234 F. 382.

§ 1251a. (Jud. Code, § 274a. Act March 3, 1915, c. 90.) Amendments to pleadings in suits at law which should have been brought in equity, or vice versa.

Decisions prior to statute.—It was improper for the federal District Court for New York to transfer to the equity side an action at law for damages for breach of a contract to make a bequest. In re Simons, 38 S. Ct. 497, 247 U. S. 231, 62 L. Ed. 1094. And see Waldo v. Wilson, 231 F. 654, 145 C. C. A. 540, reversing decree (D. C.) Wilson v. Waldo, 221 F. 505, and certiorari denied Id., 36 S. Ct. 724, 241 U. S. 673, 60 L. Ed. 1231.

Purpose and effect of statute.—See U. S. v. United States Fidelity & Guaranty Co., 247 F. 16, 159 C. C. A. 234, and Keatley v. United States Trust Co. (C. C. A.) 249 F. 296.

This section relates only to the power of the court where a suit has been improperly brought either on the equity or law side and authorizes amendments to make the pleadings conform to the proper practice, but does not validate a transfer from the equity to the law side of the court made before its enactment. Waldo v. Wilson, 231 F. 654, 145 C. C. A. 540, reversing decree Wilson v. Waldo (D. C.) 221 F. 505, and certiorari denied Id., 36 S. Ct. 724, 241 U. S. 673, 60 L. Ed. 1231.

In view of this section, defendant cannot complain that a suit to recover commissions received by a factor in violation of Penal Law N. Y. § 439, was brought on the equity side of the court. Palmer v. Doull Miller Co. (D. C.) 233 F. 309.

Suit in equity.—In view of this section, a suit in equity by a trustee in bankruptcy to set aside a consignment agreement under which defendants furnished goods to bankrupt, and to declare defendants trustees for goods returned, might be maintained, though it was unnecessary to have the agreement set aside, and the suit was in effect an action at law to recover a preference; the suit being a proper resort to the equity powers of a court of bankruptcy. Taylor v. Fram (D. C.) 243 F. 733.

Time for amendment.—The right to amend pleadings "at any stage of the cause" includes the right to make a motion therefor under a mandate from an appellate court directing further proceedings, although the term of court during which the mandate was filed has expired. District of Columbia v. Washington Terminal Co., 47 App. D. C. 570.

Transfer of cause.—See Equitable Trust Co. of New York v. Denver & R. G. R. Co. (C. C. A.) 250 F. 327; Special School Dist. of Ashdown, Ark., v. Jones (C. C. A.) 250 F. 440.

Where a bill is insufficient to give a federal court jurisdiction in equity, but states a cause of action at law, the court is required by this act to transfer the cause to the law side. John A. Roebling's Sons Co. of California v. Kinnicutt (D. C.) 248 F. 596.

Mode of review.—An appeal from the Supreme Court of Porto Rico in a case turning upon questions of law only will not be dismissed, because review should have been sought by writ of

error. Sola v. Cintron & Aboy, 237 F. 61, 150 C. C. A. 263.

Where a bill for partition was dismissed on the ground that there was a disputed question of title involved and that the plaintiffs had an adequate remedy at law, this court on an appeal by the plaintiffs will entertain the appeal; the record showing there was no disputed question of fact involved. Staub v. Staub, 47 App. D. C. 180.

Cited without definite application, Columbia-Knickerbocker Trust Co. v. Abbot (C. C. A.) 247 F. 833; Munger Laundry Co. v. National Marking Mach. Co. (C. C. A.) 252 F. 144; Marquette Cement Mining Co. v. Oglesby Coal Co. (D. C.) 253 F. 107.

§ 1251b. (Jud. Code, § 274b. Act March 3, 1915, c. 90.) Equitable defenses and equitable relief in actions at law; review of judgments or decrees in such cases.

Effect of section.—See U. S. v. United States Fidelity & Guaranty Co., 247 F. 16, 159 C. C. A. 234; Special School Dist. of Ashdown, Ark., v. Jones (C. C. A.) 250 F. 440.

This section contemplates only relief as between the original parties, and it is not a bar to an ancillary suit, in the nature of a bill of interpleader, where other parties are necessary. Sherman Nat. Bank of New York v. Shubert Theatrical Co., 247 F. 256, 159 C. C. A. 350, affirming order (D. C.) 238 F. 225.

This section renders unimportant question whether action is legal or equitable, by permitting equitable defenses in a law action. C. & A. Ry. Co. v. Pressed Steel Car Co., 243 F. 883, 156 C. C. A. 395.

Equitable defenses and relief.—See Wolfe v. Murphy, 47 App. D. C. 296.

A buyer can plead the equitable defense of fraudulent misrepresentations in an action of assumpsit against him by the seller for the purchase price of the goods. Burroughs Adding Mach. Co. v. Scandinavian-American Bank (D. C.) 239 F. 179.

Where plaintiff's cause of action against two of defendants was to prevent waste, equity may enjoin other defendants assisting them, even though plaintiff's cause of action against such defendants was legal in its nature. Beatty Oil & Gas Co. v. Blanton (D. C.) 245 F. 979.

Maintenance of action for trespass against grantee in timber deeds will not be enjoined on theory that interference with rights might prevent removal of timber within period of extension, for that equitable relief could be obtained in law court. United Timber Corporation v. Bivens (D. C.) 248 F. 554.

Where plaintiff sued at law for breach of contract, it was admissible for defendant by cross-petition to seek reformation of the contract. Upson Nut Co. v. American Shipbuilding Co. (D. C.) 251 F. 707.

Reply.—Where answer in action at law pleaded release as purely legal defense, plaintiff is not entitled, by filing replication, to obtain cancellation of such release, under this section. Keatley v. United States Trust Co., 249 F. 296, 161 C. C. A. 304, certiorari denied 38 S. Ct. 579, 247 U. S. 511, 62 L. Ed. 1242.

In an action for personal injuries, where defendant pleaded a release and plaintiff was not required to reply under the law unless so required by order of the court, a motion to dismiss on the ground that a court of law had no jurisdiction would be denied, since while in the federal courts matters cognizable in equity cannot be considered on the law side of the court, and while the only fraud permissible to be proved at law would be fraud touching the execution of the instrument, it could not be assumed that the release was executed as alleged or that plaintiff could only get relief from the release in equity. Cline v. Southern Ry. Co. (D. C.) 231 F. 238.

Determination of equitable issues.—Under this section, authorizing equitable relief in actions at law, and in view of Const. art. 3, § 2, held that, while equitable relief can be granted in law cases, procedure remains distinct, and equitable suit should be disposed of before trial of action at law. Union Pac. R. Co. v. Syas, 246 F. 561, 158 C. C. A. 531.

In action for personal injuries, where plaintiff attacked a release set up as having been procured by fraud, question of fraud, while it may be submitted to jury for advisory verdict, should not be submitted to same jury trying the action, though equitable relief is allowable in actions at law. Id.

Where equitable defense is interposed in action at law, it will have to be disposed of by court sitting as a chancellor before trial of action at law to jury. Fay v. Hill, 249 F. 415, 161 C. C. A. 389.

Appeal or writ of error.—Where the answer to an action at law on a contract was in effect a bill in equity, seeking reformation and incidentally to enjoin the action at law, the proceeding was converted into an equitable one, and hence appeal, instead of writ of error, was the appropriate method for review. Philippine Sugar Estates Development Co. v. Government of Philippine Islands, 38 S. Ct. 513, 247 U. S. 385, 62 L. Ed. 1177.

— **Absence of court rule.**—In the absence of a rule of court to the contrary, an action at law in which an equitable defense is pleaded, under this section, may be reviewed either by error or appeal. Maine Northwestern Development Co. v. Northwestern Commercial Co., 240 F. 583, 153 C. C. A. 387; Union Pac. R. Co. v. Syas, 246 F. 561, 158 C. C. A. 531.

Cited without definite application, Columbia-Knickerbocker Trust Co. v. Abbot (C. C. A.) 247 F. 833; Royal Union Mut. Life Ins. Co. v. Lloyd (C. C. A.) 254 F. 407.

1251c. (Jud. Code, § 274c. Act March 3, 1915, c. 90.) Amendments to show jurisdiction based on diverse citizenship of parties.

Cited without definite application, Columbia-Knickerbocker Trust Co. v. Abbot (C. C. A.) 247 F. 833.

CHAPTER TWELVE—JURIES

Sec.
1252. Qualifications and exemptions of jurors.
1253. Jurors, how drawn.
1254. Jurors, to be apportioned in the district.
1255. Race or color not to exclude.
1256. Venire, how issued and served.
1257. Talesmen for petit juries.
1264. Challenges.

§ 1252. (Jud. Code, § 275.) Qualifications and exemptions of jurors.

4. **Qualifications of jurors.**—Under this section, Const. S. C. art. 5, § 22, requiring each juror to be a qualified elector of good moral character, and article 2, § 6, disqualifying persons convicted of certain named offenses, one who had been convicted on plea of guilty of a violation of the act to regulate commerce by making false reports of the weight of certain articles shipped was not thereby disqualified to serve as a grand juror. Christopoulo v. U. S. (C. C. A.) 230 F. 788.

§ 1253. (Jud. Code, § 276, as amended, Act Feb. 3, 1917, c. 27.) Jurors, how drawn.

All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein. (39 Stat. 873.)

This section was amended by Act Feb. 3, 1917, c. 27, cited above, by inserting therein the provisions relating to a duly qualified deputy clerk.

Notes of Decisions

4. **Drawing of jurors.**—Under this section before amendment of 1917, held, that clerk of District Court should participate in drawing of grand jury, and where grand jury was drawn by deputy clerk and a commissioner of same political party, it was not lawful, and indictment found is subject to attack. Dunn v. U. S., 238 F. 508, 151 C. C. A. 444.

12. **Use of jurors drawn.**—That there was no colored person of African descent on the grand jury held not ground for abatement. Younge v. U. S., 242 F. 788, 155 C. C. A. 376, certiorari denied 38 S. Ct. 13, 245 U. S. 650, 62 L. Ed. 533.

§ 1254. (Jud. Code, § 277.) Jurors, to be apportioned in the district.

Construction, operation, and validity of statute.—Drawing jurors from only one division of district held not a violation of Const. Amend. 6, especially in view of this section. Ruthenberg v. U. S., 38 S. Ct. 168, 245 U. S. 480, 62 L. Ed. 414.

§ 1255. (Jud. Code, § 278.) Race or color not to exclude.

Failure to include colored persons on jury.—That there was no colored person of African descent on the grand jury held not ground for abatement, where there was no showing that they were excluded from service. Younge v. U. S., 242 F. 788, 155 C. C. A. 376, certiorari denied 38 S. Ct. 13, 245 U. S. 656, 62 L. Ed. 533.

§ 1256. (Jud. Code, § 279.) Venire, how issued and served.

Applicability of statute.—As Comp. Laws Alaska, § 2228, relating to selection of jury, makes no provision for appointment of elisor, and none of the other statutes makes any similar provision, Comp. St. 1916, §§ 1256, 1257, are applicable in case of marshal's interest. Johnson v. U. S., 247 F. 92, 159 C. C. A. 310.

Interest of marshal.—Where marshal out of his own funds paid person to detect gambling, and prosecution was based on information so obtained, held, that he was not an indifferent person, and special officer to serve special venire should be appointed under Comp. St. 1916, §§ 1256, 1257. Johnson v. U. S., 247 F. 92, 159 C. C. A. 310.

§ 1257. (Jud. Code, § 280.) Talesmen for petit juries.

See Johnson v. U. S., 247 F. 92, 159 C. C. A. 310; notes under § 1256.

§ 1264. (Jud. Code, § 287.) Challenges.

16. Nature and extent of examination.—It is not an abuse of discretion to refuse to allow counsel to ask the veniremen questions calculated to be misunderstood. Watlington v. U. S., 233 F. 247, 147 C. C. A. 253.

Examination of jurors on the point of prejudice against capital punishment, determination of which is, by Comp. St. 1916, § 10504, committed to the jury, should be confined to ascertainment of their views and the strength thereof, with the sole object of determining whether they would approach the issue in the proper frame of mind. Manuel v. U. S. (C. C. A.) 254 F. 272.

Cited without definite application, Schwartzberg v. U. S. (C. C. A.) 241 F. 348.

CHAPTER THIRTEEN—GENERAL PROVISIONS

§ 1266. (Jud. Code, § 289.) Circuit Courts abolished.

Effect of abolition of Circuit Courts.—Abolition of federal Circuit Courts by this section removed any authority for appeal to Supreme Court from Circuit Court of Appeals in habeas corpus arising under Rev. St. §§ 763, 764. Horn v. Mitchell, 37 S. Ct. 293, 243 U. S. 247, 61 L. Ed. 700, dismissing appeal 232 F. 819, 147 C. C. A. 13.

§ 1268. (Jud. Code, § 291.) Powers and duties of circuit courts imposed upon district courts.

Operation of statute.—See Wm. Edwards Co. v. La Dow (C. C. A.) 230 F. 378, and Maryland Casualty Co. of Baltimore, Md., v. Orchard Land & Timber Co., 240 F. 364, 153 C. C. A. 290.

Neither Comp. St. 1916, § 1584, nor section 1587, providing for jury trial of fact issues in the Circuit Courts, was repealed by Judicial Code, and they, as well as section 1668, providing for review, are made applicable to District Courts by this section. Lillie v. Denert, 232 F. 104, 146 C. C. A. 296.

Cited without definite application, Equitable Trust Co. of New York v. Denver & R. G. R. Co. (C. C. A.) 259 F. 327.

§ 1271. (Jud. Code, § 294.) Laws revised in this act to be construed as continuations of existing laws.

Operation of statute.—See U. S. v. Cress, 37 S. Ct. 380, 243 U. S. 316, 61 L. Ed. 746; J. Homer Fritch, Inc., v. U. S., 39 S. Ct. 158, 63 L. Ed. —; Jackson v. Cravens (C. C. A.) 238 F. 117.

§ 1272. (Jud. Code, § 295.) Inference not to be drawn from arrangement of sections.

Purpose and effect of section.—See U. S. v. Cress, 37 S. Ct. 380, 243 U. S. 316, 61 L. Ed. 746; J. Homer Fritch, Inc, v. U. S., 39 S. Ct. 158, 63 L. Ed. —.

CHAPTER FOURTEEN—REPEALING PROVISIONS

§ 1274. (Jud. Code, § 297.) Sections, etc., repealed.

Operation of statute.—See U. S. v. Cress, 37 S. Ct. 380, 243 U. S. 316, 61 L. Ed. 746.

§ 1276. (Jud. Code, § 299.) Accrued rights, etc., not affected.

Operation of statute.—Where a suit to foreclose a mortgage accrued prior to January 1, 1912, and the amount in controversy was more than $2,000, but less than $3,000, federal jurisdiction was preserved by this section. Barnes v. Cady, 232 F. 318, 146 C. C. A. 366, affirming order Cady v. Barnes (D. C.) 208 F. 359.

Notwithstanding this section, change in jurisdictional amount contained in Comp. St. 1916, § 991(1), held to apply to suits for acts done or causes arising prior to the taking effect thereof. Sloane v. Kramer Bros. & Co. (D. C.) 230 F. 727.

TITLE XIII—THE JUDICIARY

Chap.		Sec.
13.	Habeas Corpus	1281
14.	District Attorneys, Marshals, Clerks, and Other Court Officers, and Commissioners	1296
16.	Fees and Compensation of Officers	1375
17.	Evidence	1464
18.	Procedure	1534
19.	Limitations	1707
21.	The Court of Claims, Jurisdiction, Powers, and Procedure	

CHAPTER THIRTEEN—HABEAS CORPUS

Sec.
1281. Writ of habeas corpus when prisoner is in jail.
1282. Application for the writ of habeas corpus.
1283. Allowance and direction of writ.
1285. Form of return.
1289. Summary hearing; disposition of party.
1291. Appeals, how taken.
1292. Pending proceedings action by State authority void.

§ 1281. (R. S. § 753.) Writ of habeas corpus when prisoner is in jail.

I. CONSTRUCTION AND NATURE OF REMEDY IN GENERAL

1½. **Nature of remedy in general.**—The writ of habeas corpus is of the highest remedial character intended to summarily protect the liberty of the citizen from unlawful detention. Ex parte Mikell (D. C.) 253 F. 817.

3. **Discretion of court.**—Habeas corpus is not a discretionary writ, as is certiorari. U. S. v. Rauch (D. C.) 253 F. 814.

6. **Remedy by appeal or error affecting power to issue.**—Writ of habeas corpus cannot be used as writ of error, but only for consideration of fundamental and jurisdictional questions. Collins v. Morgan, 243 F. 495, 156 C. C. A. 193.

One convicted may not be released on habeas corpus because tried while an escaped insane patient; this not depriving the court of jurisdiction, but so trying him being, at most, error for which appeal is the remedy. Myers v. Halligan, 244 F. 420, 157 C. C. A. 46.

Except in case of great urgency, person in custody of state authorities, charged with a crime, held to be left to his remedy by writ of error to the Supreme Court, and not discharged on habeas corpus. Ex parte Coatz (D. C.) 242 F. 1003.

Where writ of habeas corpus was dismissed by state court, and certiorari denied by state Supreme Court, held, that writ will not be issued by federal court; there being a remedy by writ of error to the federal Supreme Court. Ex parte Merrill (D. C.) 245 F. 778.

7. **Scope of review and matters considered.**—On the filing of a petition for a writ of habeas corpus, setting out the facts, the court may properly determine upon the facts so presented whether the prisoner, if brought before it, would be discharged. Horn v. Mitchell, 232 F. 819, 147 C. C. A. 13, affirming judgment (D. C.) 223 F. 549.

Questions of jurisdiction even will not always be decided on writ of habeas corpus; principle being that, if the court had jurisdiction of the case, writ cannot be employed to retry the issues, whether of law, constitutional or otherwise, or of fact. Collins v. Morgan, 243 F. 495, 156 C. C. A. 193.

10. —— **Questions of fact in general.**—The courts do not pass upon disputed questions of fact on habeas corpus. Ex parte Graber (D. C.) 247 F. 882.

11. —— **Jurisdiction of court.**—The finding of the juvenile court, in a criminal prosecution of a father for nonsupport of his minor children, that they were domiciled in the District as alleged in the information, and that the court therefore had jurisdiction, cannot be reviewed on habeas corpus. Posey v. Zinkham, 47 App. D. C. 293.

14. —— **Errors or irregularities in proceedings.**—Habeas corpus cannot be used to review decision upon legal sufficiency of defense of former jeopardy. Collins v. Morgan, 243 F. 495, 156 C. C. A. 193.

Generally the writ of habeas corpus will not issue, unless the court under whose warrant the petitioner is held is without jurisdiction, and it cannot be

used to correct errors. Ex parte Blair (D. C.) 253 F. 800.

II. CUSTODY UNDER AUTHORITY OF THE UNITED STATES, OR FOR ACTS DONE OR OMITTED PURSUANT TO THE LAW THEREOF

19½. **In general.**—Under Comp. St. 1916, § 10537, prisoner cannot secure release on parole by proceeding in habeas corpus, where the board of parole found that his release would be incompatible with welfare of society, etc.; the board alone having power to parole. Redman v. Duehay, 246 F. 283, 159 C. C. A. 13.

President's action in ordering summary arrest and detention, under Comp. St. 1916, § 7615, of an alien enemy within United States after the declaration of war between United States and Austro-Hungary, is conclusive, and not subject to judicial review on habeas corpus. Ex parte Graber (D. C.) 247 F. 882.

Petitioners who refused, without invoking the Fifth Amendment, protecting against self-incrimination, to obey a subpœna duces tecum, or to answer questions propounded to them in a grand jury investigation, under Comp. St. 1916, §§ 188–198, of corrupt practices in a senatorial primary election, cannot, having been committed for contempt, secure release on habeas corpus on the ground that the statute was unconstitutional. Ex parte Blair (D. C.) 253 F. 800.

22. **In deportation or exclusion proceedings under immigration laws—Illegality or irregularity in proceedings.**—That the warrant on which a Chinese person, whose deportation was sought, was indefinite, merely charging that he was subject to deportation, being in the United States in violation of the Chinese Exclusion Laws, was not sufficient reason for discharge. Ong Seen v. Burnett, 232 F. 850, 147 C. C. A. 44.

A Chinese person, arrested under a warrant signed by the Assistant Secretary of Labor, will not be discharged on habeas corpus because the warrant should have been signed by the Secretary of Labor. Moy Wing Sun v. Prentis, 234 F. 24, 148 C. C. A. 40.

23. —— **Scope of review and power of court.**—The authority of the Solicitor of the Department of Labor to affirm on appeal an order of the Commissioner of Immigration denying an alien admission to the United States is not reviewable on habeas corpus where the Secretary of Labor personally affirmed the order. Ching Hing v. White, 234 F. 616, 148 C. C. A. 382, affirming order Ex parte Ching Hing (D. C.) 224 F. 261.

While weight of evidence supporting finding of fact by commissioner of immigration cannot be reviewed, courts may determine on habeas corpus whether there was any evidence to support commissioner's finding; that being question of law. Katz v. Commissioner of Immigration at Port of San Francisco, Cal., 245 F. 316, 157 C. C. A. 508.

On habeas corpus to obtain release from restraint under a warrant for deportation the District Court will not in the first instance determine the country from whence the alien came, where that question could be determined in more than one way and was left open by the warrant of deportation. Ex parte Callow (D. C.) 240 F. 212.

An order of exclusion and deportation unsupported by any evidence is invalid. Hence the question whether there was any evidence before the immigration tribunal in support of its findings may be raised in habeas corpus proceedings. Ex parte Prout (D. C.) 253 F. 97.

24. —— **Conclusiveness of decision of officers.**—On petition for habeas corpus to procure discharge from a commissioner's order of removal to another district for trial, the commissioner's finding of probable cause is presumed correct unless there was no substantial evidence to sustain it. Witte v. Shelton, 240 F. 265, 153 C. C. A. 191.

Contention that evidence was so conclusive in regard to Chinese woman's right to admission to the country as to make refusal of writ an abuse of discretion held without merit. Mah Shee v. White, 242 F. 868, 155 C. C. A. 456.

Where alien excluded from the United States on ground she was likely to become a public charge brought habeas corpus, finding of commissioner of immigration must be upheld if there is any evidence, however slight, to support his decision. U. S. v. Howe (D. C.) 235 F. 990.

26. **Under courts-martial, army or naval officers or authorities—Detention by army officers or authorities.**—Release of relator, improperly certified under Selective Draft Act into military service, cannot be denied on ground that respondent, an army officer holding relator in custody, might on complying with writ be exposed to punishment for disobedience of orders of superiors; respondent's remedy being by appeal. Ex parte Beck (D. C.) 245 F. 967.

28. —— **Courts-martial or military commissions.**—In habeas corpus to determine jurisdiction of state courts, as opposed to military courts, to try offenses by members of the military, the fact that an arrest is under a city ordinance is immaterial, if the ordinance is valid. In re Wulzen (D. C.) 235 F. 362, Ann. Cas. 1917A, 274.

If a military tribunal has jurisdiction to try a person charged with an offense against military law, the civil courts cannot interfere by writ

of habeas corpus. Ex parte Dostal (D. C.) 243 F. 664.

Where petitioners, who had been registered pending a prosecution for failure to register as required by Selective Service Act, § 5, post, § 2044e, failed to respond to call to report for service, and were sentenced by court-martial as deserters, their application to the civil court for habeas corpus, on the theory that such tribunal was entitled to proceed first, must be denied. Ex parte Dunn (D. C.) 250 F. 871.

28½. —— **Detention by selective draft boards.**—Writ of habeas corpus will not issue, when the investigation will in effect be an appellate review of what has been determined by some other tribunal of competent jurisdiction, as determination by the established military tribunal of liability to draft, depending on citizenship, in the absence of arbitrary denial of rights. U. S. v. Heyburn (D. C.) 245 F. 360.

The action of a local draft board in holding a person subject to service after a hearing on evidence is not reviewable on habeas corpus, unless it is shown that the hearing was unfair, or that there was no evidence to support the finding. Ex parte Platt (D. C.) 253 F. 413.

Action of local or district board on claim for exemption under Selective Draft Act may be reviewed by habeas corpus, where board abuses its power or exercises it arbitrarily. Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280; Ex parte Beck (D. C.) 245 F. 967; Ex parte Hutflis (D. C.) 245 F. 798; U. S. v. Bell (D. C.) 248 F. 992; U. S. v. Mitchell (D. C.) 248 F. 997.

In view of provisions for notice in Rules and Regulations, § 14, and as Conscription Act declares that decision of exemption boards shall be final, nondeclarant alien who not having claimed exemption, was certified into service by boards, is not entitled to habeas corpus on ground he was denied fair hearing, there being no showing that boards did not give him notice required. Ex parte Blazekovic (D. C.) 248 F. 327.

Under Selective Draft Act, §§ 2, 4, 5, post, §§ 2044b, 2044d, 2044e, and Rules and Regulations, §§ 18, 20, relator, nondeclarant alien, who did not claim exemption from military service within seven days after notification, held to have had fair hearing before local and district boards, which certified him for military service, and hence not entitled to habeas corpus on that ground. U. S. v. Finley (D. C.) 245 F. 871.

Where petitioner, who was certified into service under Conscription Act, was not, having failed to comply with rules and regulations as to claim for exemption, absolutely entitled to relief on account of his alienage, issuance of habeas corpus to secure release rests in sound discretion of trial court. Ex parte Blazekovic (D. C.) 248 F. 327.

Where a drafted person, claiming exemption as an alien, by mistake waived exemption in his questionnaire, he had a remedy by appeal to the local board for correction, under Selective Service Rules, § 99, and where, after notice of his classification under section 100, he, through ignorance, allowed himself to be inducted into service, he still has a remedy under section 139, by appeal to the commanding officer of the mobilization camp, and is not entitled to relief by habeas corpus. Ex parte Kusweski (D. C.) 251 F. 977.

Where certification of relator into military service was improper under Selective Draft Act, relator being entitled to exemption as nondeclarant alien, he is, having been arrested as a deserter and held for trial by court-martial, entitled to habeas corpus to secure his release. Ex parte Beck (D. C.) 245 F. 967.

Whether persons certified into National Army under Selective Draft Act meet physical and medical requirements is solely question for exemption boards provided for, and not the courts. In re Traina (D. C.) 248 F. 1004.

Where registrant under Selective Draft Law is certified into military service, decisions of examining boards as to his physical condition cannot be reviewed on habeas corpus; hence one so certified cannot, where he refused to undergo operation as directed by military authorities for cure of pre-existing trouble, obtain his discharge under habeas corpus. De Genaro v. Johnson (D. C.) 249 F. 504.

Nondeclarant alien is not entitled to habeas corpus to obtain his release, having been certified into service under Conscription Act, as he failed to claim his exemption on account of alienage, where it did not appear that, in accordance with Rules and Regulations, §§ 28, 50, he had by proper affidavit, together with excuse for failure to earlier present same, made claim for exemption to either district or local board after certification, and he did not file petition for habeas corpus until nearly two months thereafter, and he had not presented his claim for exemption in accordance with rules and regulations governing draft, it is not abuse of discretion to deny his application. Ex parte Blazekovic (D. C.) 248 F. 327.

A United States District Court has no jurisdiction to review on habeas corpus action of a local or district draft board, acting under the Selective Service Act, in calling to service an alien, who has waived his claims for exemption and been duly classified for military service under the rules to class 1. Ex parte Beales (D. C.) 252 F. 177.

It is not the province of the United States District Court to pass judgment

upon what constitutes sufficient evidence to satisfy exemption boards of the alienage of a registrant claiming exemption from military service, unless the board has acted arbitrarily or illegally. United States ex rel. Kotzen v. Local Exemption Board No. 157 of City of New York (D. C.) 252 F. 245.

The court in a habeas corpus proceeding cannot relieve against a merely erroneous decision of a draft board. Ex parte Tinkoff (D. C.) 254 F. 222.

The failure of a registrant, denied exemption by the local board, to appeal to the district board, is a bar to relief by habeas corpus. Id.

29. **Detention in proceedings for extradition—In general.**—Where arrest by deputy sheriff is in excess of duty of executive authority of state as to rendition of fugitives from justice in another state under Const. U. S. art. 4, § 2, and statutes in aid thereof, person arrested is entitled to his enlargement on habeas corpus as matter of right. Taft v. Lord, 103 A. 644, 92 Conn. 539.

30. —— **Jurisdiction and power of courts.**—A person held on an executive warrant for extradition to another state may test the legality of his detention under article 4, § 2, of the federal Constitution by habeas corpus proceedings in a federal court. Ex parte Birdseye (D. C.) 244 F. 972.

33. —— **Scope of inquiry in general.**—On habeas corpus by one charged with conspiracy and arrested under extradition warrant whether he committed any criminal act in the demanding state or was in fact a conspirator held not involved. Ex parte Montgomery (D. C.) 244 F. 967.

35. —— **Questions of guilt or innocence of accused and matters of defense.**—Where there was evidence that one requisitioned by another state as a fugitive from justice was in the demanding state within the period during which he is charged with crime, the question of his guilt is one for the courts of that state. State v. Boekenoogen (Minn.) 167 N. W. 301.

36. —— **Sufficiency of indictment.**—If any one count in an indictment charges a crime under the laws of the state, it is sufficient to sustain extradition proceedings against the accused, when attacked in a habeas corpus proceeding. Ex parte Birdseye (D. C.) 244 F. 972.

In habeas corpus proceedings for the discharge of a prisoner held on an extradition warrant, the technical sufficiency of the indictment on which the warrant was issued is not open to question. Id.

The sufficiency of the indictment on which extradition proceedings are based is open on an application for habeas corpus. Hard v. Splain, 45 App. D. C. 1.

In habeas corpus, where relator was sought to be extradited for an offense in another state, the court rightly refused to go into the sufficiency of the indictment in the other state, or the merits of the defense. People ex rel. Goldfarb v. Gargan, 168 N. Y. S. 1027, 181 App. Div. 410, 36 N. Y. Cr. R. 233.

40. —— **Questions of limitations affecting prosecution.**—Under Cr. Code Ill. §§ 315, 317 (Hurd's Rev. St. Ill. 1915–16, c. 38), on habeas corpus by person arrested for delivery to Illinois authorities, he cannot show that he was usually and publicly a resident of Illinois for the period of limitations following the date of the alleged crime. Biddinger v. Commissioner of Police of City of New York, 38 S. Ct. 41, 245 U. S. 128, 62 L. Ed. 193.

III. CUSTODY UNDER INDICTMENTS, PROCESS OF COURTS, AND DECISIONS OR ORDERS OF COMMISSIONERS

45. **Indictments or informations.**—Whether act charged in indictment is or is not crime by law which court administers is question within its jurisdiction; but it is no ground for discharge on habeas corpus that indictment is duplicitous, charging in one count offenses under two acts. Collins v. Morgan, 243 F. 495, 156 C. C. A. 193.

IV. CUSTODY UNDER JUDGMENT, DECREE, OR ORDER OF COURT OR JUDGE THEREOF

51. **Errors or irregularities in proceedings.**—Error in convicting one who stole stamps from a post office, under Penal Code, § 47 (Comp. St. 1916, § 10214), rather than under section 190 (Comp. St. 1916, § 10360), is not available on habeas corpus. Morgan v. Sylvester, 231 F. 886, 146 C. C. A. 82.

Failure to impose fine in addition to imprisonment, under statute providing for both, held not available on habeas corpus. Linningen v. Morgan, 241 F. 645, 154 C. C. A. 403.

Mere error of law in exercise of jurisdiction, though serious, is no ground for habeas corpus. Collins v. Morgan, 243 F. 495, 156 C. C. A. 193.

Where the whole record, taken together, showed the crime of which accused was convicted, he will not be freed on habeas corpus because the order of sentence did not recite the crime. Ex parte Thurston (D. C.) 233 F. 847.

52. **Cumulative sentences and sentences in excess of authority.**—Writ of habeas corpus may be employed to correct excessive punishment, after that which might have been lawfully imposed has been satisfied. Collins v. Morgan, 243 F. 495, 156 C. C. A. 193; Stoneberg v. Morgan, 246 F. 98, 158 C. C. A. 324.

54. **Judgments or orders of state courts—Jurisdiction and power of federal courts in general.**—Relator's imprisonment for failure to enter into a recognizance to appear as a state witness is lawful, so far as the federal court is concerned, so that it will refuse her petition for habeas corpus, though she was surrendered to the state authorities by the federal inspector of immigration having her in custody for deportation. In re Andrews (D. C.) 236 F. 300.

V. CUSTODY IN VIOLATION OF CONSTITUTION, LAWS, OR TREATY OF THE UNITED STATES

62. **Construction and operation in general.**—One incarcerated under state authority, in a proceeding under laws repugnant to federal Constitution, treaties, or laws, may be discharged by the federal courts on habeas corpus. Ex parte Larsen (D. C.) 233 F. 708.

Under Habeas Corpus Act, federal courts may issue writ of habeas corpus to inquire into cause of detention of prisoners held by a state on a criminal charge, if the petitioner alleges that he was performing duty as a soldier of the United States, and may determine summarily the truth of such allegation, and, if true, may discharge the prisoner on the ground that the state court is without jurisdiction. In re Wulzen (D. C.) 235 F. 362, Ann. Cas. 1917A, 274.

The power to issue writ of habeas corpus is to be sparingly exercised, especially when directed toward release of members of the military accused of offenses against the peace of the state; the jurisdiction of the civil courts of the state over such offenses in time of peace being admitted. Id.

§ 1282. (R. S. § 754.) Application for the writ of habeas corpus.

3. **Persons who may sue out writ.**—Application for writ of habeas corpus by one person on behalf of another entitles the petitioner to only such relief as might be given if the application were made by the person detained in his own name. Ex parte Dostal (D. C.) 243 F. 664.

4. **Time for application, and laches.**—In the absence of exceptional circumstances in criminal cases, the regular judicial procedure should be followed, and habeas corpus should not be granted in advance of a trial. Jones v. Perkins, 38 S. Ct. 166, 245 U. S. 390, 62 L. Ed. 358, affirming judgment Story v. Same (D. C.) 243 F. 997.

Petition for second writ of habeas corpus by a Chinese woman, who sought admission as the wife of a Chinese merchant, held not subject to demurrer; it appearing that appeal on the original writ had been dismissed to seek a reopening of case under a misapprehension of avowed action of Immigration Bureau. Ex parte Chan Shee (D. C.) 236 F. 579.

5. **Requisites of application in general.**—Where petition for habeas corpus and certiorari against local board, under Conscription Act, post, § 2044d, does not show petitioner has complied with requirements of act and regulations, or ever presented to local and district boards reason of ignorance assigned in District Court for failure to do so, relief asked against refusal of boards to exempt him as alien must be denied. Summertime v. Local Board, Division No. 10 (D. C.) 248 F. 832.

The petition is of informal character; a simple application, stating that the party is unlawfully confined, being in most cases sufficient. Ex parte Mikell (D. C.) 253 F. 817.

10. **Particular averments.**—Where unlawfulness of detention alleged in petition consists in order of an inferior tribunal, legally constituted and having jurisdiction over subject-matter and person detained, petition must state facts constituting arbitrary or capricious action. Ex parte Tinkoff (D. C.) 254 F. 222.

§ 1283. (R. S. § 755.) Allowance and direction of writ.

Allowance in general.—Where facts are not in dispute, but only question of law is involved, in attack on judgment of quasi judicial administrative tribunal with inferior jurisdiction committing petitioner, a writ of habeas corpus may issue in beginning, without delay to determine how tribunal will act. Ex parte Beck (D. C.) 245 F. 967.

§ 1285. (R. S. § 757.) Form of return.

Sufficiency of return.—Return to writ of habeas corpus for release of fugitive from justice from another state into Alabama, arrested on warrant issued by Governor on requisition of Governor of other state, attached thereto, held sufficient, and motion to quash properly overruled. Pool v. State (Ala. App.) 78 So. 407, certiorari denied (Ala. Sup.) 79 So. 311.

§ 1289. (R. S. § 761.) Summary hearing; disposition of party.

3. Person in custody of military authorities.—On habeas corpus by father to avoid enlistment of minor son over 16 and under 18 in National Guard, immediate surrender will not be directed, where son was guilty of military offense, but the military authorities would be allowed to retain custody to punish for such offense. Hoskins v. Dickerson, 239 F. 275, 152 C. C. A. 263, Ann. Cas. 1917C, 776, L. R. A. 1917D, 1056.

Where members of state National Guard had been drafted into military service of United States, under National Defense Act, and hence are beyond jurisdiction of state courts, appellate court will not consider whether they were properly mustered into service of state, as case has become moot, and courts will decline to pass upon appeals in such cases. Ex parte McMillan (Ala. App.) 74 So. 396.

6. Scope of inquiry and matters considered on trial or hearing.—On habeas corpus to obtain release from restraint under a warrant for deportation the District Court will not in the first instance determine the country from whence the alien came, where that question could be determined in more than one way and was left open by the warrant of deportation. Ex parte Callow (D. C.) 240 F. 212.

8. Evidence.—On habeas corpus prayed for on theory that indictment did not charge offense, it will be presumed, accused having been convicted, that jury found that averments of indictment were established by the evidence. Leib v. Halligan, 236 F. 82, 149 C. C. A. 292.

In habeas corpus proceedings to procure discharge from an order directing petitioners to be taken to another district for trial, allegations of the indictment against petitioners that the overt acts were committed in furtherance of the object of the conspiracy cannot be presumed to be false in the absence of conclusive evidence in conflict therewith. Witte v. Shelton, 240 F. 265, 153 C. C. A. 191.

In habeas corpus to be relieved from extradition, identity of name raises presumption that the person in custody is the person accused in the indictment, and the accused must clearly show that he is not such person. People Ex rel. Teitelbaum v. Ryan, 168 N. Y. S. 787, 181 App. Div. 404, 36 N. Y. Cr. R. 224.

In habeas corpus governor's extradition warrant makes a prima facie case and places on the prisoner the burden of proving by practically conclusive evidence that he is not a fugitive from justice. Ex parte Montgomery (D. C.) 244 F. 967; Godwin v. State (Ala. App.) 78 So. 313.

On habeas corpus Governor's warrant of extradition presumptively establishes that accused stands charged in proper form with a crime committed in the demanding state, and that he is a fugitive from justice. State v. Boekenoogen (Minn.) 167 N. W. 301.

In habeas corpus to be relieved from extradition, evidence of former conviction was admissible to prove identity of the accused. People ex rel. Teitelbaum v. Ryan, 168 N. Y. S. 787, 181 App. Div. 404, 36 N. Y. Cr. R. 224.

On habeas corpus for the release of a prisoner held under extradition proceedings as a fugitive from justice, it is error to exclude evidence showing that he is not in fact a fugitive. Godwin v. State (Ala. App.) 78 So. 313.

On habeas corpus by Chinese person, who applied for admission to United States as a minor son of a merchant, evidence held to show hearing before immigration authorities was unfair, and exclusion on ground applicant was not a minor was error. Woo Hoo v. White, 243 F. 541, 156 C. C. A. 239.

Evidence at the hearing before a commissioner who ordered petitioner for habeas corpus to be taken to another district for trial held sufficient to show probable cause that defendant was guilty of a conspiracy to cause an agent of an interstate carrier to deliver intoxicating liquors to a fictitious person. Witte v. Shelton, 240 F. 265, 153 C. C. A. 191.

In habeas corpus proceeding held, that there was substantial evidence that relator was in the demanding state within the period during which he is charged with the commission of a crime. State v. Boekenoogen (Minn.) 167 N. W. 301.

10. Order or judgment, and scope and extent of relief.—On habeas corpus, enlisted minor will be remanded to custody of military authorities for trial for offenses and service of any sentence imposed, but thereupon to be released from custody. U. S. v. Brown (D. C.) 242 F. 983.

12. —— Conditional discharge.—Where a Chinese person, applying for entrance into the United States, was ordered deported without a fair hearing, he should not, on writ of habeas corpus, be unconditionally discharged from custody; but such discharge should be conditional, to be effective only in case immigration authorities should fail to give applicant a fair hearing within a reasonable period, as a month. White v. Wong Quen Luck, 243 F. 547, 156 C. C. A. 245.

Cited in dissenting opinion.—Low Kwai v. Backus (C. C. A.) 229 F. 481; Yee Ling v. U. S. (C. C. A.) 242 F. 628.

§ 1291. (R. S. § 765.) Appeals, how taken.

4. Allowance of appeal.—Question as to jurisdictional amount necessary under Judicial Code, § 241 (Comp. St. 1916, § 1281), to sustain appeal to Supreme Court, does not arise in habeas corpus. Horn v. Mitchell, 37 S. Ct. 293, 243 U. S. 247, 61 L. Ed. 700, dismissing appeal 232 F. 819, 147 C. C. A. 13.

6. Jurisdiction of circuit courts of appeals.—Under Judicial Code, §§ 128, 129 (Comp. St. 1916, §§ 1120, 1121), and in view of failure of any statute to confer on Circuit Court of Appeals jurisdiction similar to that conferred on Circuit Court by Rev. St. § 763, held, that Circuit Court of Appeals is without jurisdiction of appeal from order of District Judge in vacation on habeas corpus. Hoskins v. Funk, 239 F. 278, 152 C. C. A. 266.

6½. Appeal from circuit courts of appeals.—Abolition of federal Circuit Courts by Judicial Code, § 289 (Comp. St. 1916, § 1266), removed any authority for appeal to Supreme Court from Circuit Court of Appeals in habeas corpus arising under Rev. St. §§ 763, 764. Horn v. Mitchell, 37 S. Ct. 293, 243 U. S. 247, 61 L. Ed. 700, dismissing appeal 232 F. 819, 147 C. C. A. 13.

8. Scope of review.—A fact on which petitioners in habeas corpus had the burden of proof, not having been proved, cannot avail them on appeal from an order in their favor based on another ground. Whittaker v. Brannan (C. C. A.) 252 F. 556.

§ 1292. (R. S. § 766, as amended, Act March 3, 1893, c. 226.) Pending proceedings, action by state authority void.

Resentence.—Where superior court having imposed void sentence pronounced a second sentence, pendency of habeas corpus proceedings in United States District Court for purpose of having first sentence declared void, did not invalidate second sentence under R. S. § 766 (Comp. St. 1916, § 1292), superior court treating first judgment as void in pronouncing second sentence, not acting in any matter pending and in process of being heard in United States District Court. Ex parte McCready (Cal.) 177 P. 459.

CHAPTER FOURTEEN—DISTRICT ATTORNEYS, MARSHALS, CLERKS, AND OTHER COURT OFFICERS, AND COMMISSIONERS

Sec.
1296. Duties of district attorneys.
1297. Prosecution of frauds on the revenue.
1311. Duties of marshal.
1323a. Clerks; bond; renewal.
1333. United States commissioners.
1334. Officers and employés of Government, etc., who may not be commissioners or receivers.
1340a. Law books, for judges transmitted to successors.

§ 1296. (R. S. § 771.) Duties of district attorneys.

2. Authority and duty of district attorney in general.—See Gouge v. Hart (D. C.) 250 F. 802.

11. Fees and salary of district attorneys—Extra compensation.—A United States attorney held not to have the right to accept private compensation for services rendered as counsel for the receiver appointed in a suit by the United States. McPherson v. U. S., 245 F. 35, 157 C. C. A. 331.

Cited without definite application, Philadelphia, H. & P. R. Co. v. Lederer (D. C.) 239 F. 184.

§ 1297. (R. S. § 838, as amended, Act Feb. 27, 1877, c. 69, § 1.) Prosecution of frauds on the revenue.

Cited without definite application, McPherson v. U. S. (C. C. A.) 245 F. 35.

§ 1311. (R. S. § 787.) Duties of marshal.

2. Limitation of power to district and service of process from other district.—In view of this section, and under Comp. St. 1916, § 1537, which supplanted Act Cong. May 19, 1828, held, that one federal District Court sitting in New York cannot issue process to be served on a person residing in the state, but in another district. Sewchulis v. Lehigh Valley Coal Co., 233 F. 422, 147 C. C. A. 358.

3. Execution of process or writs.—Service of process in an action at law in the federal District Court is not

necessarily restricted to the United States Marshal and his deputies unless the process is directed to them. Rakauskas v. Erie R. Co. (D. C.) 237 F. 495.

9. Return of execution of process or writs and liability for failure of duty.—Marshal's return, not showing that person served with process was agent of foreign corporation for service of process, held not aided by any presumption, as jurisdictional facts must appear affirmatively. Boultbee v. International Paper Co., 229 F. 951, 144 C. C. A. 233.

§ 1323a. (Act July 1, 1918, c. 113, § 1.) Clerks; bond; renewal.

The Attorney General is authorized to require the official bonds of clerks of United States courts to be renewed every four years, and to fix the amounts of such bonds within statutory limits. Failure to take such action shall not affect the liability under such bonds, but upon failure or refusal of any clerk to execute such new bond or bonds his office shall be deemed vacant by order of the President and so declared by the district attorney in open court. (40 Stat. 683.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 1333. (Act May 28, 1896, c. 252, § 19, as amended, Act March 2, 1901, c. 814.) United States commissioners.

4. Incompatible offices.—Under Comp. Laws Mich. 1897, § 11881, United States commissioner, who had investigated facts in bankruptcy proceeding of company of which defendant was an officer, with a view to issuance of federal warrant, held not incompetent as a grand juror to return an indictment against defendant for embezzlement on the same state of facts. People v. Lay (Mich.) 159 N. W. 299.

Acceptance by circuit court commissioner of the office of United States commissioner operated to vacate ipso facto his office of circuit court commissioner, under Const. Wis. art. 13, § 3, providing that no person holding office of profit or trust under the United States shall be eligible to any office of trust, profit or honor in this state; such office being, in view of this section, an office of profit and trust under the United States. State v. Turner (Wis.) 169 N. W. 304.

6. Powers and duties of commissioners.—United States commissioners are neither judges nor courts, although they at times act in a quasi judicial capacity and exercise the power of a court, in so far as an act of Congress has conferred specific authority or imposed the performance of a special duty, and while they are authorized to and may issue search warrants, when specially authorized to do so by some act of Congress, they possess no general power in that respect. U. S. v. Jones (D. C.) 230 F. 262.

§ 1334. (Act May 28, 1896, c. 252, § 20.) Officers and employés of Government, etc., who may not be commissioners or receivers.

Counsel for receiver.—A United States attorney held not ineligible to appointment as counsel for a receiver appointed to collect assets in a suit by the United States. McPherson v. U. S., 245 F. 35, 157 C. C. A. 331.

§ 1340a. (Act March 1, 1919, c. 86, § 1.) Law books for judges transmitted to successors.

Books for judicial officers: For purchase and rebinding of law books, including the exchange thereof, for United States judges, district attorneys, and other judicial officers, including the nine libraries of the United States circuit courts of appeals, to be expended under the direction of the Attorney General: Provided, That such books shall in all cases be transmitted to their successors in office; all books purchased thereunder to be marked plainly, "The property of the United States." * * (40 Stat. 1265.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

CHAPTER SIXTEEN—FEES AND COMPENSATION OF OFFICERS

Sec.
1375. Fees to be taxed.
1376. Costs and fees in circuit courts of appeals.
1377. Tables of fees in circuit courts of appeals.

FEES OF ATTORNEYS, SOLICITORS AND PROCTORS

1378. Attorneys, solicitors, and proctors.

CLERKS' FEES

1383. Clerks' fees.
1385a. Clerks of district courts; appointment; salaries in lieu of fees; collection and disposition of fees.
1385b. Same; salaries; amount.
1385c. Same; traveling expenses.
1385d. Same; deputies and clerical assistants; compensation; traveling expenses.
1385e. Same; office expenses.
1385f. Same; salaries; when and by whom payable.
1385g. Same; expense accounts; payment.
1385h. Same; office expenses; payment.
1385i. Same; accounts.

MARSHALS' FEES

1386. Marshals' fees.

RETURNS OF FEES, EMOLUMENTS, AND EXPENSES, AND COMPENSATION AND ACCOUNTS OF OFFICERS

1394. Semi-annual returns of fees by district attorneys, marshals, and clerks.
1398. Semi-annual returns of fees by clerks.
1399. Reports and accounts by clerks for moneys received.
1400. Annual returns of fees by clerks of circuit courts of appeals.
1401. Annual returns of fees by clerk of Supreme Court.
1404. Compensation retained by a clerk.
1404a. Clerks; compensation; single fees.
1414. Payment of surplus fees into the Treasury.
1417. Accounts of district attorneys, clerks, marshals, and commissioners.

SALARIES AND EXPENSES OF DISTRICT ATTORNEYS AND MARSHALS

1418. District attorneys and marshals to be paid salaries.
1419. Salaries of district attorneys.
1420. Assistant district attorneys.
1420a. Assistant district attorneys; compensation.
1424a. Marshals; per diem.
1430. Demanding or receiving illegal fees; failure to account for or pay over fees.
1432a. District attorneys; District of Columbia; subsistence.
1448. District attorneys; District of Columbia; payment to deputies.
1450a. Marshals; western district of Michigan; salary.
1450b. District attorneys; district of Connecticut; salary.

COMMISSIONERS' FEES

1451a. National Park Commissioners; salaries.

WITNESSES' FEES

1452. Witnesses' fees.
1453. Fees and mileage of jurors and witnesses in certain states and territories.

§ 1375. (R. S. § 823.) Fees to be taxed.

7. Effect of statute to limit fees taxable—Other attorney fees.—A contract, by one having a Civil War claim against the government, with an attorney to pay him a fee equal to 50 per cent. of the amount which may be collected upon the claim, and giving the attorney a lien on any warrant that may be issued in payment of the claim, is valid (Comp. St. 1916, § 1375). Newman v. Moyers, 47 App. D. C. 102.

8. —— Proctor's fees.—Proctor's fees are not properly allowable as costs, to be taken out of the general fund recovered in a suit for salvage. The Johnson Lighterage Co. No. 24, 248 F. 74, 160 C. C. A. 214, modifying decree (D. C.) 240 F. 435.

10. —— Marshal's fees.—There can be no legal agreement for a marshal to charge more than $2.50 per day for keeping an attached vessel, the fee limited by Comp. St. 1916, § 1386. The Neptune (C. C. A.) 252 F. 129.

Cited without definite application, U. S. v. Oliphant (C. C. A.) 230 F. 1.

§ 1376. (Act March 3, 1891, c. 517, § 2, as amended, Act Feb. 19, 1897, c. 263.) Costs and fees in circuit courts of appeals.

Cited without definite application, Williamson v. Electric Service Supplies Co. (C. C. A.) 242 F. 873.

§ 1377. (Act Feb. 19, 1897, c. 263.) Tables of fees in circuit courts of appeals.

Relief from liability.—A stipulation to enable the owner to get his money in condemnation proceedings does not release him from liability for costs awarded against him on appeal; nor does the requirement by the New York statute that a city condemning a reservoir site shall furnish the owner with three printed copies of the evidence relieve the owner from liability for costs for certifying the record on appeal and the supervision fee and for printing the record in the Circuit Court of Appeals. In re Bensel (D. C.) 230 F. 932.

FEES OF ATTORNEYS, SOLICITORS, AND PROCTORS

§ 1378. (R. S. § 824.) Attorneys, solicitors, and proctors.

II. DOCKET FEE

3. When taxable.—The bondsmen are liable under Bankr. Act July 1, 1898, § 3e (Comp. St. 1916, § 9587), only for damages incident to the taking and withholding of property, not the costs and expenses incident to resisting the petition taxable under General Orders in Bankruptcy, rule 34 (Comp. St. 1916, p. 11392), and this section. In re J. Ito Terusaki (D. C.) 238 F. 934.

Under this section complainant, upon taking decree pro confesso, is entitled to docket fee of $20; such decree being final. Peerless Light Co. v. Leviton (D. C.) 247 F. 606.

6. Number of fees taxable.—A prevailing party in an appeal, in which separate suits were consolidated and heard on one record, held entitled to tax but one docket fee. Steffens v. Steiner, 232 F. 862, 147 C. C. A. 56.

11. Final hearing—Admiralty.—The dismissal of a suit in admiralty without prejudice on the unopposed motion of libelant is not a "final hearing," which entitles the proctor for respondent to a docket fee of $20; but the submission to the court on exceptions to the libel, which are sustained, is a final hearing, and respondent's proctor is not deprived of the right to a docket fee by the filing of an amended libel alleging facts which libelant is unable to prove, and which is therefore voluntarily dismissed without hearing. Albion Lumber Co. v. Inter-Ocean Transp. Co. (D. C.) 240 F. 1019.

IV. DEPOSITION FEE

15. What constitute depositions for which fees may be taxed.—Libelant's proctor is not entitled to fees for the taking of a deposition of a witness whose testimony was immaterial. The Mary (D. C.) 233 F. 121.

16. "Deposition taken and admitted."—While proctor's fees for taking a deposition cannot be allowed unless it is admitted in evidence, cost of transcribing same may be allowed, where deposition was taken in good faith, though witness appeared and testified. Alaska S. S. Co. v. Gilbert, 236 F. 715, 150 C. C. A. 47.

Cited without definite application. In re National Carbon Co. (C. C. A.) 241 F. 330; Motion Picture Patents Co. v. Universal Film Mfg. Co. (D. C.) 232 F. 263.

CLERKS' FEES

§ 1383. (R. S. § 828.) Clerks' fees.

I. CLERKS' FEES

26. Copies—"Entry or record."—The proper fee for a certified transcript of the record on appeal or writ of error is 10 cents a folio, since the acts for which the higher fee is prescribed are original acts, deriving their origin from no previous record, and requiring original thought and judgment to make it conform precisely to the things done or ordered, while the originality, discretion, or judgment connected with the making of a certified transcript of the record is restricted to the selection of the parts of the record required by the rules to be transcribed, and responsibility in copying such parts is limited to accuracy, and, while the rule designates the transcript a "return," the return is to be made by transmitting a true copy of the record. U. S. v. Oliphant (C. C. A.) 230 F. 1.

27. —— "Any paper on file."—Charge by clerk of District Court for triplicate copies of declarations of intent for naturalization is not authorized by this section as if authorized by Act June 29, 1906, § 12 (Comp. St. 1916, § 4371), it would be forbidden by section 21 (Comp. St. 1916, § 4377); the service, not having been included in fees named in section 13 (Comp. St. 1916, § 4372), and if the duty arose under section 12 prohibition of section 21 would be applicable. Cross v. United States, 37 S. Ct. 5, 242 U. S. 4, 61 L. Ed. 114.

38. Fees for handling money.—Clerk of District Court is not entitled to

charge a 1 per cent commission, or to make any charge whatever, where he acts as distributing agent under the direction of the court. In re Newbold (D. C.) 244 F. 888.

Cited without definite application, Williamson v. Electric Service Supplies Co. (C. C. A.) 242 F. 873; Motion Picture Patents Co. v. Universal Film Mfg. Co. (D. C.) 232 F. 263.

§ 1385a. (Act Feb. 26, 1919, c. 49, § 1.) Clerks of district courts; appointment; salaries in lieu of fees; collection and disposition of fees.

On and after the first day of July, nineteen hundred and eighteen, all clerks of United States district courts shall be appointed by the judge for the district, or the senior judge if there be more than one judge in the district, subject to the approval of the senior circuit judge for the circuit in which the district is situated, and all fees and emoluments authorized by law to be paid to the clerks of the United States district courts, except the clerks of the district courts of Alaska, shall be charged as heretofore and shall be collected, as far as possible, and paid into the Treasury of the United States in such manner and at such times as hereinafter provided; and such clerks shall be paid, in lieu of the fees and emoluments now allowed by law, an annual salary as hereinafter provided: Provided, That this section shall not be construed to require or authorize fees to be charged or collected from the United States. (40 Stat. 1182.)

This section, and the eight sections next following, are an act entitled "An act to fix the salaries of the clerks of the United States district courts and to provide for their office expenses, and for other purposes," cited above.

§ 1385b. (Act Feb. 26, 1919, c. 49, § 2.) Same; salaries; amount.

The clerk of the United States district court for each of the judicial districts of the United States, except the clerks of the district courts of Alaska, shall be paid, in lieu of the fees, salaries, and per centum now allowed by law, an annual salary to be fixed by the Attorney General at not less than $2,500 nor more than $5,000, based in each instance upon the amount of business transacted by the court and the fees and the emoluments received by the clerks in the four years last preceding. (40 Stat. 1182.)

See note to § 1385a, ante.

§ 1385c. (Act Feb. 26, 1919, c. 49, § 3.) Same; traveling expenses.

When any clerk of a district court is necessarily absent from his official residence on any official business he shall be allowed his actual traveling expenses only and his necessary and actual expenses for lodging and subsistence, the latter not to exceed $4 per day. (40 Stat. 1182.)

See note to § 1385a, ante.

§ 1385d. (Act Feb. 26, 1919, c. 49, § 4.) Same; deputies and clerical assistants; compensation; traveling expenses.

When, in the opinion of the Attorney General, the public interest requires it he may, on the recommendation of the clerk of a district court, which recommendation shall state facts (as distinguished from conclusions) showing necessity for the same, allow such clerk to employ necessary deputies and clerical assistants, upon compensation to be fixed by the Attorney General from time to time and paid as hereinafter provided.

When any such deputy or clerical assistant is necessarily absent from the place of his regular employment on official business he shall be allowed his actual traveling expenses only and his necessary and actual expenses for lodging and subsistence, the latter not to exceed $3 per day. (40 Stat. 1182.)

See note to § 1385a, ante.

§ 1385e. (Act Feb. 26, 1919, c. 49, § 5.) Same; office expenses.

The necessary office expenses of the clerks of the district courts of the United States shall be allowed when authorized by the Attorney General. (40 Stat. 1182.)

See note to § 1385a, ante.

§ 1385f. (Act Feb. 26, 1919, c. 49, § 6.) Same; salaries; when and by whom payable.

The salaries of the clerks, deputy clerks, and clerical assistants to the clerks of the district courts shall be paid monthly by the marshals of the respective districts. (40 Stat. 1182.)

See note to § 1385a, ante.

§ 1385g. (Act Feb. 26, 1919, c. 49, § 7.) Same; expense accounts; payment.

The expense accounts of clerks of the United States district courts, when made out and verified, and the expense accounts of their deputy clerks and clerical assistants, when made out and certified as correct by the clerk of such court, covering the necessary expenses incurred by such clerk, deputy clerk, or clerical assistants when necessarily absent from the place of regular employment on official business, shall be paid by the marshal, who shall include them in his accounts with the United States. (40 Stat. 1182.)

See note to § 1385a, ante.

§ 1385h. (Act Feb. 26, 1919, c. 49, § 8.) Same; office expenses; payment.

The necessary office expenses of the clerk of the United States district court, as allowed and authorized by the Attorney General, shall be paid by the marshal and included in his accounts with the United States. (40 Stat. 1182.)

See note to § 1385a, ante.

§ 1385i. (Act Feb. 26, 1919, c. 49, § 9.) Same; accounts.

The clerk of every district court, except the clerks of the district courts of Alaska, shall account quarterly for all the fees and emoluments earned during the quarter last preceding such accounting, except where the person requiring the services is relieved by law from prepayment of fees and costs, and for all fees and emoluments received within the quarter which had been earned prior thereto. Such accounting shall be in writing and shall be made to the Attorney General, in such form as he may prescribe, on the first days of January, April, July, and October in each year, or within twenty days thereafter, and shall include all moneys received in connection with the admission of attorneys to practice in the court, all that portion retained by the clerk of moneys received for services in naturalization proceedings in whatever capacity rendered, and all other amounts received for services in any way connected with the clerk's office. Such accounts shall be made in duplicate and be verified by the oath of the officer making them. The Attorney General shall cause each such return or account to be carefully examined by the proper officer of the Department of Justice and shall approve the same as he may deem just and proper, and shall transmit it with his approval to the Auditor for the State and Other Departments, by whom an account shall be stated against the officer rendering such return or account. Immediately upon receipt of notice from the auditor, or within ten days thereafter, the clerk shall deposit to the credit of the Treasurer of the United States the amount so stated against him. (40 Stat. 1183.)

See note to § 1385a, ante.

MARSHALS' FEES

§ 1386. (R. S. § 829.) Marshals' fees.

2½. Fees for serving writs—Summons.—The marshal is entitled to only one fee for the service of a summons and copy of the declaration on any defendant at the same time. Burroughs Bros. Mfg. Co. v. Dulaney (D. C.) 238 F. 255.

14½. Fees and expenses in admiralty—Fee for custody of attached vessel.—There can be no legal agreement for a marshal to charge more than $2.50 per day for keeping an attached vessel. The Neptune (C. C. A.) 252 F. 129.

The marshal is, where the claimant of a vessel libeled pays the amount of a decree, having secured its release from custody by the giving of bond, entitled to the commission provided. The Eros (D. C.) 245 F. 814.

15. —— Expenses of keeping property attached or libeled.—The $2.50 per day for keeping an attached vessel, allowed a marshal, covers only cost of custody proper; and, she sinking without his fault, a charge for raising and beaching is proper. The Neptune (C. C. A.) 252 F. 129.

16. —— Commissions on settlement of claim.—Where a decree in admiralty is settled without a sale, the marshal is entitled to have the reduced commission included in the decree as part of the costs. The Eros (C. C. A.) 251 F. 45.

RETURNS OF FEES, EMOLUMENTS, AND EXPENSES, AND COMPENSATION AND ACCOUNTS OF OFFICERS

§ 1394. (R. S. § 833.) Semi-annual returns of fees by district attorneys, marshals, and clerks.

"Fees and emoluments of his office."—Under a rule of a Circuit Court requiring the records in equity cases and on demurrers and rules to show cause to be printed under the clerk's supervision, the clerk made a practice of procuring and retaining extra copies of the record as so printed and using one of them for the transcript of the record returned to the Circuit Court of Appeals, and claimed the right to retain the fees received from litigants for making such transcripts, on the theory that he owned the copies of the record used and could sell them and keep the proceeds. Held, that it was his duty to demand and collect fees at the rate prescribed by statute, and to report and pay such fees to the government. U. S. v. Oliphant (C. C. A.) 230 F. 1.

Interest accruing on money collected by clerk of federal court for official services rendered, and held by him pending his semiannual return, do not constitute emoluments of clerk's office, to be accounted for to United States. U. S. v. MacMillan (C. C. A.) 251 F. 55.

§ 1398. (Act June 28, 1902, c. 1301, § 1.) Semi-annual returns of fees by clerks.

Emoluments.—Where the clerk charged litigants for printing an amount in excess of the amount paid by him for the printing, the amount so received by him was for services connected in a way with the clerk's office, and should have been reported and paid to the government, as the rule requiring printing had the force of law and demanded of the clerk a service in connection with that part of the court's business peculiarly related to his office. U. S. v. Oliphant (C. C. A.) 230 F. 1.

§ 1399. (Act June 30, 1906, c. 3914, § 1.) Reports and accounts by clerks for moneys received.

Liability for fees.—There is no obligation on clerk of District Court to account for fees until he has collected them, and so he is not responsible until collection for payment of fees, in actions by sailors which may be prosecuted without prepayment. The Memphian (D. C.) 245 F. 484.

Criminal prosecution for false entries.—Indictment alleging that accused made false entries in books and records which the Attorney General required to be kept under this section, and that such acts were in violation of Act March 4, 1911 (Comp. St. 1916, § 10270), providing for punishment of any clerk making false entries in accounts with intent to deceive the United States, is not demurrable; the words of the act of 1911, "or whoever being an officer, clerk, agent," etc., embracing clerks of courts. U. S. v. Dodge (D. C.) 251 F. 742.

§ 1400. (Act June 6, 1900, c. 791, § 1.) Annual returns of fees by clerks of circuit courts of appeals.

Prepayment of fees.—Act June 12, 1917, § 1 (see post, § 1630a), which makes appropriation for fees of clerks, provided that courts of United States shall be open to seamen without furnishing bond, or prepayment of or making deposit to secure fees or costs, does not apply to prosecution of appeals in Circuit Court of Appeals; clerk of that tribunal having stated salary, appropriation for which was made by Act March 3, 1917, § 1. The Nigretia, 249 F. 348, 161 C. C. A. 356.

§ 1401. (Act March 15, 1898, c. 68, § 8.) Annual returns of fees by clerk of Supreme Court.

Fees to be accounted for.—This section plainly requires all clerks of United States courts to render an account of all fees received by them from any and all sources in discharge of their official duties. Johnson v. U. S., 50 Ct. Cl. 126.

§ 1404. (R. S. § 839.) Compensation retained by a clerk.

Naturalization fees.—Comp. St. 1916, § 4372, as to fees in naturalization cases, requires extra work from clerks of courts in naturalization proceedings, and permits retaining fees as therein provided, notwithstanding this section, limiting compensation of clerks to $3,500 per year. Darling v. U. S., 51 Ct. Cl. 100.

Amount of compensation and limitation thereon.—Where the clerk charged litigants for printing an amount in excess of the amount paid by him for the printing, the amount so received by him was for services connected in a way with the clerk's office, and should have been reported and paid to the government, as the rule requiring the printing had the force of law and demanded of the clerk a service in connection with that part of the court's business peculiarly related to his office. U. S. v. Oliphant (C. C. A.) 230 F. 1.

Where a clerk of a United States District Court has received the maximum compensation allowed by law, he is not entitled to additional fees or per diems for attendance at court in receiving and referring petitions to referees in involuntary bankruptcy cases. Johnson v. U. S., 50 Ct. Cl. 126.

Compensation of assistants.—Where the regulations of the Department of Justice state that clerks of courts cannot employ, at the expense of the United States, assistants without the permission of the Attorney General, such clerks cannot under the law be reimbursed for the compensations paid assistants whose employment was not authorized by the Attorney General. Johnson v. U. S., 50 Ct. Cl. 126.

§ 1404a. (Act June 12, 1917, c. 27, § 1.) Clerks; compensation retained; single fees.

That for the calendar year nineteen hundred and seventeen, and thereafter, the maximum personal compensation of clerks of United States district courts shall in no case exceed $3,500 per annum, and that single fees only shall be charged by United States marshals and clerks of United States district courts against the United States and against private litigants in every judicial district. (40 Stat. 157.)

This was a provision of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 1414. (R. S. § 844.) Payment of surplus fees into the Treasury.

Liability of clerk for fees.—Under a rule of a Circuit Court requiring the records in equity cases and on demurrers and rules to show cause to be printed under the clerk's supervision, the clerk made a practice of procuring and retaining extra copies of the record as so printed and using one of them for the transcript of the record returned to the Circuit Court of Appeals, and claimed the right to retain the fees received from litigants for making such transcripts, on the theory that he owned the copies of the record used and could sell them and keep the proceeds. Held, that it was his duty to demand and collect fees at the rate prescribed by statute, and to report and pay such fees to the government. U. S. v. Oliphant (C. C. A.) 230 F. 1.

§ 1417. (Act Feb. 22, 1875, c. 95, § 1.) Accounts of district attorneys, clerks, marshals, and commissioners.

Rendition of account.—Where the clerk of a Circuit Court failed to account to the government for fees collected for services in connection with certified transcripts of records transmitted to the Circuit Court of Appeals, and in the docket records of such cases entries were made showing that transcripts had been forwarded to the court, but failing to show that fees had been charged or collected therefor, and such accounts were examined and passed by the officials of the Department of Justice, the failure of the department to discover that the fees were being withheld did not amount to an approval of the clerk's retention of the fees or to an account stated, defeating a recovery of such fees by the government. U. S. v. Oliphant (C. C. A.) 230 F. 1.

SALARIES AND EXPENSES OF DISTRICT ATTORNEYS AND MARSHALS

§ 1418. (Act May 28, 1896, c. 252, § 6.) District attorneys and marshals to be paid salaries.

Cited without definite application, McPherson v. U. S. (C. C. A.) 245 F. 35.

§ 1419. (Act May 28, 1896, c. 252, § 7.) Salaries of district attorneys.

Cited without definite application, McPherson v. U. S. (C. C. A.) 245 F. 35.

§ 1420. (Act May 28, 1896, c. 252, § 8.) Assistant district attorneys.

Special assistant district attorney.—Under Act June 22, 1870, and Act June 30, 1906 (Comp. St. 1916, § 534), bankrupt charged with knowingly and fraudulently concealing his property from trustee cannot complain that attorney for petitioning creditors was duly appointed special assistant United States district attorney and participated in prosecution. Terry v. U. S., 235 F. 701, 149 C. C. A. 121.

§ 1420a. (Act July 1, 1918, c. 113, § 1.) Assistant district attorneys; compensation.

Except as otherwise prescribed by law the compensation of such of the assistant district attorneys authorized by section eight of the Act approved May twenty-eighth, eighteen hundred and ninety-six, as the Attorney General may deem necessary, may be fixed at not exceeding $3,000 per annum. (40 Stat. 683.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. See § 1420, U. S. Comp. St. 1916.

§ 1424a. (Act July 1, 1918, c. 113, § 1.) Marshals; per diem.

Marshals and office deputy marshals (except in the district of Alaska) may be granted a per diem of not to exceed $4 and $3, respectively, in lieu of subsistence, instead of, but under the conditions prescribed for, the present allowance for actual expenses of subsistence. (40 Stat. 683.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 1430. (Act May 28, 1896, c. 252, § 18.) Demanding or receiving illegal fees; failure to account for or pay over fees.

Cited without definite application, McPherson v. U. S. (C. C. A.) 245 F. 35.

§ 1432a. (Act July 1, 1918, c. 113, § 1.) District attorneys; District of Columbia; subsistence.

After July first, nineteen hundred and eighteen, the maximum allowance for actual expenses of subsistence to the United States attorney for the District of Columbia and his assistants, when ab-

sent from the District of Columbia on official business, shall be $4 per day. (40 Stat. 683.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 1448. (Act July 1, 1918, c. 113, § 1.) District attorneys; District of Columbia; payment to deputies.

The United States district attorney for the District of Columbia shall hereafter pay to his deputies or assistants not exceeding in all $15,000 per annum; also his clerical and messenger hire not exceeding $10,000; office rent, fuel, stationery, printing, and other incidental expenses not exceeding $2,500, out of the fees of his office: Provided, That no expenses other than those above specified shall be allowed. (40 Stat. 683.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

§ 1450a. (Act June 13, 1918, c. 99.) Marshals; western district of Michigan; salary.

From and after the passage of this Act the salary of the United States marshal for the western district of Michigan shall be at the rate of $4,000 a year. (40 Stat. 605.)

§ 1450b. (Act Feb. 26, 1919, c. 51.) District attorneys; district of Connecticut; salary.

From and after the passage of this Act the salary of the United States district attorney for the district of Connecticut shall be at the rate of $4,500 a year. (40 Stat. 1183.)

This section is an act entitled "An act to increase the salary of the United States District Attorney for the district of Connecticut," cited above.

COMMISSIONERS' FEES

§ 1451a. (Act March 1, 1919, c. 86, § 1.) National Park Commissioners; salaries.

National Park Commissioners: For commissioners in the Crater Lake, Glacier, Mount Rainier, and Yellowstone National Parks, at $1,500 each, $6,000. The provisions of section 21 of the legislative, executive, and judicial appropriation Act approved May 28, 1896, shall not be construed as impairing the rights of said commissioners to receive the salaries provided herein. (40 Stat. 1265.)

This section is a part of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

For Act May 28, 1896, c. 252, § 21, referred to in this section, see U. S. Comp. St. 1916, § 1451.

WITNESSES' FEES

§ 1452. (R. S. § 848.) Witnesses' fees.

1. Compensation of witnesses in general.—A libelant held not entitled to have fees for witnesses who were examined before commissioner taxed under Act May 27, 1908 (Comp. St. 1916, § 1453), but to only have them taxed under this section. The Mary (D. C.) 233 F. 121.

5. Witnesses attending voluntarily.—The fees of witnesses who attend voluntarily at the request of the prevailing party may be taxed as costs, as "pursuant to law" does not limit the fees to witnesses attending pursuant to subpœna, but has relation to the word "officer," and restricts the application of the statute to witnesses attending before some officer conducting a hearing in pursuance of law. U. S. v. Southern Pac. Co. (D. C.) 230 F. 270.

8. Witness attending in more than one case or in dual capacity—Attendance fees.—Where, though libels were not consolidated, they involved substantially the same issues and were tried on the same testimony, only one fee for attendance and travel should be allowed witnesses. The Vera, 229 F. 557, 144 C. C. A. 17, amending decree on rehearing 226 F. 369, 141 C. C. A. 199.

13. Relation between right to compensation and distance traveled—Mileage.—It is well settled that mileage for witnesses who attend from a distance

beyond the reach of a subpœna can only be allowed to the extent of 100 miles. U. S. v. Southern Pac. Co. (D. C.) 230 F. 270.

§ 1453. (Act May 27, 1908, c. 200, § 1.) Fees and mileage of jurors and witnesses in certain states and territories.

Witness before commissioner.—A libelant held not entitled to have fees for witnesses who were examined before commissioner taxed under this section, but to only have them taxed under Rev. St. § 848 (Comp. St. 1916, § 1452), allowing $1.50 per day. The Mary (D. C.) 233 F. 121.

CHAPTER SEVENTEEN—EVIDENCE

Sec.
1464. Competency of witnesses in civil cases.
1465. Competency as witnesses of defendants in criminal cases.
1466. Competency as witness of husband or wife of defendant in prosecution for bigamy, etc.
1468. Mode of proof in common-law actions.
1469. Power to order production of books and writings in actions at law.
1470. Mode of proof in equity and admiralty causes.
1471. Handwriting as basis for comparison.
1472. Depositions de bene esse.
1474. Transmission to the court of depositions de bene esse.
1476. Depositions under State laws.
1477. Depositions under a dedimus potestatem and in perpetuam, etc.
1479. Deposition under a dedimus potestatem.
1480. Subpœna duces tecum under a dedimus potestatem.
1487. Subpœnas to run into another district.
1494. Copies of department records and papers.
1496. Instruments and papers of Comptroller of the Currency.
1497. Organization certificates of national banks.
1504. Copies of records of General Land-Office.
1508. Extracts from the Journals of Congress.
1519. Authentication of legislative acts and proof of judicial proceedings of State, etc.
1520. Proofs of records, etc., not pertaining to courts.
1521. Copies of foreign records, etc., relating to land-titles in the United States.
1523. Revised Statutes as evidence.

§ 1464. (R. S. § 858, as amended, Act June 29, 1906, c. 3608.) Competency of witnesses in civil cases.

Construction and operation of this section and of former law.—The result of the Conformity Act (Rev. Stat. § 914; Comp. St. 1916, § 1537), the Rules of Decision Act (Rev. Stat. § 721; Comp. St. 1916, § 1538), and the Competency of Witnesses Act (Rev. Stat. § 858; Comp. St. 1916, § 1464), is to make state statutes relating to the competency of witnesses and the competency of testimony, as well as the state law of evidence generally, binding on the federal courts sitting within such state, except where in conflict with the federal Constitution, statutes, or treaties. American Issue Pub. Co. v. Sloan (C. C. A.) 248 F. 251.

In criminal prosecution in federal courts, held that, despite Const. Wash. art. 1. § 2, and this section, objection to witness' competency on ground that he did not believe in divine punishment as result of breaking an oath should be sustained. U. S. v. Miller (D. C.) 236 F. 798, overruled by Louie Ding v. U. S., 247 F. 12. 159 C. C. A. 230.

Competency, credibility, and impeachment of witnesses in general.—Evidence of a pending indictment is not competent to affect the credibility of a witness. Walker Grain Co. v. Blair Elevator Co. (C. C. A.) 254 F. 422.

Where one of the parties to a transaction was dead, a witness who was really an adversary party to decedent is incompetent to testify. Johnson v. Garner (D. C.) 233 F. 756.

Laws of state.—Under this section, federal court should follow decisions of highest state court, interpreting local statutes as to competency of witnesses; but, in absence of direct decisions by state courts, it will not be presumed, in an action, that state court's rule of decision is in conflict with unambiguous terms of state statute.—Central Iron & Coal Co. v. Hamacher, 248 F. 50, 160 C. C. A. 190.

—— Particular state laws.—Under Gen. Code Ohio, § 11495, neither the maker of a note nor indorsers will be deemed parties adverse to representatives of a deceased indorser, in action by holder. Murray v. Third Nat. Bank of St. Louis, 234 F. 481, 148 C. C. A. 247.

A bona fide assignment of his interest in the subject-matter of a suit held

to render a witness, otherwise incompetent for interest, competent under Act Pa. May 23, 1887 (P. L. 160) § 6. Alexander v. Fidelity Trust Co. (D. C.) 238 F. 938, decree reversed Fidelity Trust Co. v. Alexander (C. C. A.) 243 F. 162.

Grantees held incompetent, under Civ. Code Prac. Ky. § 606—2, to testify after death of grantor concerning the time a reservation was inserted in their deed. Estep v. Kentland Coal & Coke Co., 239 F. 617, 152 C. C. A. 451.

In action by executor on note owned by his testatrix, held that, under Sess. Laws Colo. 1911, p. 676, one who, according to his own testimony, was primarily liable on note, if valid, instead of defendant, was interested party and incompetent. Cordingly v. Kennedy, 239 F. 645, 152 C. C. A. 479.

Under this section, witness testifying in federal court for Pennsylvania is incompetent to testify as to transactions had with, or statements made by, one dead at time of trial, that being rule of state practice. M. B. Fahey Tobacco Co. v. Senior (D. C.) 247 F. 809, decree affirmed in part and reversed in part (C. C. A.) 252 F. 579.

Under Code Civ. Proc. N. Y. § 829, one who contracted with corporation through agent cannot after death of agent testify as to circumstances surrounding the contract, but if he does so the agent's report to the corporation is admissible. Baldwin Co. v. R. S. Howard Co. (D. C.) 233 F. 439.

Under Rev. St. § 858, as amended by Act June 29, 1906, and Rev. Code Del. 1915, § 4212, complainant held entitled to testify as to transaction with deceased as basis for decree against corporation though officer's estate owned stock, as decree against it would not be one against the executrix. Wright v. Barnard (D. C.) 248 F. 756.

Privileges and immunity of witnesses.—The federal and state governments have power to provide that returns made to their officers to be used in assessing and collecting revenue and taxes shall not be revealed by the officers, and such provisions protect the officers against commitment for contempt for refusal to produce such returns on subpœna by a court. In re Valecia Condensed Milk Co., 240 F. 310, 153 C. C. A. 236.

§ 1465. (Act March 16, 1878, c. 37.) Competency as witnesses of defendants in criminal cases.

Construction and operation.—Under this section, a defendant jointly indicted and tried with others may at his own request testify on behalf of the government against his codefendants. Heitler v. U. S., 244 F. 140, 156 C. C. A. 568.

Comment on failure to testify.—Accused, who voluntarily testifies for himself, may not omit to explain incriminating circumstances as to which he is informed, without subjecting his silence to the inferences to be drawn from it, and justifying comment in the charge to effect the jury may consider it. Caminetti v. U. S., 37 S. Ct. 192, 242 U. S. 470, 61 L. Ed. 442, L. R. A. 1917F, 502, Ann. Cas. 1917B, 1168, affirming judgments Diggs v. Same, 220 F. 545, 136 C. C. A. 147, and Hays v. Same, 231 F. 106, 145 C. C. A. 294.

Where defendant's counsel did not object to court's remark that defendant's testimony would be more important than a letter written by him, held, that statutory protection against reference to defendant's right to testify was waived. York v. U. S., 241 F. 656, 154 C. C. A. 414.

In a prosecution under Penal Code, § 215 (Comp. St. 1916, § 10385), for using the mails to defraud, where court is alleged to have commented on defendant's failure to testify, evidence held to show that the verdict was based upon the direct and positive testimony of witnesses and documents and the legitimate inferences, and not from any prejudice because defendants did not testify in their own behalf. Sidebotham v. U. S. (C. C. A.) 253 F. 417.

Where defendant took the stand, but was prevented from answering questions on cross-examination by objections that they did not come within the scope of the direct examination, the prosecutor could comment in his argument on defendant's failure to answer. Le More v. U. S. (C. C. A.) 253 F. 887.

Argument by the attorney for the United States that the evidence against defendants was conclusive, and that it had not been contradicted, is not objectionable as a comment on the failure of defendants to testify. Bradley v. U. S. (C. C. A.) 254 F. 289.

Instructions.—Reference in charge to certain government testimony as uncontradicted does not violate this section; it not being plain that no one but defendants could have disputed the facts. Shea v. U. S. (C. C. A.) 251 F. 440.

A charge that the fact defendant did not testify should not be considered against him, but he was entitled to stand on the presumption of innocence, held in no way prejudicial, but favorable, to the defendant. Kreuzer v. U. S. (C. C. A.) 254 F. 34.

Cross-examination and impeachment.—In a prosecution for falsely representing himself to be a citizen of the United States, defendant, who took the stand in his own behalf, may be required to answer whether he ran a blind tiger, when the court charges that his answer can be considered, not

as evidence of guilt, but only as affecting, in so far as it involved moral delinquency, his credibility as a witness. Christopoulo v. U. S. (C. C. A.) 230 F. 788.

As the rules of evidence are the same in civil and criminal cases, a defendant who takes the stand may be cross-examined upon his evidence in chief. Greer v. U. S., 240 F. 320, 153 C. C. A. 246.

In a prosecution under Harrison Drug Act Dec. 17, 1914 (Comp. St. 1916, §§ 6287g–6287q), wherein defendant had not testified in his examination in chief as to his alleged offer to bribe an officer to delay his arrest, questions relative thereto were not proper cross-examination. Paquin v. U. S. (C. C. A.) 251 F. 579.

Where a defendant charged with violating Penal Code, § 215 (Comp. St. 1916, § 10385), by using mails in connection with scheme to defraud, whereby ocean carriers were induced to issue fraudulent bills of lading, which were attached to drafts that were negotiated, testified that acceptors who understood transaction were able to pay, etc., cross-examination as to amount of acceptances was not objectionable as relating to matter not brought out on direct examination. Le More v. U. S. (C. C. A.) 253 F. 887.

A defendant in a criminal case, who elects to take the witness stand, is subject to all the rules and tests applicable to other witnesses, and renders admissible records of former convictions for felony. Williams v. U. S. (C. C. A.) 254 F. 52.

Where accused took the stand in his own behalf, he could be impeached, like any other witness, by proof of his prior conviction of an offense, which Penal Code, § 335 (Comp. St. 1916, § 10509), made a felony; the evidence being restricted to that purpose. Gordon v. U. S. (C. C. A.) 254 F. 53.

Where defendant on cross-examination was asked if he had an identified conversation, and he not only denied having said the things to which his attention was directed, but gave his understanding of the conversation, and the government in rebuttal placed a witness on the stand who contradicted him, defendant on surrebuttal is not entitled to again give his version. Bentall v. U. S. (C. C. A.) 254 F. 294.

It was proper to refuse to allow defendant as a witness to answer a leading question calling for undisclosed state of mind of defendant upon a subject-matter which was vital to the case and upon which it was impossible to contradict him. Flowers v. Bush & Witherspoon Co. (C. C. A.) 254 F. 519.

§ 1466. (Act March 3, 1887, c. 397, § 1.) Competency as witness of husband or wife of defendant in prosecution for bigamy, etc.

Offenses against wife.—Interstate transportation of wife for immoral purpose, in violation of Act June 25, 1910 (Comp. St. 1916, § 8813), held such a personal wrong against her as authorizes her to testify. Pappas v. U. S., 241 F. 665, 154 C. C. A. 423; U. S. v. Bozeman (D. C.) 236 F. 432.

Wife of codefendant.—The wife of one of several defendants charged with conspiracy, who has pleaded guilty, can testify against the other defendants over their objection, where neither she nor her husband claim privilege. Knoell v. U. S., 239 F. 16, 152 C. C. A. 66, affirming judgment U. S. v. Knoell (D. C.) 230 F. 509.

§ 1468. (R. S. § 861.) Mode of proof in common-law actions.

Documentary evidence.—At the trial on an amended declaration, the original declaration held admissible to contradict a witness of plaintiff, and to show that the allegations of the amended declaration were an afterthought. Cooperative Raw Fur Co. v. American Credit Indemnity Co., 240 F. 67, 153 C. C. A. 103.

Discovery and interrogatories.—Because of this section, Gen. Code Ohio, §§ 11551, 11552, empowering the court in an action at law to require parties to produce books and writings under circumstances where they might have been compelled to produce them by the ordinary rules of chancery, are inapplicable to the federal courts. General Film Co. v. Sampliner (C. C. A.) 232 F. 95.

Examination of witnesses.—Admission of evidence on redirect examination held within the court's discretion. Itasca Lumber Co. v. Martin, 230 F. 584, 144 C. C. A. 638.

In action against revenue collector for penalties paid under protest, permission of witness for defendant to read from diary as to conversation with plaintiff, without stating whether he had independent recollection of conversation, was error. De Witt v. Skinner, 232 F. 443, 146 C. C. A. 437.

The use by the plaintiff of an affidavit previously verified by his witness to refresh his recollection so as to qualify and add to his testimony was not subject to objection that he was impeaching his own witness. George Brown & Co. v. O'Connor, 238 F. 552, 151 C. C. A. 488.

Question to witness, wholly argumentative in character and not directed to any question of fact, is properly excluded. Wilson v. Studebaker Corporation of America (D. C.) 240 F. 801.

—— **Cross-examination.**—Where contractor claimed that county's engineer was in collusion with others to eliminate him and substitute a different con-

tractor, cross-examination as to favoritism of such other contractor under former contracts held within the court's discretion. Lauderdale County v. Kittel, 229 F. 593, 143 C. C. A. 615.

A witness who testified to contradictory statements made by the prosecuting witness can be cross-examined as to whether he communicated such statements to defendant and as to what he communicated. Kinser v. U. S., 231 F. 856, 146 C. C. A. 52.

Right of cross-examination is not confined to specific questions of direct examination, but extends to subject-matter. De Witt v. Skinner, 232 F. 443, 146 C. C. A. 437; Owl Creek Coal Co. v. Goleb, 232 F. 445, 146 C. C. A. 439.

Where a witness was fully cross-examined as to a matter, the trial judge, in his discretion, may refuse to permit further repetition. Memphis St. Ry. Co. v. Bobo, 232 F. 708, 146 C. C. A. 634.

How far a party may be allowed to, in effect, cross-examine his own witness, is usually a matter in the sound judicial discretion of the trial judge. Big Vein Pocahontas Co. v. Repass, 238 F. 332, 151 C. C. A. 348.

Where defendant claimed that hops tendered under contract were improperly rejected, witness testifying for plaintiff suing for advances, may be properly cross-questioned to bring out the condition of the hops, to show he was testifying to a matter of which he could not have had knowledge. Wolf v. Edmunson, 240 F. 53, 153 C. C. A. 89.

Admission of question in cross-examination of party as to a date, referring to a fire in which plaintiff's children were burned, over objection that it was argumentative, held not an abuse of discretion. George v. Meyers, 241 F. 653, 154 C. C. A. 411.

—— **Redirect examination.**—Where, on cross-examination, defendant's witness testified to making false statements as to the matter with which accused was charged with perjury, accused is, on redirect examination, entitled to bring out the witness' explanation of her false statements. Safford v. U. S., 233 F. 495, 147 C. C. A. 381.

Question on redirect examination as to what witness, who had difficulty in making himself understood, meant, held properly admitted. George v. Meyers, 241 F. 653, 154 C. C. A. 411.

§ 1469. (R. S. § 724.) Power to order production of books and writings in actions at law.

I. "IN THE TRIAL"

1. Right to require production before trial.—This section does not authorize an order for the production of books and writings before the trial, and so does not deprive a court of equity of jurisdiction to entertain a bill of discovery in aid of an action at law before trial. General Film Co. v. Sampliner (C. C. A.) 232 F. 95.

Complainant cannot be required to present its case before trial, though the facts alleged are to be proven by oral evidence or written documents. Churchward International Steel Co. v. Bethlehem Steel Co. (D. C.) 233 F. 322.

IV. "DUE NOTICE"

4. Necessity and sufficiency.—Where defendant testified that in response to subpœna duces tecum he had produced all correspondence before grand jury, and asserted that he did not receive decoy letters, in response to which it was contended he deposited in mails nonmailable matter, secondary evidence of such decoy letters was properly received, though government served no notice to produce. Pilson v. U. S., 249 F. 328, 161 C. C. A. 336.

VIII. OTHER REMEDIES AND EFFECT OF STATUTE THEREON

21. Remedy by discovery.—This section does not deprive a court of equity of jurisdiction to entertain a bill of discovery in aid of an action at law before trial. General Film Co. v. Sampliner, 232 F. 95, 146 C. C. A. 287.

Cited without definite application, Pressed Steel Car Co. v. Union Pac. R. Co. (D. C.) 241 F. 964.

§ 1470. (R. S. § 862.) Mode of proof in equity and admiralty causes.

Taking testimony under equity rules.
—See Block v. Arrowsmith Mfg. Co. (D. C.) 243 F. 775.

§ 1471. (Act Feb. 26, 1913, c. 79.) Handwriting as basis for comparison.

Genuineness of handwriting offered.—In prosecution for altering postal money order, notebook containing personal memoranda, taken from accused's possession, held admissible as basis of comparison of accused's handwriting, though accused denied that order was issued to him and that book was his. Dean v. U. S., 246 F. 568, 158 C. C. A. 538.

Witnesses who had seen writing of defendant, who was charged with de-

positing and causing to be deposited in post office letter containing poison, etc., are competent to testify that writing and signature was that of accused. Murray v. U. S., 247 F. 874, 160 C. C. A. 96.

§ 1472. (R. S. § 863.) Depositions de bene esse.

1. Construction and operation of statute in general.—Equity rule 47 (Comp. St. 1916, p. 2516), limiting time for taking depositions without order of court does not vary this section, but merely regulates the procedure, and was within the power of the Supreme Court. Audiffren Refrigerating Mach. Co. v. General Electric Co. (D. C.) 245 F. 783.

2. Mode of taking depositions.—Though defendant would have sufficient protection by taking depositions under this section, held that, under Act March 9, 1892 (Comp. St. 1916, § 1476), complainant's motion for an open commission to take depositions on written interrogatories in conformity with the state practice should be granted; a considerable economy being effected. Cook v. Flagg (D. C.) 233 F. 713.

6. Right to take depositions—When witness lives at greater distance than 100 miles.—Despite equity rule 46 (Comp. St. 1916, p. 2516), held in view of this section, that testimony of infirm witnesses residing more than 100 miles from place of trial might be taken before judge prior to trial. Jennings v. Smith (D. C.) 244 F. 836.

10. Notice of taking.—Court has power to vacate notices of taking of depositions de bene esse under this section, if the procedure is irregular. Audiffren Refrigerating Mach. Co. v. General Electric Co. (D. C.) 245 F. 783.

14½. —— Notice of filing deposition.—Claimants, being notified of taking of deposition under this section, and not appearing, held not entitled to object that they were not notified of filing of same; it not clearly appearing whether, under local laws of Porto Rico, where deposition was used, that they were entitled to such notice. The D. J. Sawyer, 236 F. 913, 150 C. C. A. 175.

15. Time of taking.—Under Rev. St. §§ 862, 863, 917 (Comp. St. 1916, §§ 1470, 1472, 1543), and equity rules 47, 56 (Comp. St. 1916, pp. 2516, 2520), plaintiff could not, after expiration of time for taking depositions prescribed by rules, take deposition on notice to defendant without order of court. Block v. Arrowsmith Mfg. Co. (D. C.) 243 F. 775; Audiffren Refrigerating Mach. Co. v. General Electric Co. (D. C.) 245 F. 783.

21. Retaking and re-examination.—The testimony of the same witness may be taken by deposition de bene esse, under this section, more than once, in equity as well as at law. Audiffren Refrigerating Mach. Co. v. General Electric Co. (D. C.) 245 F. 783.

Cited without definite application, In re Subpœnas Duces Tecum (D. C.) 248 F. 137.

§ 1474. (R. S. § 865.) Transmission to the court of depositions de bene esse.

12. Admission in evidence—Existence and continuance of grounds for taking.—Deposition taken under stipulation is admissible, without proof that witness was not, at time it was offered, within jurisdiction of court. The Colusa, 248 F. 21, 160 C. C. A. 161, affirming decree (D. C.) 241 F. 968.

16. —— Waiver of objections.—Where defendant read in evidence depositions taken by plaintiff, defendant cannot complain on appeal that the depositions contained incompetent and hearsay evidence. Chicago & E. I. R. Co. v. Collins Produce Co., 235 F. 857, 149 C. C. A. 169.

Where expert accountant, on the taking of his deposition, produced corporate books then in his custody, testified as to matters found therein, and made a tabulation therefrom which was attached to his deposition, all without objection, a stipulation as to the reservation of objections does not warrant exclusion of deposition on trial upon ground that books were not produced. Columbia-Knickerbocker Trust Co. v. Abbot, 247 F. 833, 160 C. C. A. 55, certiorari denied 39 S. Ct. 6, 63 L. Ed. —.

19. —— Deposition taken in another suit or proceeding.—Contrary to the general rule, a deposition of a witness now dead, taken in a suit between strangers, if tending to prove ancient possession of land, is admissible in evidence; but a deposition of the then clerk of the United States Circuit Court for the Eastern District of Virginia as to destruction of the records of that court in 1865, taken many years before trial in another action, is inadmissible to prove that fact, as it might be shown by the custodian in charge of the records at the time of trial. Virginia & West Virginia Coal Co. v. Charles (C. C. A.) 251 F. 83.

The admissibility of depositions taken in a prior suit between the same parties must be determined in the case in which they are offered. Young v. J. Samuels & Bro. (D. C.) 232 F. 784.

The general rule in Virginia is that depositions taken in a former suit cannot be read in evidence in a subsequent suit, unless there be substantial

identity both of parties and issues. Virginia & West Virginia Coal Co. v. Charles (D. C.) 251 F. 83.

24. Suppression of depositions—Grounds.—Where witness refuses to answer pertinent questions, stating she acts upon advice of counsel, thus evading proper inquiry, her whole testimony may be stricken. Kirkpatrick v. McBride, 232 F. 859, 147 C. C. A. 53, affirming decree McBride v. Kirkpatrick (D. C.) 207 F. 893.

§ 1476. (Act March 9, 1892, c. 14.) Depositions under state laws.

Right to take deposition.—Though defendant would have sufficient protection by taking depositions under Rev. St. § 863 (Comp. St. 1916, § 1472), held that, under this section complainant's motion for an open commission to take depositions on written interrogatories in conformity with the state practice should be granted; a considerable economy being effected. Cook v. Flagg (D. C.) 233 F. 713.

§ 1477. (R. S. § 866.) Depositions under a dedimus potestatem and in perpetuam, etc.

IV. ADMISSION OF DEPOSITIONS IN EVIDENCE

16. Admissibility.—Where, after defendant read the direct testimony in a deposition of one of its witnesses, plaintiff withdrew the cross-examination, and defendant thereafter read the cross-examination, it thereby made the cross-examination its own testimony. American Lumber & Mfg. Co. v. Berthold & Jennings Lumber Co., 233 F. 971, 147 C. C. A. 645.

Where order for taking deposition applied for during trial limited inquiry to one matter, exclusion of testimony as to other matters held within court's discretion. Norma Mining Co. v. Mackay, 241 F. 640, 154 C. C. A. 398.

§ 1479. (R. S. § 868.) Deposition under a dedimus potestatem.

Effect of statute.—While, under Rev. St. §§ 868, 869 (Comp. St. 1916, §§ 1479, 1480), a subpœna duces tecum, commanding witness to produce documents before commissioner authorized to take testimony under dedimus potestatem, is only issued upon application to judge, clerk may issue subpœna duces tecum, directing witness to produce documents in criminal proceeding, for his privilege will in all events be protected. In re Subpœnas Duces Tecum (D. C.) 248 F. 137.

§ 1480. (R. S. § 869.) Subpœna duces tecum under a dedimus potestatem.

Effect of statute.—Where exhibits are offered in evidence, trial court has power to impound them with clerk for future use; such power being analogous to that underlying subpœna duces tecum. Perlman Rim Corporation v. Firestone Tire & Rubber Co. (D. C.) 244 F. 304.

While, under Rev. St. §§ 868, 869 (Comp. St. 1916, §§ 1479, 1480), a subpœna duces tecum, commanding witness to produce documents before commissioner authorized to take testimony under dedimus potestatem, is only issued upon application to judge, clerk may issue subpœna duces tecum, directing witness to produce documents in criminal proceeding, for his privilege will in all events be protected. In re Subpœnas Duces Tecum (D. C.) 248 F. 137.

§ 1487. (R. S. § 876.) Subpœnas to run into another district.

Construction and operation.—This section includes subpœnas duces tecum, as well as ordinary subpœnas ad testificandum. In re Subpœnas Duces Tecum (D. C.) 248 F. 137.

Witnesses beyond 100-mile limit.—A subpœna, served without the district and more than 100 miles from the place of holding court, has no potency, and a witness attending pursuant thereto is regarded as attending voluntarily. U. S. v. Southern Pac. Co. (D. C.) 230 F. 270.

§ 1494. (R. S. § 882.) Copies of department records and papers.

Copies of records—Weigher's certificate.—A government weigher's certificate, stating the quantity, etc., of certain beans, not identified with those involved in the suit, and whose accuracy was not proved, nor its contents brought home to defendant, is incompetent. Llopis v. P. Pastene & Co. (Sup.) 159 N. Y. S. 773.

—— **Records of weather bureau.**—The records of the weather bureau at St. Louis that the greatest rainfall occurring in over 40 years occurred during a particular storm are inadmissible to prove conditions existing in Madison county. Handfelder v. East Side Levee & Sanitary District, 194 Ill. App. 262.

§ 1496. (R. S. § 884.) Instruments and papers of Comptroller of the Currency.

Authentication.—In view of Rev. St. §§ 178, 327, 884 (Comp. St. 1916, §§ 260, 498, 1496), as to certificates of Comptroller of the Currency all certificates from the office of the Comptroller of the Currency of the United States, authenticated by seal, are admissible. Weitzel v. Brown, 112 N. E. 945, 224 Mass. 190.

§ 1497. (R. S. § 885.) Organization certificates of national banks.

Parol evidence.—Under Rev. Laws Okl. 1910, § 5112, and this section, parol evidence is competent to prove existence of a national bank, where its existence is called in question collaterally. Farmers' Nat. Bank v. Johnston (Okl.) 176 P. 236.

§ 1504. (R. S. § 891.) Copies of records of General Land-Office.

Receiver's receipt.—A receiver's receipt from the United States government for land, offered by plaintiff as a foundation for his title in an action to quiet title, without being otherwise certified or shown to be genuine, was inadmissible for any purpose. Olson v. Kelsey (Colo.) 157 P. 194.

§ 1508. (R. S. § 895.) Extracts from the Journals of Congress.

Confirmation of officer's appointment.—Where plaintiff deraigned title from a deed executed by the designated collector of the federal direct tax of 1816, an extract from the Journal of the Executive Proceedings of the United States, certified in accordance with this section, showing that the nomination of the grantor in the deed relied on as collector of direct taxes was confirmed in 1814, is admissible, though not showing that he was appointed designated collector. Virginia & West Virginia Coal Co. v. Charles (D. C.) 251 F. 83.

§ 1519. (R. S. § 905.) Authentication of legislative acts and proof of judicial proceedings of State, etc.

I. AUTHENTICATION OF LEGISLATIVE ACTS

1. Proof of foreign statutes.—Act of Congress providing, how acts of state Legislature shall be authenticated does not deprive state of power to declare, as done by Rev. St. La. 1440, that statutes of another state published in book form shall be admissible and prima facie evidence of its contents. Marzette v. Cronk, 75 So. 107, 141 La. 437.

3. Necessity of proof—Judicial notice.—The courts of the forum will not take judicial notice of foreign statutes. Swan v. Gregory (Mich.) 161 N. W. 933; Otto v. Pryor (Mo. App.) 193 S. W. 28.

Under Code W. Va. 1913, c. 13, § 4 (sec. 333), judicial notice will be taken by the courts of the laws of a foreign state. Appalachian Marble Co. v. Masonic Temple Ass'n (W. Va.) 91 S. E. 403.

10. Parol evidence.—In action based on laws of state of Kansas, permitting one of plaintiff's attorneys, acquainted with laws of Kansas, to testify as to what law was in that jurisdiction, held not error. Church v. Central Coal & Coke Co. (Mo. App.) 195 S. W. 573.

It was not an abuse of discretion for the trial court to permit an attorney to testify what the law of Alaska was on a given subject, where he testified that he had practiced law there for three years and was so practicing when the Code went into effect. Lipsett v. Dettering, 162 P. 1007, 94 Wash. 629.

II. PROOF OF JUDICIAL PROCEEDINGS

(A) Construction, operation, and validity of statutory provision

14. "Records and judicial proceedings."—The probate of a will in common form under Civ. Code Ga. 1910, § 3855, held not a judgment entitled to full faith and credit by virtue of this section in courts of other states. Frederick v. Wilbourne (Ala.) 73 So. 442.

(B) Authentication in general

28. Whether this method exclusive.—A copy of a foreign judgment duly attested, sealed, and certified as required by this section, is admissible in evidence, though not authenticated according to Rev. Laws Okl. 1910, § 5098. Block v. Schafer (Okl.) 162 P. 456.

In an action to recover on a judgment of another state, proof by witness of the attached copy as a compared copy of the judgment on the original docket of the court of such state is admissible. Wallace v. Schneider (Tex. Civ. App.) 185 S. W. 333.

31. Requisites and sufficiency.—Under Civ. Code Ga. 1910, § 5824, exemplification of record of letters of administration of administratrix of de-

ceased nonresident plaintiff in whose name action was revived held sufficient within this section. Stewart v. Fisher, 89 S. E. 1052, 18 Ga. App. 519.

Where a certificate of judicial proceedings in a foreign state pursuant to act of Congress was signed by a deputy clerk and chancellor certified only to official character of clerk, held, that the certificate is not sufficient to be admissible in evidence. Painter v. Bank of Osyka, 73 So. 266, 140 La. 457; Id., 73 So. 268, 140 La. 465.

A certified copy of foreign judgment sued on held properly authenticated under this section, though no judgment is shown to have been signed by the trial judge and filed in the court. Shufeldt v. Bank of Mound City (Okl.) 160 P. 923.

34. —— **Probate proceedings.**—Certified copy of will executed in Peoria, Ill., and of probate thereof in Pueblo, Colo., testatrix's residence, was not competent evidence of title to realty in Illinois, where authenticated copy was not recorded in Illinois according to Statute on Wills, § 2, and certificate of clerk of Colorado probate court failed to state that will was executed agreeably to laws of Colorado as provided by section 9. Barnett v. Barnett (Ill.) 120 N. E. 532.

Purported certificate of appointment in another state as executors of original nonresident defendant, not bearing seal of any court and not accompanied by letters testamentary or by a copy of will, etc., did not sufficiently prove that parties presenting it were executors entitled to be made parties defendant. First Nat. Bank v. Pancake (N. C.) 90 S. E. 515.

Under Shannon's Code Tenn. §§ 3914, 3915, and this section, a certified copy of a foreign will of one of plaintiff's predecessors in title, which was probated by the proper officer in the foreign state, and a duly certified copy of which, with the certificate of probate, was recorded in Tennessee, held admissible. Fielder v. Pemberton, 189 S. W. 873, 136 Tenn. 440.

37. —— **Necessity of complying with statute.**—The records and judicial proceedings of a court of another state are not admissible in evidence unless attested and verified as required by Code W. Va. 1913, c. 130, § 19 (sec. 4875). Central Trust Co. of Illinois v. Hearne (W. Va.) 88 S. E. 450.

Where certificate of clerk to document offered as foreign judgment does not comply with St. Wis. 1915, §§ 4140, 4145, or this section, the judgment is inadmissible. Arndt v. Burghardt, 162 N. W. 317, 165 Wis. 312.

Where copy of foreign judgment when offered in evidence was objected to generally, counsel stating that he did not care to press objection, and subsequent evidence showed payment by judgment debtor on judgment, admission of the copy, though it was defective, was not erroneous. Id.

(C) Attestation by clerk

41. **Requisites and sufficiency of attestation.**—Certificate under seal of court of another state, signed by its clerk, stating a person named to be one of its presiding judges, and certificate signed by such person, designating himself as "presiding judge," complied with this section. Gustavus v. Dahlmer (Sup.) 163 N. Y. S. 132, 98 Misc. Rep. 462.

(D) Certification

45. **Necessity of certification.**—A foreign judgment certified by clerk, but not by court, is admissible where witness testified that it was true copy of original, which he had examined. Givens v. Givens (Tex. Civ. App.) 195 S. W. 877.

This section requires a judge's certificate as well as attestation by clerk, to entitle transcript of foreign court proceedings to be introduced in evidence. Nease v. Broadwater Mercantile Co. (Tex. Civ. App.) 206 S. W. 692.

(E) "Faith and credit"

54. **What faith and credit required—Same as domestic judgment.**—In action on a sister state judgment, defense being pending appeal from judgment, effect of appeal on finality of the judgment and its admissibility in evidence is determinable by the laws of state where rendered. Van Natta v. Van Natta (Tex. Civ. App.) 200 S. W. 907.

56. —— **Presumptions in favor of foreign judgments.**—When copy of foreign judgment is offered in evidence without signature of trial judge, and no proof is offered that such signature is necessary in foreign state, court, assuming that law in such state is same as its own law, should admit copy, since no such signature is necessary in Wisconsin. Arndt v. Burghardt, 162 N. W. 317, 165 Wis. 312.

62. **Scope of inquiry in local court—Conclusiveness of judgment, in general.**—Under Const. U. S. art. 4, § 1, and this section, save that the question of jurisdiction may be raised, judgment of a foreign court is as conclusive in court of another state as though it were domestic judgment, and no question regarding conduct of trial can be raised. Lucas v. Vulcan Iron Works (D. C.) 233 F. 823.

Duly authenticated record of judgment of sister state is prima facie evidence of jurisdiction of court rendering such judgment. Gustavus v. Dahlmer (Sup.) 163 N. Y. S. 132, 98 Misc. Rep. 462.

A judgment, entered upon a note containing a warrant of attorney to confess judgment without personal service

of the maker, is a judgment within the full faith and credit clause of the federal Constitution (article 4, § 1), and this section, pursuant thereto. Miller v. Miller, 156 P. 8, 90 Wash. 333.

66. —— **Jurisdiction of foreign court.**—Where right of mother of intestate to share in stock in corporation in state of mother's residence and a claim against the corporation was adjudicated by decrees of another state not having jurisdiction of the mother or the corporation by service of process or appearance decrees are not entitled to full faith under Const. art. 4, § 1, and this section. Baker v. Baker, Eccles & Co., 37 S. Ct. 152, 242 U. S. 394, 61 L. Ed. 386, affirming decree 173 S. W. 109, 162 Ky. 683.

In an action in Illinois on a judgment rendered against an Illinois corporation in a foreign state, it is error to admit in evidence a transcript of such judgment, where it not only does not show either directly or by implication that defendant was transacting business in such foreign state, but the petition in the action in such state alleges defendant to be an Illinois corporation having its principal office and place of business in Illinois and maintaining no office or place of business in the foreign state nor complying with the laws of the latter as to foreign corporations doing business therein. Frick-Reid Supply Co. v. Consolidated Adjustment Co., 197 Ill. App. 303.

CITED WITHOUT DEFINITE APPLICATION

Gasquet v. Lapeyre, 37 S. Ct. 165, 242 U. S. 367, 61 L. Ed. 367, dismissing writ of error Interdiction of Gasquet, 68 So. 89, 136 La. 957.

§ 1520. (R. S. § 906.) Proofs of records, etc., not pertaining to courts.

7. **Authentication in general—Requisites and sufficiency.**—Records and books kept in a public office of a foreign state, not appertaining to a court, are not admissible unless attested and certified as required by Code W. Va. 1913, c. 130, § 20 (sec. 4876). Central Trust Co. of Illinois v. Hearne (W. Va.) 88 S. E. 450.

13. **Certificate to attestation—Requisites and sufficiency.**—An exemplified copy of special assessment proceedings of an Indiana city is not admissible in the courts of this state, where the certificate of the city clerk attached to such copy does not show that the proceedings conformed to the laws of Indiana. Ledowsky v. Gordon, 194 Ill. App. 442.

§ 1521. (R. S. § 907.) Copies of foreign records, etc., relating to land-titles in the United States.

Authentication of copies.—Letters from Mexican officials to other officials in Mexico, certified by their official custodian, are not admissible as certified copies, under Rev. St. arts. 3694, 3700. Kenedy Pasture Co. v. State (Tex. Civ. App.) 96 S. W. 287.

§ 1523. (Act June 20, 1874, c. 333, § 2.) Revised Statutes as evidence.

Judicial notice of federal laws.—The laws of Congress are not foreign laws that must be pleaded and proven in state courts. Pipes v. Missouri Pac. Ry. Co., 184 S. W. 79, 267 Mo. 385; Stubblefield v. St. Louis & S. F. R. Co. (Mo. App.) 184 S. W. 149.

Under Code W. Va. 1913, c. 13, § 4 (sec. 333), judicial notice will be taken by the courts of the laws of the United States. Appalachian Marble Co. v. Masonic Temple Ass'n (W. Va.) 91 S. E. 403.

CHAPTER EIGHTEEN—PROCEDURE

Sec.
1534. Sealing and testing of writs.
1536. Mesne process and proceedings in equity and admiralty.
1537. Practice and proceedings in other than equity and admiralty causes to conform to practice, etc., in courts of State.
1538. Laws of the States; rules of decision.
1539. Attachments, etc., in common-law causes as provided by laws of State.
1540. Executions, etc., in common-law causes as provided by laws of State.
1541. Rights and remedies of occupying claimants of land as given by statutes of State.
1543. Power of the Supreme Court to regulate the practice of district courts.
1544. Practice in the several courts to be regulated by their own rules.
1545. Suits for duties, imposts, taxes, penalties, or forfeitures.
1547. Orders to save costs, and consolidation of causes of a like nature.
1565. Sale after condemnation.
1567. Delivery bond in admiralty proceedings; general bond by owner of vessel.
1571. Bail and affidavits.
1573. When clerks may take bail de bene esse.
1574. Proceedings in suits against United States.
1575. Petition in suit against United States.
1583. Trial of issues of fact.
1584. Trial of issues of fact by jury.
1585. Trial of issues of fact in admiralty causes.
1587. Trial of issues of fact by the court.
1590. Bill of exceptions.
1591. Defects of form; amendments.
1592. Death of parties.
1593. Death of one of several plaintiffs or defendants.
1594. Death, expiration of term, etc., of officer sued in official capacity, etc.

JUDGMENTS, COSTS, EXECUTIONS, AND MONEYS PAID INTO COURT

1605. Interest on judgments.
1606. Judgments of United States courts to be liens on property, etc.
1607. Indices of judgment records to be kept by clerks.
1608. When judgments of United States courts cease to be liens.
Sec.
1609. Plaintiff or petitioner recovering less than certain amounts to recover no costs.
1614. Costs not recoverable in certain suits for infringement of patent, unless disclaimer entered, etc.
1615. When costs of prosecution to be paid by defendant.
1622. Taxation of fees of witness before a commissioner.
1623. Attorney liable for costs vexatiously increased by him.
1624. Bill of costs, how taxed.
1626. Suits, etc., by poor persons.
1630a. Suits by seamen without prepayment of or bond for costs.
1633. Executions stayed on conditions.
1635. Execution not to issue against officers of revenue in cases of probable cause, etc.
1636. Imprisonment for debt.
1637. Discharge from arrest or imprisonment.
1644. Moneys paid into court, where and how deposited.
1645. Moneys paid into court, how withdrawn; disposition of moneys unclaimed.

PROCEDURE ON ERROR AND APPEAL

1646. Appeals, writs of error, etc.
1647. Appeals and writs of error to circuit courts of appeals; time for taking.
1648. Circuit courts of appeals to Supreme Court; time for taking.
1649. To Supreme Court, time for taking.
1649a. Dismissal; wrong remedy.
1651. Provisions made applicable to circuit courts of appeals.
1653. Removal of causes by writ of error.
1654. Transcripts on appeals [in equity and admiralty].
1656. Printed transcript.
1657. Same.
1658. Citation.
1660. Bond in error and on appeal.
1666. Supersedeas.
1668. Review in cases tried without a jury.
1670. Remand of cause.
1672. Reversal on error limited.

CRIMINAL PROCEDURE

1674. Offenders; how arrested and removed.
1678. Persons arrested to be taken before nearest officer; complaint attached to warrant.
1679. Bail in cases not capital.

Sec.
1684. When penalty of recognizances may be remitted.
1690. Charges joined in one indictment.
1691. Indictments; defects of form.
1692. Judgment on demurrer to an indictment.
1694. Copy of writ to be jailer's authority.
1699. Copy of indictment and list of jurors and witnesses to be delivered to prisoner in capital cases.
1703. Writ of error in capital cases.
1704. Writs of error in criminal cases on behalf of United States in certain instances.

§ 1534. (R. S. § 911.) Sealing and testing of writs.

2. Construction and application of section in general.—This section applies only to writs and process issuing from the courts themselves, and not to notices given by the parties, which are not process of the courts; hence, as condemnation proceedings may under the state statute be instituted upon mere notice, such proceedings are valid, though the notices are not under seal of the court and signed by the clerk. In re Condemnation Suits by United States (D. C.) 234 F. 443.

§ 1536. (R. S. § 913.) Mesne process and proceedings in equity and admiralty.

RULES AND NOTES OF DECISIONS

A. Equity Practice and Procedure.
B. Admiralty Practice and Procedure.

A. EQUITY PRACTICE AND PROCEDURE

I. Equity Rules.
II. Equity Procedure in General.

I. Equity Rules

These rules were republished in 1918. The changes made thereby are indicated below.

These rules, so far as applicable, shall be enforced in proceedings under the Copyright Act of 1909, by a provision of rule 1 of the Supreme Court rules adopted under the authority of section 25 of that act. See note to § 9546, post.

RULE 4. NOTICE OF ORDERS

Applicability.—Equity rule 4 does not apply to the entry of a judgment discharging a bankrupt. In re Stafford (D. C.) 240 F. 155.

RULE 7. PROCESS, MESNE AND FINAL

Cited without definite application, Alexander v. Fidelity Trust Co. (D. C.) 238 F. 938.

RULE 8. ENFORCEMENT OF FINAL DECREES

Supplementary proceedings.—Under Rev. St. §§ 913, 914, 916, 917 (Comp. St. 1916, §§ 1536, 1537, 1540, 1543), and new equity rule No. 8, a trustee against whom a decree was rendered in his representative capacity may be examined in supplementary proceedings. Brown v. Fletcher (D. C.) 239 F. 360.

Cited without definite application, Alexander v. Fidelity Trust Co. (D. C.) 238 F. 938.

RULE 9. WRIT OF ASSISTANCE

Cited without definite application, Alexander v. Fidelity Trust Co. (D. C.) 238 F. 938.

RULE 13. MANNER OF SERVING SUBPŒNA

Cited without definite application, Central Ry. Signal Co. v. Jackson (D. C.) 254 F. 103.

RULE 18. TECHNICAL FORMS ABROGATED

Signature and verification.—Under equity rules 18 and 24 answer signed by solicitor, need not be signed nor verified by defendant. Kinney v. Rice (D. C.) 238 F. 441.

RULE 19. AMENDMENTS GENERALLY

Particular amendments.—Under equity rules 19, 20, a telegraph company will be permitted to amend a bill claiming a perpetual easement in a railroad right of way, so as to set forth the facts on which its claim is based. Western Union Telegraph Co. v. Atlanta & W. P. R. Co., 238 F. 36, 151 C. C. A. 112, modifying order (D. C.) 227 F. 465.

Where it clearly appeared that an intervening petitioner was entitled to a lien on movables, held that, under equity rules 19 and 20, petition should be allowed to be amended, so as to state further facts showing right to lien; decree awarding lien on other property being reversed. Whitney-Central Trust & Savings Bank v. General Fire Extinguisher Co., 240 F. 631, 153 C. C. A. 429.

Under equity rules 19 and 26, a District Court has power to consolidate for trial patent causes which involve the same patent, where the parties are the same, although it effected a broadening out of the charge of infringement over a prior election in the record. Union Tool Co. v. Wilson, 249 F. 736, 161 C. C. A. 646, affirming decree Wilson v. Union Tool Co. (D. C.) 237 F. 847.

Under equity rule 19, which leaves the allowance of amendments to the discretion of a court, an amendment to a bill may be allowed, although the matter introduced was known to complainant when the original bill was filed. Whitaker v. Whitaker Iron Co. (D. C.) 238 F. 980.

Technical defects.—That trial judge, in action by receiver against directors of corporation, erroneously held that proof of conspiracy was necessary, held immaterial, where he found the other essential facts against complainant. Howland v. Corn, 232 F. 35, 146 C. C. A. 227.

A bill for infringement of a patent which does not allege that the patent was issued in the name of the United States under the seal of the Patent Office or that it was signed by the Commissioner, nor annex a copy of the patent or make profert thereof, is defective, but is amendable under equity rule 19. Schaum & Uhlinger v. Copley-Plaza Operating Co. (D. C.) 243 F. 924.

RULE 20. FURTHER AND PARTICULAR STATEMENT IN PLEADING MAY BE REQUIRED

Amendment of bill.—Under equity rules 19, 20, a telegraph company will be permitted to amend a bill claiming a perpetual easement in a railroad right of way, so as to set forth the facts on which its claim is based. Western Union Telegraph Co. v. Atlanta & W. P. R. Co., 238 F. 236, 151 C. C. A. 112, modifying order (D. C.) 227 F. 465.

Where it clearly appeared that an intervening petitioner was entitled to a lien on movables, held that, under equity rules 19 and 20, petition should be allowed to be amended, so as to state further facts showing right to lien; decree awarding lien on other property being reversed. Whitney-Central Trust & Savings Bank v. General Fire Extinguisher Co., 240 F. 631, 153 C. C. A. 429.

Motion for further particulars.—Motion by defendants in a stockholder's suit for further and better particulars under equity rule 20 held proper. Whitaker v. Whitaker Iron Co. (D. C.) 238 F. 980.

Cited without definite application, Jennings v. Smith (D. C.) 242 F. 561; Union Sulphur Co. v. Freeport Texas Co. (D. C.) 251 F. 634.

RULE 21. SCANDAL AND IMPERTINENCE

Pleading law.—Statements of law, statutory and customary, accompanied by copious references to decisions, should not be included in a bill. Western Union Telegraph Co. v. Louisville & N. R. Co. (C. C. A.) 250 F. 199.

RULE 22. ACTION AT LAW ERRONEOUSLY BEGUN AS SUIT IN EQUITY —TRANSFER

Nature of remedy and transfer of suit in general.—Bill to collect attorney's fees by attachment on the land, originally filed in the state court, held not to show that the remedy at law was inadequate so that it should, after removal, have been transferred to the law side of the court under Judicial Code, § 38 (Comp. St. 1916, § 1020), and equity rule 22. Edward Hines Lumber Co. v. Bowers, 238 F. 782, 151 C. C. A. 632.

That, in suit in equity, right asserted was legal title to land, and possession and enjoyment thereof was sought held not to justify dismissal under equity rule 22, but the suit should be transferred to the law side of the court. A. G. Wineman & Sons v. Reeves, 245 F. 254, 157 C. C. A. 446.

Court held not to have erred in dismissing suit to enforce statutory liability of a number of stockholders, instead of transferring it to the law side of the court, where separate action against each stockholder would be nec-

essary. Clinton Mining & Mineral Co. v. Cochran, 247 F. 449, 159 C. C. A. 503.

Under equity rule 22, the fact that there is a remedy at law is no ground for demurrer or motion to dismiss a bill, but the proper procedure is to move to transfer it to the law side. Fay v. Hill, 249 F. 415, 161 C. C. A. 389.

A draft or check was purchased in England and sent by the purchaser to a bank for plaintiff's account. It was presented for payment at the clearing house and credited to the payee, but subsequently returned on the ground that the drawee had received no instructions to pay it; whereupon the payee bank drew its check and in form repaid the amount to the drawee. Before payment, the drawer made an assignment for the benefit of creditors, and a petition in bankruptcy was filed against him in New York. A creditor attempted to attach the account in the drawee bank, and plaintiff sued the bank to declare a trust for plaintiff and named as defendants the drawee bank, the attaching creditor, the purchaser of the draft, the drawer, his assignee, the petitioning creditors in bankruptcy, and the receiver in bankruptcy. Held that, there being the requisite diversity of citizenship between plaintiff and the drawee bank, the court had jurisdiction, since, if equitable jurisdiction did not exist, jurisdiction at law existed on the theory that there was a claim in personam against the drawee for money had and received under a mistake of fact, and under the new equity rules the claim would be disposed of whether at law or in equity. Eastman Kodak Co. v. National Park Bank (D. C.) 231 F. 320.

Under equity rules 22, 23, suit in equity will not be transferred to law docket, because there is included a matter ordinarily determinable at law, where suit is one primarily for equitable relief. Wright v. Barnard (D. C.) 233 F. 329.

There is no authority, under equity rule 22, for the transfer of a suit for equitable relief brought on the law side to the equity side. Waldo v. Wilson, 231 F. 654, 145 C. C. A. 540, reversing decree Wilson v. Waldo (D. C.) 221 F. 505 and certiorari denied Id., 36 S. Ct. 724, 241 U. S. 673, 60 L. Ed. 1231.

Where a bill states a cause of action cognizable in equity, the denial of a motion made under equity rule 22 to transfer the cause to the law side of the court is not error. Gatewood v. New River Consol. Coal & Coke Co., 239 F. 65, 152 C. C. A. 115.

Equity will grant relief to a creditor against the proceeds of a sale of its insolvent debtor's property by a nonresident trustee, to whom it had been fraudulently conveyed to prevent plaintiff from enforcing his claim without requiring plaintiff to first secure a judgment at law. Murray v. Sioux Alaska Mining Co., 239 F. 818, 152 C. C. A. 604.

Equitable relief not awarded.—Under Judicial Code, § 267 (Comp. St. 1916, § 1244), court of equity, after denial of injunction, which was the only equitable relief sought, has no jurisdiction to proceed with cause for purpose of awarding damages to complainant, but cause should be transferred to law side of court, pursuant to equity rule 22. American Falls Milling Co. v. Standard Brokerage & Distributing Co., 248 F. 487, 160 C. C. A. 497.

A cause brought and tried as one in equity, but resulting in a money judgment for breach of contract, ordered by the appellate court transferred to the law side and the judgment corrected accordingly in view of equity rule 22. Equitable Trust Co. of New York v. Denver & R. G. R. Co. (C. C. A.) 250 F. 327.

Time for transfer.—Where a bill in a federal court presents a mere cause of action at law for damages of which equity is without jurisdiction, a motion to transfer the cause to the law side may be made at any time before the taking of proofs. Parkerson v. Borst (C. C. A.) 251 F. 242.

Waiver of objection.—Failure to move to transfer a bill to the law side, on the ground that there is a complete and adequate remedy at law, and proceeding to a hearing, is a waiver of the objection. Fay v. Hill, 249 F. 415, 161 C. C. A. 389.

Effect of transfer.—Where a bill to cancel for fraud a contract for the exchange of lands, and a deed, was transferred to the law side of the court under equity rule 22, because plaintiff had put it out of his power to restore defendants to their former position, an amended petition, filed by order of court, setting up same transaction and fraud, cannot be regarded as stating a new cause of action, within the statute of limitations, but must be considered continuation of original suit. Friederichsen v. Renard, 38 S. Ct. 450, 247 U. S. 207, 62 L. Ed. 1075, reversing judgment 231 F. 882, 146 C. C. A. 78.

Cited without definite application, Cooper v. Jewett (C. C. A.) 233 F. 618; Munger Laundry Co. v. National Marking Mach. Co. (C. C. A.) 252 F. 144; Scattergood v. American Pipe & Construction Co. (D. C.) 247 F. 712; Marquette Cement Mining Co. v. Oglesby Coal Co. (D. C.) 253 F. 107.

RULE 23. MATTERS ORDINARILY DETERMINABLE AT LAW, WHEN ARISING IN SUIT IN EQUITY TO BE DISPOSED OF THEREIN

Applicability of rule.—Where only equitable relief sought, which was injunction, was denied, court of equity is without jurisdiction to retain cause and award complainant damages; equity rule 23 applying only to case wherein court of equity has jurisdiction. American Falls Milling Co. v. Standard Brokerage & Distributing Co., 248 F. 487, 160 C. C. A. 497.

Cited without definite application. Cooper v. Jewett (C. C. A.) 233 F. 618; Bankston v. Commercial Trust & Savings Bank (C. C. A.) 250 F. 985; Munger Laundry Co. v. National Marking Mach. Co. (C. C. A.) 252 F. 144.

RULE 24. SIGNATURE OF COUNSEL

Signature and verification by party.—Under equity rules 18 and 24, where answer is signed by solicitor, it need not be signed nor verified by defendant. Kinney v. Rice (D. C.) 238 F. 441.

RULE 25. BILL OF COMPLAINT—CONTENTS

Name, citizenship, and residence of parties.—Where a suit is brought in a federal court, not only in behalf of complainants, but also in the interest of others, under equity rule 25, the names and residences of such others should be alleged in the bill. Whitaker v. Whitaker Iron Co. (D. C.) 238 F. 980.

Statement of ultimate facts.—Under equity rule 25 a bill which contains repetitions, redundancies, and statements of conclusions is subject to attack in accordance with rule 29. Crim v. Rice, 232 F. 570, 146 C. C. A. 528.

Statements of law, statutory and customary, accompanied by copious references to decisions, should not be included in a bill. Western Union Telegraph Co. v. Louisville & N. R. Co. (C. C. A.) 250 F. 199.

Under equity rule 25 allegations in bill of due diligence on part of plaintiff, which set out various letters showing diligence, being properly pleaded, are not subject to motion to strike on ground of violation of rules of brevity. Foster v. Callaghan & Co. (D. C.) 248 F. 944.

Where bill, based on written instruments to which defendants were parties, set forth execution and import of writings, that was a sufficient statement of ultimate facts within equity rule 25, and defendants, though entitled to know contents of instruments, could not compel plaintiff to set forth copies of writings, by motion for further and better statement of claim, without averring ignorance thereof as basis for motion. St. Louis Car Co. v. J. G. Brill Co. (D. C.) 249 F. 502.

—— Bill for infringement of patent.—Requisites of a bill for infringement considered under equity rule 25. Bayley & Sons v. Braunstein Bros. Co. (D. C.) 237 F. 671.

Under equity rule 25 the bill in an infringement suit, which asks for a preliminary injunction, must be verified by some one showing that he has knowledge of the facts upon which such relief is asked. Scheuerle v. Onepiece Bifocal Lens Co. (D. C.) 241 F. 270.

Equity rule 25 has not changed established practice requiring that bill for infringement shall contain distinct allegations of compliance with Rev. St. §§ 4886, 4887, as amended by Act March 3, 1897, c. 391, §§ 1, 3 (Comp. St. 1916, §§ 9430, 9431). Schaum & Uhlinger v. Copley-Plaza Operating Co. (D. C.) 243 F. 924.

RULE 26. JOINDER OF CAUSES OF ACTION

Causes which may be joined.—A bill for the foreclosure of two mortgages held good under equity rule 26, permitting the joinder of causes of action when it will promote the convenient administration of justice. Crawford v. Washington Northern R. Co., 233 F. 961, 147 C. C. A. 635.

Under equity rules 19 and 26 a District Court has power to consolidate for trial patent causes which involve the same patent, where the parties are the same, although it effected a broadening out of the charge of infringement over a prior election in the record. Union Tool Co. v. Wilson, 249 F. 736, 161 C. C. A. 646, affirming decree Wilson v. Union Tool Co. (D. C.) 237 F. 847.

This rule, though prescribed by the Supreme Court, cannot override statutory limitations of jurisdiction, and does not authorize the joinder with a suit for infringement of patent of a suit for unfair competition between citizens of the same state. Unit Const. Co. v. Huskey Mfg. Co. (D. C.) 241 F. 129.

Under equity rule 30, and in view of rule 26, held, that defendant might plead counterclaim unrelated to subject-matter of principal suit. Paramount Hosiery Form Drying Co. v. Walter Snyder Co. (D. C.) 244 F. 192.

Under equity rule 26 it is no objection to a bill that it joins several causes of action if all are cognizable in

equity and are between the same parties. Eclipse Mach. Co. v. Harley-Davidson Motor Co. (D. C.) 244 F. 463.

Separate trials.—In patent infringement suit, where defendant's answer denied plaintiff's title, and also attacked validity of the patent, plaintiff's remedy was to ask separate trial as to title, which a court of equity could grant, under equity rules 26, 29. Cleveland Eng. Co. v. Galion D. M. Truck Co. (D. C.) 243 F. 405.

Cited without definite application, St. Louis Car Co. v. J. G. Brill Co. (D. C.) 249 F. 502.

RULE 27. STOCKHOLDER'S BILL

Construction in general.—This rule applies to stockholders' suits asserting derivative rights on behalf of the corporation. Bogert v. Southern Pac. Co., 244 F. 61, 156 C. C. A. 489.

Equity rule 27, prescribing requisites of stockholder's bill, held not to apply to a suit brought by a stockholder in his own right against the corporation to enjoin it from doing an illegal act. General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

Sufficiency of allegations in general.—Complainant, who was the owner of a fraction of 1 per cent. of the stock of a national bank, brought suit against the bank and a former president to set aside an agreement between the directors and such officer under which, on his resignation, he was paid a sum in cash in settlement of his claim to participation in a pension fund established by resolution of the stockholders. Complainant alleged a request to the directors to bring suit to recover the money, and their refusal, and that the suit was not collusive, but did not allege any application to the stockholders, although there had been a meeting since the transaction. There was no allegation of fraud, nor that the directors owned a controlling stock interest, nor that they had any interest adverse to that of the corporation or the other stockholders. Held, that complainant did not show compliance with the requirements of equity rule 27 to entitle him to maintain the suit. Heinz v. National Bank of Commerce in St. Louis (C. C. A.) 237 F. 942.

A stockholder's bill held to state facts sufficient to entitle complainants, as minority stockholders, to invoke the jurisdiction of a court of equity. Krouse v. Brevard Tannin Co., 249 F. 538, 161 C. C. A. 464.

A bill filed by complainants as stockholders, under equity rule 27, against the corporation and others, considered in the light of the corporate records produced at the instance of complainants, held to state no cause of action, and dismissed for want of equity. Whitaker v. Whitaker Iron Co. (D. C.) 238 F. 980.

Effort to obtain action.—The requirement that the bill set forth with particularity the efforts of plaintiff to secure such action as he desires does not apply, where the allegations clearly show that by reason of antagonistic control of the corporation such efforts would have been futile. Krouse v. Brevard Tannin Co., 249 F. 538, 161 C. C. A. 464.

A bill by shareholder of a corporation, designed to secure relief from unlawful acts of president of corporation, who was majority shareholder, held sufficient, under equity rule 27, though alleging no effort to induce the corporation to act. Forbes v. Wilson (D. C.) 243 F. 264.

RULE 29. DEFENSES—HOW PRESENTED

In general.—See Utah Power & Light Co. v. U. S. (C. C. A.) 230 F. 328; Victor Talking Mach. Co. v. Strauss (C. C. A.) 230 F. 449; Cleveland Eng. Co. v. Galion D. M. Truck Co. (D. C.) 243 F. 405.

A court of bankruptcy is an equity court, and subject to new equity rule 29, abolishing demurrers in equity suits. (Per Smith, Circuit Judge.) Pollack v. Meyer Bros. Drug Co., 233 F. 861, 147 C. C. A. 535.

Motions to dismiss.—The defense of estoppel and res judicata may be presented on a demurrer, where upon the allegations of the bill it clearly appears that such defense exists. Hewitt v. Great Western Beet Sugar Co. (C. C. A.) 230 F. 394.

Under Supreme Court equity rule 25 a bill which contains repetitions, redundancies, and statements of conclusions is subject to attack in accordance with rule 29. Crim v. Rice, 232 F. 570, 146 C. C. A. 528.

In a suit to prevent infringement of letters patent, defendant answered denying complainant's right because of its assignment of the letters patent. Held, under equity rules 33, 29, and 30, that such answer set up a defense by way of confession and avoidance, and therefore, though a motion to strike might be applicable where the answer sets up an affirmative defense, such motion is inapplicable. Churchward International Steel Co. v. Bethlehem Steel Co. (D. C.) 233 F. 322.

For requirement that all defenses be incorporated in single motion, by analogy with District of Columbia Supreme Court rule 32, see Ryan v. McAdoo, 46 App. D. C. 117.

In the federal courts of equity, indefiniteness of statement in a bill is not ground for a motion to dismiss, if,

fairly construed, it states a cause of action. U. S. v. United Shoe Machinery Co. (D. C.) 234 F. 127.

Under equity rule 29, an objection to misjoinder cannot be taken as a matter of right, save by motion, plea, or answer, nor can it be insisted upon at trial, though the court on its own motion, in the interests of justice, may raise the question. Swift v. Inland Nav. Co. (D. C.) 234 F. 375.

Where bill in federal court shows on its face that court is without jurisdiction, it should be dismissed by court on its own motion, though question be not raised by defendant. Bronson v. Boards of Sup'rs of Emmet and Kossuth Counties, Iowa (D. C.) 237 F. 212.

Motions to dismiss under equity rule 29 are to be encouraged in suits for infringement of simple design patents, where a mere inspection of the patent is all that would be necessary on final hearing. Mallinson v. Ryan (D. C.) 242 F. 951.

Motion, undertaking to reach certain parts of bill by setting out effect of portions to which it refers, will not be considered, as court cannot be required to go through the entire pleading to find what portion is attacked by motion to strike. Everglades Drainage League v. Napoleon B. Broward Drainage Dist. (D. C.) 253 F. 246.

In the federal courts a party may take advantage of a prior adjudication either by special plea or by offering the record of that adjudication in evidence. Carmody v. Simpson-Sullivan Co., 44 App. D. C. 39.

—— **Determination of motion.**—A motion to dismiss a bill is in the nature of a demurrer, and for the purpose of the motion the allegations of the bill must be taken as true. Edwards v. Bodkin, 249 F. 562, 161 C. C. A. 488; Woodall v. Clark (C. C. A.) 254 F. 526; Lowenthal v. Georgia Coast & P. R. Co. (D. C.) 233 F. 1010; Puder v. Agler (D. C.) 242 F. 95; Forbes v. Wilson (D. C.) 243 F. 264; First Nat. Bank of Cincinnati, Ohio, v. Durr (D. C.) 246 F. 163; Everglades Drainage League v. Napoleon B. Broward Drainage Dist. (D. C.) 253 F. 246.

Motion to dismiss a bill for want of equity appearing on its face, made under equity rule 29, whether before or after answer, must be decided on allegations of the bill alone. Krouse v. Brevard Tannin Co., 249 F. 538, 161 C. C. A. 464; Albert v. Bascom (D. C.) 245 F. 149; Scattergood v. American Pipe & Const. Co. (D. C.) 247 F. 712; Old Dominion Trust Co. v. First Nat. Bank of Oxford, N. C. (D. C.) 252 F. 613.

Under equity rules 29, 81, held that, where demurrer, filed prior to February 1, 1913, was sustained after that date, it would be assumed that it was submitted before such date, or treated as a motion to dismiss. Weber v. Hertzell, 230 F. 965, 145 C. C. A. 159.

A motion to dismiss, made under equity rule 29, although going to the entire bill may be sustained as to a part of the bill only, where such part relates to relief which cannot be granted because of defect of parties, but the bill is good as to other matters. General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

Under equity rule 29, court of equity may in its discretion refuse to dismiss case for defects apparent on face of bill, and require matter to be presented by answer. Wright v. Barnard (D. C.) 233 F. 329.

Waiver of errors in ruling.—Pleading over by a bankrupt after the overruling of his demurrer to a petition of creditors held a waiver of any error in such ruling. (Per Smith, Circuit Judge.) Pollack v. Meyer Bros. Drug Co., 238 F. 861, 147 C. C. A. 535.

Separate hearing.—In a suit for infringement of letters patent by two corporations conspiring together, one of which was alleged to be controlled by the other, held that, under equity rule 29, a separate hearing on defense that there was no conspiracy and one corporation did not control the other cannot be had. Union Sulphur Co. v. Freeport Texas Co. (D. C.) 234 F. 191.

Cited without definite application, American Seeding Mach. Co. v. Dowagiac Mfg. Co. (C. C. A.) 241 F. 875; Hazen Mfg. Co. v. Wareham (C. C. A.) 242 F. 642; Macbeth-Evans Glass Co. v. General Electric Co. (C. C. A.) 246 F. 695; Goudy v. Hansen (C. C. A.) 247 F. 782; Pressed Steel Car Co. v. Union Pac. R. Co. (D. C.) 241 F. 964; Eclipse Mach. Co. v. Harley-Davidson Motor Co. (D. C.) 244 F. 463.

RULE 30. ANSWER—CONTENTS—COUNTERCLAIM

3. Admissions and denials.—In a suit to prevent infringement of letters patent, defendant answered denying complainant's right because of its assignment of the letters patent. Held, that such answer set up a defense by way of confession and avoidance, and therefore, though a motion to strike might be applicable where the answer sets up an affirmative defense, such motion is inapplicable. Churchward International Steel Co. v. Bethlehem Steel Co. (D. C.) 233 F. 322.

Under equity rule 30 the court, upon submission on bill and answer, may consider explanatory facts, and is not limited to mere general denials. Shera v. Merchants' Life Ins. Co. (D. C.) 237 F. 484.

In patent infringement suit denial for want of knowledge is equivalent to specific denial, and puts on plaintiff burden

of proving title, in view of equity rule 30. Southern Textile Mach. Co. v. Fay Stocking Co. (D. C.) 243 F. 917.

3½. **Alternative defenses.**—Under equity rule 30, defendant in an infringement suit may deny plaintiff's title and allege ownership in itself, and also deny the validity of the patent, and cannot be required to elect between such two defenses. Cleveland Engineering Co. v. Galion Dynamic Motor Truck Co. (D. C.) 243 F. 405.

4. **Set-off and counterclaim.**—See Goodno v. Hotchkiss (D. C.) 230 F. 514.

In suit by purchaser to obtain rescission of contract to buy land, held that, under equity rule 30, vendors were entitled to set up as counterclaim their demand for relief, on account of notes for unpaid purchase money which they had taken up from the indorsees. Knupp v. Bell, 243 F. 157, 156 C. C. A. 23.

A claim to a statutory forfeiture, under Code Miss. 1906, § 2795, held not one arising out of the subject-matter of the suit, which could be pleaded as a counterclaim in equity under equity rule 30. Bankston v. Commercial Trust & Savings Bank (C. C. A.) 250 F. 985.

This rule is to simplify pleading only and does not authorize the setting out of any cause of action cognizable in equity, regardless of whether or not it is a proper subject of set-off or counterclaim. Ohio Brass Co. v. Hartman Electrical Mfg. Co. (D. C.) 243 F. 629.

Under equity rule 30, and in view of rule 26, held, that defendant might plead counterclaim unrelated to subject-matter of principal suit. Paramount Hosiery Form Drying Co. v. Walter Snyder Co. (D. C.) 244 F. 192.

A complainant, who brings a suit in equity in a district other than that of his residence, held required to meet in such suit any counterclaim which defendant may plead under equity rule 30. Champion Spark Plug Co. v. Champion Ignition Co. (D. C.) 247 F. 200.

5. —— **Patent infringement cases.**—Under equity rule 30 a defendant in an infringement suit may set up a counterclaim for infringement of other patents, although he could not have maintained an original suit thereon in that district. United States Expansion Bolt Co. v. H. G. Kroncke Hardware Co., 234 F. 868, 148 C. C. A. 466, modifying decree (D. C.) 225 F. 383.

Under rule 30 defendant cannot, as a counterclaim in its answer, set up claims arising out of transactions not included in the original bill; therefore, in a suit for infringement of a patent, defendant cannot counterclaim for plaintiff's infringement of a different patent. Christensen v. Westinghouse Traction Brake Co. (D. C.) 235 F. 898.

A counterclaim for infringement of patents, pleaded in a suit for infringement of trademark, held one arising out of the same transaction, within equity rule 30. Champion Spark Plug Co. v. Champion Ignition Co. (D. C.) 247 F. 200.

7. —— **Failure to plead.**—Under equity rule 30 a defendant, who has a counterclaim arising out of the transaction which is the subject-matter of the suit, is required to set it up, or it is waived. Caflisch v. Humble (C. C. A.) 251 F. 1.

Cited without definite application, S. E. Hendricks Co. v. Thomas Pub. Co. (C. C. A.) 242 F. 37; Safety Car Heating & Lighting Co. v. United States Light & Heat Corporation (D. C.) 237 F. 646.

RULE 31. REPLY—WHEN REQUIRED—WHEN CAUSE AT ISSUE

Necessity and sufficiency of reply.—See Keatley v. United States Trust Co. (C. C. A.) 249 F. 296.

In action by foreign corporation, allegation of amended answer that plaintiff had not complied with state statute as to permit to do business, unsupported by the evidence adduced, must be deemed to be denied by plaintiff without further pleading in view of equity rule 31. Turner Const. Co. v. Union Terminal Co., 229 F. 702, 144 C. C. A. 112.

In a suit to enforce a family agreement for the division of an estate in the proportions indicated in an unsigned will, and to require an accounting by the executrix and administratrix of parties to the agreement as to property received by them upon a division which it was alleged was not in accordance with the agreement, one of the defendants filed a pleading, denominated an "answer," but which, after denying in part and admitting in part the allegations of the complaint, and pleading limitations and a former adjudication, asked for certain orders, judgments, and decrees. Held that, unless the answer was amended, so as to omit the prayers for affirmative relief, a replication to the answer must stand, as the word "counterclaim," in the rules, must be taken to be a general and comprehensive term, including all counter demands which might be the subject of an independent suit in equity, so as to enable the court to pronounce final judgment in the same suit, both on the bill of complaint and the answer. Goodno v. Hotchkiss (D. C.) 230 F. 514.

Under equity rules 31 and 33, new and affirmative matter pleaded in an answer must, upon submission on bill and answer, be deemed denied, and the case is before the court upon admis-

sions and denials of the answer and averments of bill. Shera v. Merchants' Life Ins. Co. (D. C.) 237 F. 484.

Cited without definite application, Williamson v. Electric Service Supplies Co. (C. C. A.) 242 F. 873.

RULE 33. TESTING SUFFICIENCY OF DEFENSE

Construction and application in general.—In suit to prevent infringement of patent, validity of defense that complainant has released to a third party, the effect of which is to release defendant, is trial question, not to be determined on motion to strike. Churchward International Steel Co. v. Bethlehem Steel Co. (D. C.) 233 F. 322.

Under equity rules 31 and 33, new and affirmative matter pleaded in an answer must, upon submission on bill and answer, be deemed denied, and the case is before the court upon admissions and denials of the answer and averments of bill. Shera v. Merchants' Life Ins. Co. (D. C.) 237 F. 484.

Cited without definite application, Bonney Supply Co. v. Heltzel (D. C.) 243 F. 399.

RULE 34. SUPPLEMENTAL PLEADING

Supplemental bill.—Under equity rule 34, permission to file a supplemental bill alleging matters occurring after the filing of the original bill held proper, although such matters would in effect change the nature of the suit. General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

An allegation in a supplemental bill, made as basis for relief not within the scope of the original bill, held not ground for the dismissal or striking out of the supplemental bill. Whitaker v. Whitaker Iron Co. (D. C.) 238 F. 980.

RULE 37. PARTIES GENERALLY—INTERVENTION

Parties to suit.—Receivers of a New Jersey corporation, appointed by state court, will not be substituted as plaintiffs in error in stockholders' suit pending in federal Supreme Court, where four years previously a federal court in another state had appointed other receivers for such corporation. United Copper Securities Co. v. Amalgamated Copper Co., 37 S. Ct. 509, 244 U. S. 261, 61 L. Ed. 1119, affirming judgment 223 F. 421, 139 C. C. A. 15.

As party to agreement collateral to railroad mortgage was not necessary or proper party to foreclosure suit, equity rule 37 held not to authorize court to order that it be made a party. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

Where jurisdiction appears from the nature of the suit, new equity rule 37 does not impose on the court the duty on its own motion, and without pleadings to inquire into the capacity of the plaintiff to sue. Kardo Co. v. Adams, 231 F. 950, 146 C. C. A. 146, reversing decree American Ball Bearing Co. v. Same (D. C.) 222 F. 967.

Where an order of the Interstate Commerce Commission authorized, and a tariff filed thereunder provided, higher rates to four certain cities than to certain other cities, one of such cities, representing the interest of its citizens, and traffic associations formed for the purpose of representing jobbers and merchants in the three other cities, could maintain a suit to enjoin the enforcement of such order and tariff, as they were within the rule that bills may be filed in the name of unincorporated associations and parties in behalf of others similarly situated, and moreover the equity rules seem to contemplate such a suit for the common benefit of all, where the parties are numerous and have a common or general interest. Merchants' & Manufacturers' Traffic Ass'n of Sacramento v. United States (D. C.) 231 F. 292.

Under Judicial Code, §§ 52, 57, and equity rule 37, where some defendants were residents of Southern district of Georgia and were claiming adversely to plaintiffs, appointment of administrators residing in Northern district held not to divest jurisdiction of District Court for Southern district. Jennings v. Smith (D. C.) 242 F. 561.

Intervention.—Where, after decree foreclosing a trust deed on the property of a railroad company, interveners who asserted that their claims were entitled to priority filed intervening petitions under equity rule 37, they cannot thereafter amend the petitions and attack the validity of the trust deed. First Trust Co. v. Illinois Cent. R. Co. (C. C. A.) 252 F. 965.

RULE 38. REPRESENTATIVES OF CLASS

Common interest.—See Bogert v. Southern Pac. Co. (C. C. A.) 244 F. 61.

In suit against officers of labor unions, personal relief by injunction against persons who, pending the suit, succeeded the original parties as officers held erroneous; the suit not being a representative one within equity rule 38. Hitchman Coal & Coke Co. v. Mitchell, 38 S. Ct. 65, 245 U. S. 229, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, reversing decree Mitchell

v. Hitchman Coal & Coke Co., 214 F. 685, 131 C. C. A. 425, which reversed decree Hitchman Coal & Coke Co. v. Mitchell (D. C.) 202 F. 512. Mandate stayed 38 S. Ct. 190.

Under equity rule 38 an incorporated co-operative organization is a proper party, as representing the interest of its members, to conduct a suit in substance brought for their benefit. International News Service v. Associated Press, 39 S. Ct. 68, 63 L. Ed. —.

Mortgage bondholders of a railroad company cannot maintain a suit to enjoin the enforcement of a rate statute, unless it is shown that the mortgage trustee has refused to bring the suit; equity rule 38 not applying. Winthrop v. Fellows (D. C.) 230 F. 702.

Where an order of the Interstate Commerce Commission authorized, and a tariff filed thereunder provided, higher rates to four certain cities than to certain other cities, one of such cities, representing the interest of its citizens, and traffic associations formed for the purpose of representing jobbers and merchants in the three other cities, could maintain a suit to enjoin the enforcement of such order and tariff, as they were within the rule that bills may be filed in the name of unincorporated associations and parties in behalf of others similarly situated, and moreover the equity rules seem to contemplate such a suit for the common benefit of all, where the parties are numerous and have a common or general interest. Merchants' & Manufacturers' Traffic Ass'n of Sacramento v. U. S. (D. C.) 231 F. 292.

Under equity rule 38, one lot owner may maintain a suit in behalf of himself and other owners, where the threatened injury affects all. Chew v. First Presbyterian Church of Wilmington, Del. (D. C.) 237 F. 219.

Under equity rules, corporate creditors, suing directors under Act Pa. April 29, 1874 (P. L. 73), may sue on behalf of all other creditors. United States Smelting Co. v. Hofkin (D. C.) 245 F. 896.

In suit by voluntary association of landowners against a drainage district and the respective tax collectors of two counties, to restrain collection of drainage tax; bill held not multifarious, in view of equity rule 38 each complainant being interested in the subject-matter, but in different amounts, and each defendant being connected, though differently, with the whole dispute. Everglades Drainage League v. Napoleon B. Broward Drainage Dist. (D. C.) 253 F. 246.

RULE 39. ABSENCE OF PERSONS WHO WOULD BE PROPER PARTIES

Indispensable parties.—The court may not dispense with persons having rights so closely related to the issues between the parties in court that a final decision cannot be made without affecting their rights. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

Absence of an indispensable party to the granting of full relief in equity is not ground for dismissal of bill in its entirety, if there are separable matters as to which relief may be granted without affecting the rights of such person. General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

In suit to foreclose mortgage securing railroad bonds, where appointment of receiver was prayed, held, under Judicial Code, § 50, and equity rule 39, that nonresident trustee was not indispensable party, and suit might be proceeded with, though it was not joined. Lowenthal v. Georgia Coast & P. R. Co. (D. C.) 233 F. 1010.

Absence from jurisdiction.—Citizens of another state held to be dispensed with as parties in federal court, if, though necessary parties, the case may be finally decided between the litigants without bringing them before the court. Ex parte Equitable Trust Co. of New York, 231 F. 571. 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

A suit in a federal court by minority stockholders against the corporation, which is a corporation of the state, having its property and business therein, and the managing director, who is also a citizen and resident of the state, in which the bill alleges transactions by the directors, who are also the principal stockholders, by which the corporation has been defrauded of property for their individual benefit, should not be dismissed on motion because the other directors are not parties, where by reason of their being out of the jurisdiction they cannot be served, and if brought in their joinder would oust the jurisdiction of the court. In such case, such directors, while proper, are not indispensable parties, even though full relief as to all the transactions alleged cannot be granted without their presence, and the court, having jurisdiction over the corporation and its property, may and should, under equity rule 39 and Judicial Code, § 50 (Comp. St. 1916, § 1032), proceed without them, and grant such relief as the proofs may warrant and as is within its power. Krouse v. Brevard Tannin Co., 249 F. 538, 161 C. C. A. 464.

Equity rule 39 applies not only to defect of parties, due to their being out of reach of process, but also to parties within the reach of process, whose joinder would oust the jurisdiction of the court, in which contingency the court may in its discretion proceed without making such persons parties; the rule particularly applying to parties having an interest in the contro-

versy, but whose interest will not be directly affected by decree in their absence; so that in a foreclosure suit, if it is apparent that the presence of the owner of the equity of redemption will oust the court of jurisdiction, it may proceed without him. Brown v. Crawford (D. C.) 252 F. 248.

Protection of rights of absent parties.—In patent infringement suit, even if equity rule 39, as to proceeding without prejudice to absent plaintiffs, were applicable, the court could not dismiss, without prejudice to alien enemy plaintiffs, and thus expose defendants to two suits. Speidel et al. v. N. Barstow Co. (D. C.) 243 F. 621.

Cited without definite application, Sherman Nat. Bank v. Shubert Theatrical Co. (C. C. A.) 247 F. 256.

RULE 43. DEFECT OF PARTIES—RESISTING OBJECTION

Waiver of objection.—Under equity rules 43, 44, no specific objection of want of parties having been made below, objection because of suit for benefit of members of incorporated co-operative organization being brought by it, instead of them, will be treated as waived. International News Service v. Associated Press, 39 S. Ct. 68, 63 L. Ed. —.

RULE 44. DEFECT OF PARTIES—TARDY OBJECTION

Waiver of objection.—Under equity rules 43, 44, no specific objection of want of parties having been made below, objection because of suit for benefit of members of incorporated co-operative organization being brought by it, instead of them, will be treated as waived. International News Service v. Associated Press, 39 S. Ct. 68, 63 L. Ed. —.

Cited without definite application, Central Ry. Signal Co. v. Jackson (D. C.) 254 F. 103.

RULE 45. DEATH OF PARTY—REVIVOR

Effect of rule.—While formerly, on death of one of parties having an interest in litigation, substitution was effected through a bill of revivor or a bill of that nature, such relief, under new equity rule 45, is now granted on motion. Ex parte Slater, 38 S. Ct. 265, 246 U. S. 128, 62 L. Ed. 621.

RULE 46. TRIAL—TESTIMONY—OBJECTIONS TO EVIDENCE

Testimony taken out of court.—Reference in bankruptcy to a master to take testimony and report findings should only be on notice and showing, as required by equity rules 46, 47, 59. In re C. W. Bartleson Co. (D. C.) 243 F. 1001.

Despite equity rule 46, held, in view of Rev. St. § 863 (Comp. St. 1916, § 1472), that testimony of infirm witnesses residing more than 100 miles from place of trial might be taken before judge prior to trial. Jennings v. Smith (D. C.) 244 F. 836.

Cited without definite application, Great Northern Ry. Co. v. Philadelphia & Reading Coal & Iron Co. (C. C. A.) 242 F. 799; Holt Mfg. Co. v. C. L. Best Gas Traction Co. (D. C.) 245 F. 354.

RULE 47. DEPOSITIONS—TO BE TAKEN IN EXCEPTIONAL INSTANCES

Effect on statute.—Equity rule 47, limiting time for taking depositions without order of court held not to vary Rev. St. § 863 (Comp. St. 1916, § 1472), but merely to regulate the procedure, and within the power of the Supreme Court. Audiffren Refrigerating Mach. Co. v. General Electric Co. (D. C.) 245 F. 783.

Time for taking.—Equity rule 47, which fixes the time for taking depositions, "unless otherwise ordered by the court or judge for good cause shown," does not limit the power of the court by order to permit the taking of depositions at any time. United States Gypsum Co. v. Mackey Wall Plaster Co. (C. C. A.) 252 F. 397.

Where proceedings were not dismissed because of failure to take testimony within three months, as required by old equity rule 69, an order of re-reference thereafter waived any possible laches. Lackner v. McKechney (C. C. A.) 252 F. 403.

Under Rev. St. § 863 (Comp. St. 1916, § 1472), and equity rule 47, depositions de bene esse cannot be taken by plaintiff without court's permission more than 60 days after joinder of issue. Block v. Arrowsmith Mfg. Co. (D. C.) 243 F. 775; Audiffren Refrigerating Mach. Co. v. General Electric Co. (D. C.) 245 F. 783.

Effect of delay.—Under equity rules 47, 56, 57, held that, where a case was dropped from the trial calendar on stipulation of the parties, and was not reinstated within a year, costs could not, on dismissal, be awarded in favor of defendant and against plaintiff. E. G. Staude Mfg. Co. v. Labombarde, 243 F. 362, 156 C. C. A. 142, reversing decree (D. C.) 229 F. 1004.

Reference to master.—Reference in bankruptcy to a master to take testimony and report findings should only be on notice and showing, as required by equity rules 46, 47, 59. In re C. W. Bartleson Co. (D. C.) 243 F. 1001.

Cited without definite application, Fitzhugh v. Reid (D. C.) 252 F. 234.

RULE 49. EVIDENCE TAKEN BEFORE EXAMINERS, ETC.

This rule, as set forth in Comp. St. 1916, p. 2518, was changed by substituting for the words, "cross and re-examination," at the end thereof, the words "cross-examination" and "reexamination."

RULE 51. EVIDENCE TAKEN BEFORE EXAMINERS

Examiner's report.—Under equity rule 51, held, that master's report in patent infringement suit should not contain unnecessary statement, argument, and debate regarding objections to evidence. Rollman Mfg. Co. v. Universal Hardware Works (D. C.) 229 F. 579.

RULE 54. DEPOSITIONS UNDER R. S. §§ 863, 865, 866, 867—CROSS-EXAMINATION

Time for taking.—See Audiffren Refrigerating Mach. Co. v. General Electric Co. (D. C.) 245 F. 783.

RULE 55. DEPOSITION DEEMED PUBLISHED WHEN FILED

Use in other suits.—A party is protected under the general rules of evidence in the right to use depositions taken in a former case between the same parties, where the testimony would not otherwise be procurable; but the relevancy of such testimony must be determined in the case in which it is offered. Young v. J. Samuels & Bro. (D. C.) 232 F. 784.

RULE 56. ON EXPIRATION OF TIME FOR DEPOSITIONS, CASE GOES ON TRIAL CALENDAR

Effect of rule.—See Audiffren Refrigerating Mach. Co. v. General Electric Co. (D. C.) 245 F. 783.

Under equity rules 47, 56, 57, held that, where a case was dropped from the trial calendar on stipulation of the parties, and was not reinstated within a year, costs could not, on dismissal, be awarded in favor of defendant and against plaintiff. E. G. Staude Mfg. Co. v. Labombarde, 243 F. 362, 156 C. C. A. 142, reversing decree (D. C.) 229 F. 1004.

Under Rev. St. §§ 862, 863, 917 (Comp. St. 1916, §§ 1470, 1472, 1543), and equity rules 47, 56, plaintiff could not, after expiration of time for taking depositions prescribed by rules, take deposition on notice to defendant without order of court. Block v. Arrowsmith Mfg. Co. (D. C.) 243 F. 775.

RULE 57. CONTINUANCES

Applicability and effect of rule.—New equity rule 57, providing that a cause placed on the trial calendar shall not be continued over the term, except for cause shown, does not apply to a cause which has been heard where the term ends before entry of decree. Davis v. Virginia Ry. & Power Co., 229 F. 633, 144 C. C. A. 43, certiorari denied Virginia Ry. & Power Co. v. Davis, 36 S. Ct. 723, 241 U. S. 672, 60 L. Ed. 1231.

Under equity rules 47, 56, 57, held that, where a case was dropped from the trial calendar on stipulation of the parties, and was not reinstated within a year, costs could not, on dismissal, be awarded in favor of defendant and against plaintiff. E. G. Staude Mfg. Co. v. Labombarde, 243 F. 362, 156 C. C. A. 142, reversing decree (D. C.) 229 F. 1004.

RULE 58. DISCOVERY—INTERROGATORIES—INSPECTION AND PRODUCTION OF DOCUMENTS—ADMISSION OF EXECUTION OR GENUINENESS

Purpose and effect of rule.—A bill for relief, and also for discovery, as incidental to such relief, if it fails to state a cause of action for the relief, fails also as to the discovery. Church v. Swetland, 233 F. 891, 147 C. C. A. 565.

A bill for discovery to put a party on his oath is obsolete. Scotten v. Rosenblum (D. C.) 231 F. 357.

Equity rule 58, while it changes the procedure, does not alter the substantive rules governing discovery in equity, nor give any right to discovery which did not previously exist. Wolcott v. National Electric Signaling Co. (D. C.) 235 F. 224.

Admiralty rule 32 (Comp. St. 1916, p. 2700), providing for dismissal of libel for failure of libelant to answer

interrogatories propounded by defendant, is not extended to defendants by equity rule 58, so as to warrant striking of answer for failure to reply to interrogatories. The Fred E. Richards (D. C.) 248 F. 956.

Scope and extent of discovery.—A party is not in general entitled to discovery in equity from the adverse party as to facts equally within his own knowledge. Wolcott v. National Electric Signaling Co. (D. C.) 235 F. 224.

It was not the purpose of the rule to compel discovery by plaintiff of the particulars of his own cause of action, where such particulars do not relate to any pleaded defense or to compel the defendant to disclose facts material only to his defense. Window Glass Mach. Co. v. Brookville Glass & Tile Co. (D. C.) 229 F. 833; Wolcott v. National Electric Signaling Co. (D. C.) 235 F. 224; Kinney v. Rice (D. C.) 238 F. 444; Marquette Mfg. Co. v. Oglesby Coal Co. (D. C.) 247 F. 351.

Discovery, under rule 58, must be limited to material facts, and does not extend to evidence or facts merely tending to prove material facts. F. Speidel Co. v. N. Barstow Co. (D. C.) 232 F. 617; Wolcott v. National Electric Signaling Co. (D. C.) 235 F. 224; Kinney v. Rice (D. C.) 238 F. 444; Marquette Mfg. Co. v. Oglesby Coal Co. (D. C.) 247 F. 351.

A party will not be required to answer interrogatories propounded under equity rule 58, where they suggest a "fishing expedition," or at least an attempt to pry into the adversary's case. Window Glass Mach. Co. v. Brookville Glass & Tile Co. (D. C.) 229 F. 833.

Equity rule 58 is not intended to prevent the parties from producing their evidence at trial, and the court in exercising its discretion should not allow propounding of interrogatories to a corporate officer, which are necessarily vexatious. Union Sulphur Co. v. Freeport Texas Co. (D. C.) 234 F. 194.

A party interrogated under Equity Rule 58 cannot be required to disclose the names of his witnesses nor his evidence. Marquette Mfg. Co. v. Oglesby Coal Co. (D. C.) 247 F. 351.

Under equity rule 58, defendant held not to be required, in patent infringement suit, to answer interrogatories, as information sought could be easily procured by inspection. Window Glass Mach. Co. v. Brookville Glass & Tile Co. (D. C.) 229 F. 833.

In a stockholder's suit against officers and directors of the corporation, alleging a conspiracy, in violation of their trust, to purchase certain outstanding stock for their own benefit and profit, instead of for the corporation which had the power under its charter and the available means to purchase the same, interrogatories propounded to defendant officers, calling for details of a multitude of business transactions involving also other concerns having no relation to the suit, held improper, where the ulitmate material facts could be ascertained from the books. Du Pont v. Du Pont (D. C.) 234 F. 459.

Equity rule 58 does not warrant the court in requiring answers to interrogatories, which would give no more than an opinion, or no more than the evidence relied on in support or defense of the cause, although, if the answer would disclose a material fact or document, it is no objection to its allowance that it would incidentally require an expression of opinion, or disclosure of some of the evidence to be relied on at the trial, or the giving of other information which, standing alone, could not be required. Batdorf v. Sattley Coin Handling Mach. Co. (D. C.) 238 F. 925.

On issue of infringement, it was no objection to plaintiff's questions, under equity rule 58 of Supreme Court, that it would be difficult, if not impossible, to answer them, or that terms of interrogatories and claims were susceptible of one or more meanings. General Electric Co. v. Independent Lamp & Wire Co. (D. C.) 244 F. 825.

Under equity rules 30, 33, and 58, held that, in a suit for infringement of a patent and to enjoin publications denying its validity, defendant should answer interrogatories seeking admission as to authorship of publication. Rodman Chemical Co. v. E. F. Houghton Co. (D. C.) 233 F. 470.

—— **Discovery by corporate officer.**—Where a corporate officer was unable to answer interrogatories himself, held that, under equity rule 58, he should not be required to answer the interrogatories on information gleaned from inferior agents of corporation. Union Sulphur Co. v. Freeport Texas Co. (D. C.) 234 F. 194.

Procedure.—Under equity rule 58, held that imposition on defendants of costs incurred by complainant in taking depositions to prove documents was no abuse of discretion; defendants, after first refusing to stipulate as to matter, having declined to pay costs incurred by complainant up to time it offered to stipulate as to such matter. Wagner v. Meccano, Limited, 246 F. 603, 158 C. C. A. 573, affirming in part and reversing in part Meccano, Limited, v. Wagner (D. C.) 234 F. 912.

Party voluntarily answering improper interrogatories held not entitled to say that they ought not to have been propounded. Window Glass Mach. Co. v. Brookville Glass & Tile Co. (D. C.) 229 F. 833.

Where defendant is in doubt, or the meaning of interrogatories does not clearly appear, defendant may require a restatement. Rodman Chemical Co. v. E. F. Houghton Co. (D. C.) 233 F. 470.

An interrogatory filed under equity

rule 58 should embrace a single question, and be so framed that it may be clearly seen what the interrogated party is called upon to answer. Kinney v. Rice (D. C.) 238 F. 444.

Under equity rule 58 the court may require the answering of an interrogatory only upon conditions imposed on the interrogating party. Batdorf v. Sattley Coin Handling Mach. Co. (D. C.) 238 F. 925.

Under equity rule 58 the proper practice under a bill of discovery is for plaintiff to plead those facts which entitle him to a discovery and annex such interrogatories as he wishes defendant to answer. If defendant does not dispute plaintiff's right to some discovery, but objects to some or all of the interrogatories, he will make those objections and bring them on for hearing, but is not subject to the old rule that, if he answers one, he must answer all. If he disputes plaintiff's right to any discovery, he will plead in an answer such facts as he deems apposite, and obtain an enlargement of his time to answer the interrogatories until plaintiff's right to discovery is determined. Pressed Steel Car Co. v. Union Pac. R. Co. (D. C.) 241 F. 964.

Cited without definite application, Helmet Co. v. Wm. Wrigley, Jr., Co. (C. C. A.) 245 F. 824; Scotten v. Rosenblum (D. C.) 231 F. 357; Bonney Supply Co. v. Heltzel (D. C.) 243 F. 399.

RULE 59. REFERENCE TO MASTER—EXCEPTIONAL NOT USUAL

Effect of rule.—Where defendant in a suit for an accounting annexed to his sworn answer acounts rendered by him, the court can take and settle the account itself without reference to a master. McManus v. Sawyer (D. C.) 231 F. 231.

A court of equity held, under the equity rules, to have discretionary power to refer a case to a master, without consent of parties, to hear the evidence and report his findings and conclusions on the whole case for the advice of the court. Holt Mfg. Co. v. C. L. Best Gas Traction Co. (D. C.) 245 F. 354.

Equity rule 59 does not forbid a reference; and, where the cause is referred, it is to be presumed, on exceptions to the report, that the judge properly exercised his discretion. Flanders v. Coleman (D. C.) 249 F. 757.

Matters subject of reference.—See Brown et al. v. Pennsylvania Canal Co. (D. C.) 244 F. 980.

Notwithstanding Bankruptcy Act, § 18d (Comp. St. 1916, § 9602), references to masters to take and report testimony, with findings, recognized by equity rule 59, are permissible, but should only be on notice and showing, as required by equity rules 46, 47, 59. In re C. W. Bartleson Co. (D. C.) 243 F. 1001.

Practice.—Where either party objects to order of reference on ground that it is improper under equity rule 59, proper practice is to move before judge for revocation of order; and a failure so to move is tantamount to acquiescence, as point cannot be initially raised before master. Flanders v. Coleman (D. C.) 249 F. 757.

Cited without definite application, Alexander v. Fidelity Trust Co. (D. C.) 238 F. 938.

RULE 60. PROCEEDINGS BEFORE MASTER

Cited without definite application, Reliance Const. Co. v. Hassam Paving Co. (C. C. A.) 248 F. 701; Rollman Mfg. Co. v. Universal Hardware Works (D. C.) 229 F. 579; Holt Mfg. Co. v. C. L. Best Gas Traction Co. (D. C.) 245 F 354.

RULE 61. MASTER'S REPORT—DOCUMENTS IDENTIFIED BUT NOT SET FORTH

Cited without definite application, Holt Mfg. Co. v. C. L. Best Gas Traction Co. (D. C.) 245 F. 354.

RULE 62. POWERS OF MASTER

Orders.—Equity rule 62, defining the powers of masters, confers no authority on a special master to grant an order in nature of an injunction. In re Gordon (D. C.) 250 F. 798.

Cited without definite application, Holt Mfg. Co. v. C. L. Best Gas Traction Co. (D. C.) 245 F. 354.

RULE 63. FORM OF ACCOUNTS BEFORE MASTER

Evidence.—Equity rule 63 deals with results and not with evidence. It gives no sanction for a demand upon the accounting party to set forth in his account evidence or the sources of possible evidence from which a different account might be stated, although the adverse party may go into such inquiry

if he chooses, in which case the inquiry is governed by the ordinary rules of evidence. Cushman & Denison Mfg. Co. v. L. F. Grammes & Sons (D. C.) 234 F. 949.

Cited without definite application, Alexander v. Fidelity Trust Co. (D. C.) 238 F. 938; O. & W. Thum Co. v. Dickinson (D. C.) 254 F. 219.

RULE 66. RETURN OF MASTER'S REPORT—EXCEPTIONS—HEARING

Effect of rule.—Where exceptions to the account a receiver in bankruptcy were referred to a master, who reported thereon, his findings as to the account stand confirmed, unless exceptions to his report are filed within 20 days, as required by equity rule 66. In re El Sevilla Restaurant (D. C.) 253 F. 410.

Cited without definite application, Holt Mfg. Co. v. C. L. Best Gas Traction Co. (D. C.) 245 F. 354.

RULE 67. COSTS ON EXCEPTIONS TO MASTER'S REPORT

Re-reference.—Where, because master's original report was not sufficiently full to permit disposition of exceptions thereto without original examination by court of all testimony presented, court re-referred cause, no allowance of costs under equity rule No. 67 should be made on account of objections and exceptions to master's first report overruled, which were practically duplicated in exceptions and objections to second report. Firestone Tire & Rubber Co. v. Riverside Bridge Co., 247 F. 625, 160 C. C. A. 35.

Cited without definite application, Holt Mfg. Co. v. C. L. Best Gas Traction Co. (D. C.) 245 F. 354; Westinghouse Electric & Mfg. Co. v. Wagner Electric Mfg. Co. (D. C.) 248 F. 508.

RULE 68. APPOINTMENT AND COMPENSATION OF MASTERS

Compensation.—Under equity rule 68 it is discretionary with the court to first issue an order to show cause before issuing attachment. Cutting v. Van Fleet (C. C. A.) 252 F. 100.

The compensation allowed a master by a district court under equity rule 68 must be fixed under the rules applicable to costs, to be measured by the time employed "having regard to all the circumstances" of the case. Byerly v. Sun Co. (D. C.) 235 F. 1021.

Cited without definite application, Holt Mfg. Co. v. C. L. Best Gas Traction Co. (D. C.) 245 F. 354.

RULE 71. FORM OF DECREE

Cited without definite application, Ammon & Person v. Narragansett Dairy Co. (D. C.) 254 F. 208.

RULE 73. PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDERS

Applicability.—See Supreme Council of Royal Arcanum v. Hobart, 244 F. 385, 157 C. C. A. 11.

Cited without definite application, Everglades Drainage League v. Napoleon B. Broward Drainage Dist. (D. C.) 253 F. 246.

RULE 74. INJUNCTION PENDING APPEAL

Dismissal of bill for injunction.—A decree dismissing a bill for an injunction cannot be superseded, and the status quo of the subject-matter of the suit maintained, except under the provisions of equity rule 74, which is binding upon the courts of this District. Shaw v. Lane, 47 App. D. C. 170.

RULE 75. RECORD ON APPEAL—REDUCTION AND PREPARATION

Notes of Decisions

Statement of evidence.—The requirement of equity rule 75 that the testimony be reduced to narrative form will not be enforced, where the testimony embraces 30 volumes containing more than 12,000 pages, where a part of the testimony was taken before the rule became operative. U. S. v. United States Steel Corporation, 36 S. Ct. 408, 240 U. S. 442, 60 L. Ed. 731.

Where, in an equity suit, the defeated party appealed and also brought error, and the evidence was brought up in a so-called bill of exceptions, it will, the intention being clear that it should be treated also as a statement of evidence under equity rule 75, be so regarded. L. A. Westermann Co. v. Dispatch Printing Co., 233 F. 609, 147 C. C. A. 417.

Where record was printed for use by trial court in deciding the case and even most immaterial testimony was printed in the form of questions and answers, held, that there was no compliance with equity rule 75, cl. (b); but,

parties having acted in good faith, and no previous ruling having been had, record will be received. Firestone Tire & Rubber Co. v. Seberling, 235 F. 891, 149 C. C. A. 203.

The failure of an appellant to present his statement of the evidence to the trial judge for approval, as required by equity rule 75, will be disregarded, where it otherwise appears that the transcript is complete and accurate and decision on merits would be the same. Garland v. Quinn, 242 F. 267, 155 C. C. A. 107.

Where court did not approve statement of evidence found in record, as required by equity rule 75, and it is not shown to contain all evidence adduced, it is to be presumed that court's findings were supported by evidence other than that which record disclosed, though counsel had approved statement of evidence as correct. Carson v. Hurt (C. C. A.) 250 F. 30.

A bill of exceptions is not required on appeal in equity cases, under equity rule 75, but only a condensed statement of the evidence, approved by the court or judge. United States v. Great Northern Ry. Co. (C. C. A.) 254 F. 522.

Though record conformed to Act Cong. Feb. 13, 1911 (Comp. St. 1916, §§ 1656, 1657), and Supreme Court rule 31 (Comp. St. 1916, p. 1835), transcript without statement in narrative form, required by equity rule 75, could not be approved. U. S. v. Motion Picture Patents Co. (D. C.) 230 F. 541.

Noncompliance with rule.—The failure of an appellant to state the evidence in the record on appeal in narrative form, as required by equity rule 75, does not effect the appeal, but subjects him to the imposition of costs. Garland v. Quinn, 242 F. 267, 155 C. C. A. 107.

RULE 76. RECORD ON APPEAL—REDUCTION AND PREPARATION—COSTS—CORRECTION OF OMISSIONS

Costs.—Where record is made unnecessarily long by party, he may not recover cost thereof, if successful. Tompkins v. St. Regis Paper Co. (D. C.) 240 F. 838.

RULE 77. RECORD ON APPEAL—AGREED STATEMENT

Agreed statement.—See Swindell v. Youngstown Sheet & Tube Co. (C. C. A.) 230 F. 438.

RULE 79. ADDITIONAL RULES BY DISTRICT COURT

Effect of district court rules.—The established equity practice approved by the Supreme Court under the old rules must be considered to have remained in force, except as changed by the new rules or by rules of the District Court adopted under authority of new rule 79. Individual Drinking Cup Co. v. Union News Co. (C. C. A.) 250 F. 625.

Information as to which claims of patents would be relied upon held to be obtained by motion under supplementary equity rule 7, § 2, and not by interrogatory under equity rule 58. Window Glass Mach. Co. v. Brookville Glass & Tile Co. (D. C.) 229 F. 838.

Cited without definite application, Holt Mfg. Co. v. C. L. Best Gas Traction Co. (D. C.) 245 F. 354.

RULE 81. RULES EFFECTIVE FEBRUARY 1, 1913—OLD RULES ABROGATED

This rule as set forth in Comp. St. 1916, p. 2530, was changed by substituting for the word "theretofore," after the words "All rules," at the beginning of the second paragraph, the word "heretofore."

Pending causes.—Under equity rules 29, 81, held, that where demurrer, filed prior to February 1, 1913, was sustained after that date, it would be assumed that it was submitted before such date, or treated as a motion to dismiss. Weber v. Hertzell, 230 F. 965, 145 C. C. A. 159.

The equity rules, which went into effect February, 1913, apply to proceedings in causes then pending, as well as those thereafter brought. E. G. Staude Mfg. Co. v. Labombarde, 243 F. 362, 156 C. C. A. 142, reversing decree (D. C.) 229 F. 1004.

Pre-existing practice.—The established equity practice approved by the Supreme Court under the old rules must be considered to have remained in force, except as changed by the new rules or by rules of the District Court adopted under authority of new rule 79. Individual Drinking Cup. Co. v. Union News Co. (C. C. A.) 250 F. 625.

II. Equity Procedure in General

(A) In general

1. In general.—Under conformity statute (Rev. St. §§ 913, 914, 916, 917 [Comp. St. 1916, §§ 1536 1537, 1540, 1543]), the state practice is adopted only as to common-law actions. Brown v. Fletcher (D. C.) 239 F. 360.

The United States courts have al-

ways recognized the distinction between common law and equity under the Constitution as a matter of substance, as well as of form and procedure, though both jurisdictions are vested in the same courts. Bonifaci v. Thompson (D. C.) 252 F. 878.

The jurisdiction of a court of equity, unless enlarged by express statute, is limited to the protection of property rights. Id.

(C) Laches and stale demands

18. Nature and elements.—Lapse of time held to bar rights of occupant of land patented to another in equity as well as at law, in absence of fraudulent concealment of cause of action or excuse for the laches. U. S. v. New Orleans Pac. Ry. Co., 235 F. 841, 149 C. C. A. 153.

Equitable estoppel is the indispensable foundation of such laches, acquiescence, or ratification as will bar a suit. Elder v. Western Mining Co., 237 F. 966, 150 C. C. A. 616.

A party is as much open to the charge of laches for failure to prosecute a suit diligently as for undue delay in its institution. U. S. v. Fletcher, 242 F. 818, 155 C. C. A. 406, affirming decree (D. C.) 231 F. 326.

The doctrine of laches is an equitable principle applied to promote, but never to defeat, justice. Bunch v. U. S. (C. C. A.) 252 F. 673.

20. Application of doctrine to state or government.—See U. S. v. Fletcher, 242 F. 818, 155 C. C. A. 406, affirming decree (D. C.) 231 F. 326.

26. Lapse of time.—Mere lapse of time not not being of the essence of laches or acquiescence, the surrounding facts and circumstances are to be considered as well as the rights and interests of all concerned. National Circle, Daughters of Isabella, v. National Order of Daughters of Isabella (D. C.) 252 F. 815.

27. —— Effect of delay alone.—Defense of laches does not depend upon mere lapse of time, but circumstances must be such that assertion of plaintiff's rights would be inequitable. Pond Creek Coal Co. v. Hatfield, 239 F. 622, 152 C. C. A. 456.

The right of a complainant to maintain an effective suit to enforce his rights is not barred by laches because of the lapse of time alone where there has been no prejudice from the delay, and where complainant did not acquiesce in the situation, and was not inactive, but mistook his remedy. Bogert v. Southern Pac. Co., 244 F. 61, 156 C. C. A. 489, affirming decree (D. C.) 226 F. 500. Certiorari granted Southern Pac. Co. v. Bogart, 38 S. Ct. 190, 245 U. S. 668, 62 L. Ed. 539.

In legal significance, laches is not mere lapse of time, whether greater or less than precise time of statute of limitations; it is delay for such time as makes doing of equity either impossible or doubtful. Humphreys v. Walsh, 248 F. 414, 166 C. C. A. 424.

Where complainants were at all times in possession of the land, their delay in beginning suit to set aside disclaimers to the land does not constitute laches, which will bar relief. Woodall v. Clark (C. C. A.) 254 F. 526.

29. —— Acquiescence.—Where for over 22 years a purchaser of land acquiesced in the title remaining in his sister, to whom it was transferred from the original grantee, and his will affirmed such title, the heirs of the purchaser cannot thereafter assert a resulting trust in the land. Higginbotham v. Boggs, 234 F. 253, 148 C. C. A. 155, reversing decree Boggs v. Bright (D. C.) 222 F. 714.

30. —— What constitutes unreasonable delay.—A stockholder's delay of 12 years before instituting a stockholder's bill to recover for injuries from the negligence of directors constituted laches, preventing recovery. Kelly v. Dolan, 233 F. 635, 147 C. C. A. 443, affirming decree (D. C.) 218 F. 966.

Where director of corporation, which was in financial difficulties, acquired timber land belonging to it, advancing sums of money to discharge corporate debts, delay of about 20 months in attacking sale is not such delay as will prevent corporation from avoiding it. Wing v. Dillingham, 239 F. 54, 152 C. C. A. 104.

Complainant's delay for over 20 years in suing to quiet its title against claims of president of corporation and his grantees under tax deed held not laches. Edwards v. Sarasota Venice Co., 246 F. 773, 159 C. C. A. 75.

Complainants' eight-year delay in seeking relief against the administrator, who obtained an estate to which complainants were entitled as next of kin, held, in view of complainants' delay in ascertaining their rights, not to warrant denial of relief on the ground of laches. Diamond v. Connolly (C. C. A.) 251 F. 234.

Delay of five years before bringing suit for the cancellation of an alleged forged deed, during which time the person charged with the forgery had died, held, under the facts shown, such laches as debarred complainants from equitable relief. Naylor v. Foreman-Blades Lumber Co. (D. C.) 230 F. 658.

A suit to quiet title, brought after defendant had been in adverse possession for a period longer than required to give it title by prescription under the state statute, held barred by laches. Guenther v. Dennis-Simmons Lumber Co. (D. C.) 246 F. 521.

Where contract expressed by letters called for sale of defendant's accumulation of steel scrap, approximating 8,200 tons, and plaintiff's order blank

called for the exact amount of 8,200 tons, laches could not be imputed to defendant, after receiving the order, in failing to notify plaintiff that it would deliver only its accumulation, since defendant could not be held to anticipate that plaintiff would make a claim other than that embodied in the contract as originally written. Upson Nut Co. v. American Shipbuilding Co. (D. C.) 251 F. 707.

31. **Prejudice from delay.**—Laches held principally a question of inequity of permitting claim to be enforced because of changed conditions. Pickens v. Merriam, 242 F. 363, 155 C. C. A. 139.

In the federal courts the defense of laches is an equitable one, and to prevail the lapse of time and the relation of the defendants to the rights must be such that it would be inequitable to permit plaintiffs to assert their rights. Kentucky Block Cannel Coal Co. v. Sewell (C. C. A.) 249 F. 840.

The rule that equity will not aid a person who has slept upon his rights without excuse is especially to be enforced when the right to relief is based on alleged fraud or criminal acts of persons who have died during period of delay. Naylor v. Foreman-Blades Lumber Co. (D. C.) 230 F. 658.

34. —— **Prejudice to defendants.**—Over ten years' delay by complainant in instituting suit against defendant on account of wrongful transfer by testamentary trustee of capital stock of which complainant was ultimate beneficiary held to amount to laches barring recovery against defendant, defendant's right of action against its transfer agent having been lost. Dunscomb v. Chicago, B. & Q. R. Co., 246 F. 394, 158 C. C. A. 458.

39. **Excuses — Personal disabilities.**—Where within reasonable time after she married and left her guardian's household, former ward instituted proceedings for opening of settlement of his guardianship accounts, she was not guilty of any laches which would preclude attack on her acknowledgment without consideration of receipt of payment of notes given by guardian for sum he admitted to be due. Beaven v. Stuart (C. C. A.) 250 F. 972.

41. —— **Absence or nonresidence.**—Suit by executor and residuary legatee of payee of note against distributee of maker's estate, to impress trust on assets in his hands for payment of note, held barred by laches, and not to be saved by exception of statute of limitations as to nonresidence of debtors. Humphreys v. Walsh, 248 F. 414, 160 C. C. A. 424.

42. —— **Fraud, concealment, or other act of adverse party.**—A suit by stockholders for the cancellation of a renewal of a lease made by the directors held not barred by laches or acquiescence, where the renewal was executed three or four years before the expiration of the former lease and was concealed from complainants until within less than one year before the commencement of suit. Elder v. Western Mining Co. (C. C. A.) 237 F. 966.

44. —— **Pendency of legal proceedings.**—Failure of intervener, after bill was amended so as to omit her as complainant, to take further steps in establishing her claim until determination of complainant's suit, held not to amount to laches, precluding relief on subsequent intervention. Mathieson v. Craven (D. C.) 247 F. 223.

Effect of existence of judgment. Wolbol v. Steinhoff (Wyo.) 168 P. 251, rehearing denied 170 P. 381.

47. —— **Ignorance of facts.**—Plaintiff's delay in commencing suit involving mineral rights to land held not to amount to laches; defect in plaintiff's title being discovered only shortly before suit, and defendant, who asserted title to the land, not having discovered defect when he acted as agent for plaintiff's predecessor in purchasing same. Pond Creek Coal Co. v. Hatfield, 239 F. 622, 152 C. C. A. 456.

Complainants' eight-year delay in seeking relief against an administrator who fraudulently represented that he was next of kin, etc., held, in view of their efforts on behalf of their mother, etc., not to warrant denial of relief; the case falling within Rev. Codes Idaho, § 4054, subd. 4, requiring actions based on fraud to be commenced within three years, but providing that such actions shall not be deemed to have accrued until discovery of the fraud. Diamond v. Connolly (C. C. A.) 251 F. 234.

Where defendant was guilty of fraud, a court of equity should be reluctant to deny relief, merely on the ground of laches. Id.

Disclosure of diligence to discover the fraud is, after long delay, indispensable to obtain relief against judgment because of fraudulent representations, in the action in which judgment was obtained, on the tendered issue of ownership of cause of action to give jurisdiction on the ground of diversity of citizenship. Bunch v. U. S. (C. C. A.) 252 F. 673.

Plaintiff held not guilty of laches in bringing suit for rescission of her agreement for dissolution of partnership with defendant, organization of a corporation in which he should have the controlling share, and transfer to it of partnership assets, much of the most convincing proof of the fraud not coming to light till a few months before suit. Tevander v. Ruysdael (C. C. A.) 253 F. 918.

A complainant held not barred by laches from maintaining a suit for fraud on the ground that it should have sooner discovered the fraud. Santa

Marina Co. v. Canadian Bank of Commerce (D. C.) 242 F. 142.

49. Following statute of limitations.—Under Pennsylvania statute (Act March 28, 1867 [P. L. 48]), a bill by a stockholder of corporation in receivership to recover for injuries from directors' negligence cannot be maintained after the expiration of six years. Kelly v. Dolan, 233 F. 635, 147 C. C. A. 443, affirming decree (D. C.) 218 F. 966.

Kentucky statutes of limitation apply to equitable as well as to legal actions. Pond Creek Coal Co. v. Hatfield, 239 F. 622, 152 C. C. A. 456.

In the absence of any statute of limitations enacted by Congress, the federal courts of equity usually follow the state statutes, even in suits which depend upon or arise under the laws of the United States. Benedict v. City of New York, 247 F. 758, 159 C. C. A. 616, affirming decree (D. C.) 235 F. 258.

In applying doctrine of laches in equity actions, federal courts are not bound by statutes of limitation of forum, even when such statutes are applicable by their terms to such actions. Humphreys v. Walsh, 248 F. 414, 160 C. C. A. 424.

A court of chancery cannot grant relief, in a suit by the United States to cancel a patent on account of fraud, after the expiration of six years, in the absence of reasonable care and diligence on its part to discover the same, for Act March 3, 1891, § 8 (Comp. St. 1916, § 5114), expressly forbids such suits, and to grant relief would be a species of judicial legislation. U. S. v. Diamond Coal & Coke Co. (C. C. A.) 254 F. 266.

Independently of any statute of limitations courts of equity uniformly decline to assist a person who has slept upon his rights and shows no excuse for his laches in asserting them. Naylor v. Foreman-Blades Lumber Co. (D. C.) 230 F. 658.

A state statute, limiting the time for presentation of claims against an estate, is a rule of property, and as such binding on a federal court sitting in equity. Goodno v. Hotchkiss (D. C.) 237 F. 686.

51. —— Delay short of statutory period.—The doctrine of laches has no function when the analogous action or proceeding at law is not barred, and no unusual conditions invoke its application within the period of limitations to secure a just result. Bunch v. U. S. (C. C. A.) 252 F. 673.

Bill to rescind for fraud having been filed within a few months after the fraud was discovered, and within less than the period of limitations after the making of the representations, suggestion of laches, in the absence of a showing of special circumstances, is without force. Independent Harvester Co. v. Tinsman (C. C. A.) 253 F. 935.

53½. Laches appearing by bill.—In cases of great delay in seeking relief, courts of equity on their own motion require plaintiff to allege and show affirmatively facts excusing delay. Pond Creek Coal Co. v. Hatfield, 239 F. 622, 152 C. C. A. 456.

Bill in stockholders' suit held to disclose such laches on its face, in connection with the discovery called for, as to warrant its dismissal. Whitaker v. Whitaker Iron Co., 249 F. 531, 161 C. C. A. 457, affirming decree (D. C.) 238 F. 980, and writ of certiorari denied 39 S. Ct. 8, 63 L. Ed. —.

55. Pleading as defense.—The plaintiff in a suit in equity to set aside an exchange of real property for fraud of her brokers in effecting the exchange will not be held guilty of laches, where the allegation in the bill that she recently discovered the fraud is not denied in the answer. Bradley v. Davidson, 47 App. D. C. 266.

(D) Parties

57. In general.—The equitable claims of a state or nation appeal to the conscience of a chancellor with no greater or less force than would those of a private citizen under like circumstances, and barring the effect of mere delay, they are judicable in a court of chancery, to whose jurisdiction the state or nation submits them, under the rules applicable to private citizens. U. S. v. Diamond Coal & Coke Co. (C. C. A.) 254 F. 266.

A court may look beyond the names of the parties to a suit and ascertain the real parties in interest from the facts as they appear in the record. U. S. v. Fletcher (D. C.) 231 F. 326.

In chancery, all persons ought to be made parties who are interested in the controversy. Brown v. Crawford (D. C.) 252 F. 248.

A suit in equity to rescind a conveyance of land for fraud after the death of the injured party must be brought in the name of his heirs at law or devisees. Bradley v. Davidson, 47 App. D. C. 266.

58. Necessary or indispensable parties.—It is the established rule in the federal courts that a suit in equity may proceed without the presence of all proper, or even necessary, parties, and that only indispensable parties must be joined. Lion Tractor Co. v. Bull Tractor Co., 231 F. 156, 145 C. C. A. 344.

An "indispensable party" is one who has such an interest in the subject-matter of the controversy that a final decree cannot be made without affecting his interests or leaving the controversy in such a situation that its final determination may be inconsistent with equity and good conscience. U. S. v. Bean (C. C. A.) 253 F. 1.

A chancery court cannot proceed at all without the presence of the indispensable parties. Brown v. Crawford (D. C.) 252 F. 248.

On a bill for specific performance of an agreement for an exchange of properties, not signed by defendant's wife, she was not a necessary party, as if she was unwilling to join in the conveyance, the court might nevertheless require defendant to execute a deed in accordance with his contract. Dixon v. Anderson (C. C. A.) 252 F. 694.

Ordinarily none but those who join in the contract need be made parties to a suit for specific performance; but where land is incumbered, and the contract calls for title free from incumbrances, it is within the discretion of the trial court to permit or direct that the lienholders be joined. Bryan v. Barriger (D. C.) 251 F. 328.

In suit to foreclose railroad mortgage, held, that whether collateral agreement imposed equitable lien on property of another railroad company could not be adjudicated without affording it an opportunity to be heard. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

Committee of railroad bondholders and its depositary held not indispensable parties to proceeding by minority bondholder who desired to foreclose mortgage securing bonds to secure appointment of receiver. Lowenthal v. Georgia Coast & P. R. Co. (D. C.) 233 F. 1016, decree affirmed Georgia Coast & P. R. Co. v. Lowenthal (C. C. A.) 238 F. 795.

In the strictest sense, the owner of the equity of redemption is not an indispensable party to a foreclosure, though the object of foreclosure is to extinguish the equity of redemption; the procedure being quasi in rem; but if personal judgment is sought as against holder of equity of redemption, he is an indispensable party to a foreclosure, and the mortgagee cannot have relief without his personal presence. Brown v. Crawford (D. C.) 252 F. 248.

Mortgagor corporation held not necessary party to suit in federal court by nonresident trustees, named in mortgage to secure bondholders, against members of Public Utilities Commission to enjoin illegal action of such commissioners. De Pauw University v. Public Service Commission of Oregon (D. C.) 247 F. 183.

Where purchasers of lands formerly belonging to the Seminole Nation, which had been sold for taxes, were not made parties to a suit by the United States against the treasurer of the Oklahoma county in which the lands lay to enjoin him from collecting the taxes and from selling or conveying the lands, the suit must be dismissed for the want of such parties, for they are indispensable. U. S. v. Bean (C. C. A.) 253 F. 1.

Though complainant in courts of North Carolina, in which state debtors resided recovered judgment against them, such debtors are necessary parties in suit in federal District Court for Florida, wherein transfers of property by debtors were sought to be set aside and property subjected to complainant's demand. Bank of Commerce & Trust of Richmond, Va., v. McArthur (D. C.) 248 F. 138.

A judgment defendant is not a necessary party to a suit by the surety on his supersedeas bond brought after affirmance of the judgment to enjoin prosecution of an action on the bond by the judgment plaintiff. Maryland Casualty Co. v. Repass (C. C. A.) 253 F. 328.

Creditors' bill to enforce stockholders' liability on behalf of plaintiff and all others joining in the bill held not maintainable without the corporation as a party. Clinton Mining & Mineral Co. v. Cochran, 247 F. 449, 159 C. C. A. 503.

A bill by creditors of an insolvent corporation against a stockholder held not defective because of the failure to join other stockholders who might be liable on the same grounds. Second Nat. Bank of Erie v. Georger (D. C.) 246 F. 517.

Where there are a number of creditors, a single creditor cannot maintain a bill in equity against the stockholder of an insolvent corporation to collect unpaid subscription for his benefit alone. John A. Roebling's Sons Co. of California v. Kinnicutt (D. C.) 248 F. 596.

To a suit to establish a claim against a testamentary trustee, by an assignee of the beneficiary who repudiates the assignment, such beneficiary is an indispensable party. Brown v. Fletcher, 231 F. 92, 145 C. C. A. 280.

In suit by a wife's administrator to set aside a deed given by decedent and her husband, husband held not an indispensable party. Grigsby v. Miller (D. C.) 231 F. 521.

59. —— Persons legally represented.—Bondholders secured by deed of trust are assumed to be fairly represented by the trustee, and the court can deal with them only through their trustee. Rospigliosi v. New Orleans, M. & C. R. Co., 237 F. 341, 150 C. C. A. 355.

60. —— Grounds for omitting or dispensing with parties.—Persons who have disposed of all their interest in the subject-matter of a suit in equity, and who cannot be affected by the decree, are neither indispensable nor necessary parties. Lion Tractor Co. v. Bull Tractor Co., 231 F. 156, 145 C. C. A. 344.

In suit to vacate contract between aged woman and her agent, rights of possible beneficiaries under contract cannot be concluded, unless they are parties; but agent, his liability to them being personal, may be protected by de-

posit of money with the clerk of the court, so such beneficiaries are not necessary parties. Parker v. Ross, 234 F. 28.), 148 C. C. A. 191.

The rule that in general courts can deal with bondholders only through their trustees is a rule of convenience, to facilitate the conduct of the suit, and is inapplicable where the trustee occupies a position prejudicial to the interest of the bondholders. Brown v. Denver Omnibus & Cab Co. (C. C. A.) 254 F. 560.

61. —— **One or more suing or defending on behalf of all.**—The failure of a creditor to bring his creditors' bill on behalf of other creditors does not render the bill demurrable. Murray v. Sioux Alaska Mining Co., 239 F. 818, 152 C. C. A. 604.

Where members of a class are made parties as representatives of the class, such fact and their relation to the subject-matter should appear from the record. McClelland v. Rose, 247 F. 721, 159 C. C. A. 579, Ann. Cas. 1918C, 341.

62. **Proper parties.**—Owner of large proportion of stock of defendant company, and in position to control its action, was proper party defendant to suit against company. Vineyard Land & Stock Co. v. Twin Falls Oakley Land & Water Co., 245 F. 30, 157 C. C. A. 326.

Where an administrator, by a false and fraudulent statement that he and certain of his relatives were next of kin, obtained a decree of distribution in their favor, the sureties on the administrator's bond are proper parties to a suit to hold the administrator and other distributees as trustees, etc. Diamond v. Connolly (C. C. A.) 251 F. 234.

The failure to join one who is a proper, but neither a necessary nor an indispensable, party does not deprive a federal court of equity of jurisdiction. U. S. v. United Shoe Machinery Co. (D. C.) 234 F. 127.

63. **Complainants.**—That plaintiff, seller, prior to institution of suit for rescission, had disposed of identical certificate covering shares of stock sold to defendant, would not bar suit for lack of interest, where plaintiff owned other stock more than sufficient to cover shares sold to defendant, and defendant in said suit for rescission set up demand for damages for wrongful conversion and sale of certificate. Atkins v. Garrett (D. C.) 252 F. 280.

65. **Defendants.**—A defendant, joined only on the ground that it is a debtor of its codefendant, and against which the only relief prayed is that it be enjoined from paying its codefendant and be required to pay to complainant the amount of the latter's claim, is only a stakeholder and not a real party in interest. General Electric Co. v. Richardson (C. C. A.) 233 F. 84.

In an action for false imprisonment, brought against a sheriff and his deputies, the sheriff was properly joined with the deputies as parties defendant, notwithstanding they both acted in their official capacity. Reichman v. Harris (C. C. A.) 252 F. 371.

67. **Making party complainant or defendant.**—In suit by a wife's administrator to set aside deeds, one given by herself and husband to M., and one given by M. to another, the proper position of the husband as a party was as a plaintiff, and not as a defendant. Grigsby v. Miller (D. C.) 231 F. 521.

69. **Intervention.**—In foreclosure suit, intervening petition asserting that trustee was not protecting bondholders' rights under collateral agreement held without relevancy to pending proceedings, as trustee's actions did not indicate infidelity to its trust. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. (D. C.) 231 F. 478.

Stockholders of a corporation cannot intervene in a proceeding to foreclose a mortgage on corporate property, setting up defenses which were available to the corporation, where there was no averment of any demand upon or refusal by the corporation to assert such defense. Rospigliosi v. New Orleans, M. & C. R. Co., 237 F. 341, 150 C. C. A. 355.

On proceedings to wind up partnership affairs, creditors will be permitted to intervene and file their claims against the partnership assets and against individual partners. Lackner v. McKechney (C. C. A.) 252 F. 403.

In a suit to foreclose a mortgage securing bonds issued by railroad company, stockholders seeking to intervene cannot inject by their answer issues as to whether some of the stockholders had paid for the stock held by them. Fidelity Trust Co. v. Elberton & E. Ry. Co. (D. C.) 235 F. 1009.

That suit was pending in another district to determine rights of contractor which had received issue of bonds for building railroad held ground for denying intervention urging contractors' breach of contract to defeat foreclosure of mortgage securing bonds, part of which had been disposed of by contractor. Id.

In a suit to enforce a lien on lands, held that, bill being dismissed as to those defendants who were residents of same state as intervener, he being entitled to same relief as complainant, should be allowed to intervene. Mathieson v. Craven (D. C.) 247 F. 223.

A stranger cannot intervene for the purpose of defeating the entire suit, nor for the purpose of litigating with the complainant his right or title to

any relief; and if it is desired to set up a new and independent claim, it must be done by an original bill in the nature of a cross-bill. Hopkins v. Lancaster (D. C.) 254 F. 190.

70. Bringing in new parties.—Because purchaser pendente lite will be bound by results of litigation will not alone justify making him party by ancillary proceedings before final decree. Venner v. Pennsylvania Steel Co. of New Jersey (D. C.) 250 F. 292.

71. Defects and objections.—Where contingent remaindermen were not made parties to a partition suit, though life tenants were, a sale for partition disposes only of life estates, and not fee. Glover v. Bradley, 233 F. 721, 147 C. C. A. 487, Ann. Cas. 1917A, 921.

The failure to join in foreclosure proceedings one having an interest in the land does not invalidate the judgment, but merely renders it ineffective as to him. Eckerson v. Tanney (D. C.) 235 F. 415.

(E) Process and appearance

79. Service—Substituted service.—Substituted service of a bill in equity against a foreign corporation, made on its attorney without any order having been procured therefor, is invalid. Johnson-Brown Co. v. Delaware, L. & W. R. Co. (D. C.) 239 F. 590.

80. Return.—Return of service of a subpœna on a nonresident defendant in an infringement suit held insufficient to give the court jurisdiction over such defendant. Scheuerle v. Onepiece Bifocal Lens Co. (D. C.) 241 F. 270.

82. Appearance.—Under the federal practice an appearance to object to the jurisdiction of the court does not bind the parties appearing to submit to the jurisdiction on the overruling of the objection. Hitchman Coal & Coke Co. v. Mitchell, 38 S. Ct. 65, 245 U. S. 229, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, reversing decree Mitchell v. Hitchman Coal & Coke Co., 214 F. 685, 131 C. C. A. 425, which reversed decree Hitchman Coal & Coke Co. v. Mitchell (D. C.) 202 F. 512. Mandate stayed 38 S. Ct. 190.

(F) Bill

83. Nature and office.—A suit in equity is begun by filing the original bill. Waldo v. Wilson, 231 F. 654, 145 C. C. A. 540, reversing decree Wilson v. Waldo (D. C.) 221 F. 505, and certiorari denied Id. 36 S. Ct. 724, 241 U. S. 673, 60 L. Ed. 1231.

84. Form and requisites in general.—In modern practice, pleadings in civil actions at law or in equity are not construed with the strictness formerly applied to criminal indictments, but are to be taken to mean what their language fairly imports. U. S. v. United Shoe Machinery Co. (D. C.) 234 F. 127.

86. Introduction or statement as to parties.—Bill against fraternal insurer, alleging mismanagement, probability of loss of trust funds, and praying appointment of receiver, etc., and that plaintiffs were interested in certain trust funds, is insufficient, not disclosing plaintiffs' interest. Cummings v. Supreme Council of Royal Arcanum (D. C.) 247 F. 992.

88. Premises or statement of cause of action.—Facts which excuse plaintiff from laches are properly pleaded in a bill asking equitable relief, and may be proven upon the trial. Foster v. Callaghan & Co. (D. C.) 248 F. 944.

90. Prayer for relief.—Where a bill is of the nature of a bill to foreclose, it has that effect, though it does not pray such relief. Brown v. Crawford (D. C.) 252 F. 248.

A prayer for general relief in a bill in equity is in aid of the specific grounds enumerated, and is limited to the objects of the bill. Shaw v. Lane, 47 App. D. C. 170.

92. Form and sufficiency of allegations.—Sufficiency of bill is not to be determined by consideration of whether pleader will be able to establish his allegations. Bolin v. Wilkes, 249 F. 705, 161 C. C. A. 615.

A bill of complaint by those next of kin of an Idaho decedent, living in the United States, against the administrator, who had obtained distribution of the property to himself, etc., under Rev. Codes Idaho, § 5702, by false representations that he was the next of kin, held sufficient to charge a fraudulent breach of trust by the administrator. Diamond v. Connolly (C. C. A.) 251 F. 234.

Allegations, in a bill to set aside as clouds on their title disclaimers, as to minerals, held to sufficiently aver complainant's title to the minerals mentioned. Woodall v. Clark (C. C. A.) 254 F. 526.

A bill may properly allege on information and belief, in the alternative, that defendant had actual knowledge or constructive notice of an essential fact, where the complainant has no means of knowing the facts as to such knowledge or notice. Brady v. Reliance Motion Picture Corporation (D. C.) 232 F. 259.

Bill by corporate creditors against directors held to show sufficiently that corporation was insolvent when the directors declared a dividend. United States Smelting Co. v. Hofkin (D. C.) 245 F. 896.

95. Consistency, ambiguity, or repugnancy.—Complainant's statement of conclusion that it treated only "single-stamped" barrels is not supported by its allegations of fact that those supplying it with barrels have both single and double stamped barrels, and that all distinguishing marks have been obliterated before complainant secures them.

Western Extracting Co. v. Smietanka, 234 F. 229, 148 C. C. A. 131.

97. Joinder of causes of action.—Claim against individual defendants for recovery of $36,000 expended by complainant in developing mining property, and claim against corporation for stock and dividends, both claims being under single contract between parties for exploitation of mining property, held separable, in sense that, while they could both be enforced in one action, they could also be separately enforced; action against corporation for stock and dividends being brought in federal court, as involving internal management of foreign corporation after state court had refused to pass on claim against company. Beltz v. Great Western Lead Mfg. Co. (D. C.) 251 F. 696.

There is no inflexible rule in equity against the splitting of demands, which may be done under special circumstances to avoid injustice. Id.

99. Multifariousness.—A bill is not multifarious which presents a common point of litigation the decision of which will affect the whole subject-matter and will settle the rights of all the parties to the suit. Elder v. Western Mining Co., 237 F. 966, 150 C. C. A. 616.

That complainants prayed for relief to which they were not entitled, or alleged facts not material to relief, would not make bill multifarious. Everglades Drainage League v. Napoleon B. Broward Drainage Dist. (D. C.) 253 F. 246.

100. —— Misjoinder of causes of action.—Bill by United States to enjoin railroad from constructing its line through a forest reserve unless it executes stipulation required by Secretary of the Interior in accordance with its agreement and to obtain damages for timber destroyed in operation of road is not multifarious. Chicago, M. & St. P. Ry. Co. of Idaho v. U. S., 37 S. Ct. 625, 244 U. S. 351, 61 L. Ed. 1184, affirming decree 218 F. 288, 134 C. C. A. 84.

Court below, under Alaska statute, had discretion to permit joinder of causes of action for diminishing assets of bank by permitting subscribers to surrender stock and for declaring illegal dividend. Jesson v. Noyes, 245 F. 46, 157 C. C. A. 342, certiorari denied 38 S. Ct. 133, 245 U. S. 667, 62 L. Ed. 538.

Bill to cancel release of judgment and to subject equity in land to payment of the judgment is not multifarious; the cancellation being but incident to the real purpose of the litigation. Ross v. Miller (C. C. A.) 252 F. 697.

103. Impertinence and scandal.—Where bill charged fraudulent conduct against attorney, without stating facts to support charge, such charge is scandalous, and should be stricken from bill. Crim v. Rice, 232 F. 570, 146 C. C. A. 528.

104. Exhibits.—Where, in a suit to set aside a judgment of a state court, the bill described the suit in the state court and the issues involved, and set forth the date of the judgment and the volume and page of the Reports wherein it was reported, the court was authorized to refer to the reported decision and read it in connection with the allegations of the bill, for the purpose of determining what was at issue and decided therein, as if a copy thereof had been appended as an exhibit to the bill; the court not thereby taking judicial notice of a proceeding of the state court, but taking notice of that which was brought to its attention by proper pleading. Hewitt v. Great Western Beet Sugar Co. (C. C. A.) 230 F. 394.

Instruments of writing need not be set out in extenso in a bill, unless the bill shows that it is essential to the proper construction of the particular clauses complained of, and which are set out. U. S. v. United Shoe Machinery Co. (D. C.) 234 F. 127.

Making exhibit attached to bill a part thereof, and praying reference, had the same effect as though the facts set out in the exhibit were alleged in the body of the bill. Everglades Drainage League v. Napoleon B. Broward Drainage Dist. (D. C.) 253 F. 246.

105. Construction and operation.—While pleadings are not construed in equity with so high a degree of technicality as at law, nevertheless, where allegations are equivocal, they will be construed most strongly against pleader. Du Pont v. Gardiner, 238 F. 755, 151 C. C. A. 605.

Allegations in a bill, although made on information and belief, may rightfully be considered in determining the sufficiency of the bill, where the existence of such facts is also distinctly alleged. Helmet Co. v. Wm. Wrigley, Jr., Co., 245 F. 824, 158 C. C. A. 164.

Where complainant's bill to enforce mechanic's lien alleged that named persons had some interest in premises either as mortgagees or purchasers, but alleged that mortgage was inferior to lien, and evidence indicated that existence of mortgage was uncontroverted, complainant cannot attack decree because of absence of formal proof of mortgage; his pleading amounting to admission of its existence. Turner Const. Co. v. Union Terminal Co., 248 F. 120, 160 C. C. A. 260.

In modern practice, pleadings in civil actions at law or in equity are not construed with the strictness formerly applied to criminal indictments, but are to be taken to mean what their language fairly imports. U. S. v. United Shoe Machinery Co. (D. C.) 234 F. 127.

(H) Answer

116. Denials and admissions.—Where, in a suit in equity the plaintiffs aver in

their bill of complaint that a bill of sale of a chattel given by the defendant to the plaintiffs' intestate was in fact a chattel mortgage to secure a debt due by him to their intestate, and ask that it be so declared, and for the sale of the chattel to pay the debt, and defendant admits in his answer part of the debt to be due, and does not deny that the bill of sale was in fact intended as a mortgage, but merely demands strict proof of the material averments of the bill, the pleadings, together with evidence by the plaintiff identifying the bill of sale and the notes evidencing the debt, will support a decree in favor of the plaintiff granting the relief asked. Emig v. Baker, 44 App. D. C. 306.

Where trustees under a deed of trust were restrained pendente lite from taking possession of the real estate sold by them under the deed of trust, on charges by the owner in possession that the purchaser at the sale had bought the property in the interest of the trustees, and that the property had been sold for less than one-half of its real value, and the trustees failed to deny that they were interested in the sale, and made only an equivocal denial of the charge as to the inadequacy of the sale price, this court on an appeal by them affirmed the restraining order. Brown v. Oriental University, 44 App. D. C. 414.

120. Compelling answer.—Requiring the owner of the equity of redemption, in a subsequent lienholder's suit for redemption, to answer a cross-bill for subrogation to the extent of interest paid by the cross-complainant, does not suffice to require him to answer or appear in the main case. Brown v. Crawford (D. C.) 252 F. 248.

(I) *Cross-bill*

122. Nature and office—Relation to subject-matter of original bill in general.—A cross-bill may not interpose new controversies between codefendants to the original bill, the decision of which is unnecessary to a complete determination of the controversies between the complainant and the defendants over the subject-matter of the original bill. Landon v. Public Utilities Commission of Kansas (D. C.) 234 F. 152.

(J) *Replication*

138. Failure to reply.—Where in an answer to a bill of complaint praying, among other things, for the establishment of an indebtedness due from the defendant, the defendant avers that part of the alleged indebtedness was usurious, and claims credit for the usury paid, the failure of the plaintiff to reply to such averment of the answer is not an admission by the plaintiff of its truth, that will dispense with the necessity of the defendant's proving its truth on the trial. Emig v. Baker, 44 App. D. C. 306.

(N) *Amended and supplemental pleading*

146. Discretion of court.—See Kinney v. Rice (D. C.) 238 F. 441.

Allowance of amendment to bill is question within discretion of court. National Bank of Bakersfield v. Moore, 247 F. 913, 160 C. C. A. 103, certiorari denied 38 S. Ct. 427, 247 U. S. 507, 62 L. Ed. 1241.

The granting or refusing of leave to file a supplemental bill rests in the discretion of the trial court. General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160.

147. Amendment of bill.—Where complainant was entitled to no relief under the evidence, the denial of an amendment to the bill, at close of testimony, as to a certain matter, and changing the prayer for relief, was not error. Parent v. Picotte (C. C. A.) 254 F. 301.

149. —— Matter arising after filing bill.—A complainant is not estopped from adopting a different theory of his case in an amended bill, to meet an authoritative decision rendered after the suit was commenced. Ashland Waterworks Co. v. City of Ashland (C. C. A.) 251 F. 492.

150. —— Matter making new case.—A complainant cannot be permitted, under the guise of amendment, to make a new bill. U. S. v. Whitted, 245 F. 629, 158 C. C. A. 57.

156. Amendment of plea or answer —— Matter making new defense.—In a suit in equity an amended answer, tentatively received during trial, "more in detail," would be rejected to the extent found to raise new issues operating as a surprise. First Trust & Savings Bank v. Bitter Root Valley Irr. Co. (D. C.) 251 F. 320.

158. Amendment to conform to proofs.—Where evidence has been fully taken without objection on an issue not made by the pleadings, complainant may be permitted to amend his bill to meet the evidence and present such issue. Davis v. Gates (D. C.) 235 F. 192.

161. Form and sufficiency of amended pleading.—In a suit in equity an amended answer, tentatively received during trial, "more in detail," would be rejected to the extent found to deny former admissions. First Trust & Savings Bank v. Bitter Root Valley Irr. Co. (D. C.) 251 F. 320.

168. Time for filing.—In suit to compel defendant to hold, as trustee for plaintiff, mineral rights in land, held, that leave to file trial amendment to plaintiff's bill, excusing delay in suing, was improperly refused. Pond Creek Coal Co. v. Hatfield, 239 F. 622, 152 C. C. A. 456.

(O) *Signature, verification, and filing*

176. Verification.—See Kinney v. Rice (D. C.) 238 F. 441.

177. —— Authority to take.—See Kinney v. Rice (D. C.) 238 F. 441.

(P) Issues, proof, and variance

185. Matters to be proved.—In equity, as at law, fact admitted held proved, with all its consequences, as though fact in avoidance had not been averred, unless such fact also is proved. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

(Q) Defects and objections as to pleadings, and waiver thereof

190. Waiver of objections in general —— Objections to bill.—Where there was no demurrer or motion to dismiss, relief held not to be denied, after trial of suit to rescind on the merits, because bill did not allege plaintiff's willingness to return property received by him. Twin Lakes Land & Water Co. v. Dohner, 242 F. 399, 155 C. C. A. 175.

(R) Evidence

196. Rules of evidence in general.—Parol evidence is not admissible, even in equity, to show that the consideration of $1, which the lease recited had been paid, was not in fact paid. Lindlay v. Raydure (D. C.) 239 F. 928.

201. Answer as evidence—Waiver of answer under oath.—The answer in a suit in equity is not evidence, where an answer under oath is waived, and the hearing is not upon bill and answer. Bradley v. Davidson, 47 App. D. C. 266.

(T) Discovery

221½. Right to discovery.—See John A. Roebling's Sons Co. of California v. Kinnicutt (D. C.) 248 F. 596.

A bill of discovery in aid of a defense at law cannot be maintained where complainant has ample proof of his allegations and the evidence sought is plainly cumulative or comparatively unimportant. Galion Iron Works Co. v. Ohio Corrugated Culvert Co., 244 F. 427, 157 C. C. A. 53.

To give equity jurisdiction of a bill as one for discovery, where it also prays for other relief, it must allege that discovery is essential to such relief. Parkerson v. Borst (C. C. A.) 251 F. 242.

A bill for discovery to put a party on his oath is obsolete. Scotten v. Rosenblum (D. C.) 231 F. 357.

A plaintiff cannot require discovery in aid of an action at law of facts of which he has equal knowledge, or equal means of knowledge, with the defendant. Kinney v. Rice (D. C.) 238 F. 444.

Affirmative defenses to a bill of discovery must be confined with the most narrow and technical rigidity to such as the precedents have recognized, and do not include, where the bill is in aid of an action at law, matter which might be a good defense to such action. Pressed Steel Car Co. v. Union Pac. R. Co. (D. C.) 241 F. 964.

224. Answers to interrogatories—Necessity.—See Kinney v. Rice (D. C.) 238 F. 441.

226. —— Sufficiency.—Answers to interrogatories in a bill in equity required to be under oath are evidence only in so far as they are responsive to the interrogatories. Bradley v. Davidson, 47 App. D. C. 266.

227. Production and inspection of documents.—Under a bill of discovery in aid of an action at law, defendant can be required to produce only such documents as contain evidence material to plaintiff's case. Pressed Steel Car Co. v. Union Pac. R. Co. (D. C.) 241 F. 964.

(U) Dismissal before hearing

231. Voluntary dismissal—Effect of answer or cross-bill.—Where attorneys, who had performed services under a contract with a partnership, filed their claim in a proceeding brought by the executor of a deceased partner to wind up the partnership affairs, held, that they acquired an independent standing in the suit, and the court should not allow the original bill, etc., to be dismissed until the intervening petition was disposed of on the merits. Lackner v. McKechney (C. C. A.) 252 F. 403.

232. —— Conditions.—The right of a complainant to dismiss without prejudice, at least before the case has reached a stage where the court could render final decree on the merits, is not subject to the imposition of conditions other than the payment of costs. Young v. J. Samuels & Bro. (D. C.) 232 F. 784.

235. Involuntary dismissal—Grounds in general.—On a bill for specific performance, an objection by defendant that the contract could not be enforced, because it was not signed by his wife, not arising on the allegations in the bill, furnished no ground for its dismissal. Dixon v. Anderson (C. C. A.) 252 F. 694.

An allegation of an essential fact in a bill in equity by way of recital, but in such form that the existence of the fact appears by necessary implication, is good as against a motion to dismiss. Grasselli Chemical Co. v. Ætna Explosives Co. (D. C.) 247 F. 603.

239. —— Dismissal on court's own motion.—A court of equity will on its own motion dismiss a bill, if to grant the relief prayed for would injuriously affect persons materially interested in the subject-matter who are not made parties. U. S. v. Bean (C. C. A.) 253 F. 1.

241. —— Operation and effect.—An order entered on the minutes, on motion of defendant, that the court "does now dismiss this bill for want of prose-

cution," was in effect a final decree, binding on defendant, which was not entitled at a subsequent term to a formal decree of dismissal "on the merits." Westinghouse Traction Brake Co. v. Orr (C. C. A.) 252 F. 392.

(V) Hearing, submission of issues to jury, and rehearing

244. Separate hearings in same cause.—Disputed rights of inheritance cannot be settled on a preliminary hearing in equity to secure relief against fraudulent administration of an estate, but the plaintiffs, citizens of other states, have a right to be heard and to have the estate preserved pending final determination of their rights. Jennings v. Smith (D. C.) 232 F. 921. See Equity Rule 26, ante.

251. Conduct of hearing in general.—Where parties were agreeable to foreclosure of railroad mortgage, and necessity for prompt sale was shown, held, that parties were entitled to have case proceed with convenient expedition. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

252. Reception of evidence.—In a suit by the vendor for specific enforcement of a contract for the sale of a leasehold interest in land, where the lease prohibited its assignment, except with written consent of the lessor, the court had discretion, after the close of the hearing, to permit complainant to supply proof that such consent had been obtained. United States Gypsum Co. v. Mackey Wall Plaster Co. (C. C. A.) 252 F. 397.

254. Dismissal at final hearing.—Where bill of trustee of bankrupt mining company, charging actual fraud on part of defendants, alleged conspiracy to wreck company, etc., such bill must be dismissed, where the fraud was not established. Munro v. Smith (D. C.) 243 F. 654.

264. Rehearing—Application and proceedings thereon.—See Kinney v. Rice (D. C.) 238 F. 441.

Where a petition for rehearing is filed by leave of court during the term at which decree was entered the decree does not become final until the petition is disposed of. U. S. v. Midway Northern Oil Co. (D. C.) 232 F. 619.

Entry of an order vacating a decree of dismissal without notice to the defendant even if an error does not affect the jurisdiction of the court to make the order. Id.

(W) Masters and commissioners, and proceedings before them

267. Compensation and fees.—A master's fee of $20,000 is excessive by at least $10,000, where service rendered was found in a few brief meetings, held at intervals during period of less than three months, and in preparation of two reports, which, while thorough, could not have been difficult, and could not have occupied more than two months, had master done nothing else. Brown v. Pennsylvania R. Co. (C. C. A.) 250 F. 513.

269. Power to refer to master.—A court of equity held to have power to appoint a commission to make tests of a refuse-burning plant built for a city, and to report the results, as bearing upon the issue as to whether the plant fulfilled the requirements and warranties of the contract. Destructor Co. v. City of Atlanta (D. C.) 232 F. 746.

270. Discretion as to reference.—In a suit for an accounting, it is within the discretion of the court to refer the case to a master for that purpose. Bothwell Co. v. Bice, 247 F. 60, 159 C. C. A. 278.

273. Powers and functions of master in general.—A master, to whom a patent infringement suit was referred, had ample power, which he would not hesitate to use, to speed the cause and prevent unreasonable delay. Rollman Mfg. Co. v. Universal Hardware Works (D. C.) 229 F. 579.

There is no authority in a special master per se, and in the absence of a special statute none can be granted him by the court, to make an order in the nature of an injunction. In re Gordon (D. C.) 250 F. 798.

274. Questions and matters proper for reference.—Where court has determined substantial rights of parties, reference to master for accounting is not denial of hearing before court, particularly as either party, if dissatisfied with master's findings, might except, and such exceptions would be passed on by court. Kentucky Wagon Mfg. Co. v. Jones & Hopkins Mfg. Co., 248 F. 272, 160 C. C. A. 350.

275. Issues embraced in order of reference.—See Wm. Edwards Co. v. La Dow (C. C. A.) 230 F. 378.

288. Objections and exceptions to report and proceedings thereon—Necessity of exceptions.—Where no exceptions were taken to the master's findings of fact, they must be accepted as true by the reviewing court. Fleming v. Noble (C. C. A.) 250 F. 733.

289. —— Time for objecting and excepting.—Proper practice requires that objections to a master's report shall be taken in the trial court, that any errors discovered therein may be rectified by the court itself, or by a reference to the master for correction. Riverside Heights Orange Growers' Ass'n v. Stebler, 240 F. 703, 153 C. C. A. 501.

292. —— Form and sufficiency of exceptions.—Exceptions to reports of masters in chancery are in the nature of a special demurrer, and the party

objecting must point out the error; otherwise, the part not excepted to will be taken as admitted. Riverside Heights Orange Growers' Ass'n v. Stebler, 240 F. 703, 153 C. C. A. 501.

Exceptions to the report of a master must specifically point out the matter objected to and the ground of objection, and general exceptions will not be considered. In re Association Dairy Co. (D. C.) 251 F. 749.

297. —— Conclusiveness of report.—Though master was appointed by consent, held, that his findings of fact included in his report were not conclusive, and exceptions thereto might be considered by the court. City and County of Denver v. Denver Union Water Co., 38 S. Ct. 278, 246 U. S. 178, 62 L. Ed. 649.

Under a reference of an entire case to a master by consent of parties, to report his findings of fact and conclusions of law, without the reservation of a right of review his findings of fact are conclusive, if there is any competent evidence to support them. Goldsmith Silver Co. v. Savage, 229 F. 623, 144 C. C. A. 33, affirming decree (D. C.) 211 F. 751.

Where order of reference contained reservation of right of review, findings of master are to be regarded, on exception, as presumptively correct, and should be sustained, except so far as against weight of evidence reported, or so inconsistent with one another that they could not properly stand. Dresser v. Bates (C. C. A.) 250 F. 525, reversing decree Bates v. Dresser (D. C.) 229 F. 772.

Finding of master, referee, or judge, seeing and hearing witnesses, held of great weight, and great caution to be exercised in disturbing it. Fernald Woodward Co. v. Conway Co. (D. C.) 229 F. 819.

There is a presumption in favor of the report of the master based on conflicting testimony. Carlisle v. Smith (D. C.) 234 F. 759.

To justify setting aside findings of a master appointed through consent of the parties, it must clearly appear that there is a mistake or error. Balfe v. Tilton (D. C.) 237 F. 684.

The rule as to the conclusiveness of findings of fact by a master, made by consent of all parties, does not extend to findings on issues not at the time made by the pleadings. Boisot v. Amarillo St. Ry. Co. (D. C.) 244 F. 838.

In a case involving the constitutionality of a state law, statutory or municipal, the court will not be bound by the findings of a master. Spring Valley Water Co. v. City and County of San Francisco (D. C.) 252 F. 979.

(X) Decree and enforcement thereof

300. Nature and essentials.—While there is a wide discretion in chancellor as to frame or language of his decree, forms and modes of expression used do not affect character of decision, which depends on what has been decided. Linde Air Products Co. v. Morse Dry Dock & Repair Co., 246 F. 834, 159 C. C. A. 136, affirming decree (D. C.) 239 F. 909.

Statement in decree of any facts proved or unproved has fallen into disuse, as unnecessary, except in matters of contempt, or in exceptional cases. Id.

A judgment foreclosing three mortgages, which did not recite amounts due on each separately, held valid; land not bringing enough to satisfy mortgage having priority, so that good title passed to a purchaser at foreclosure sale. Eckerson v. Tanney (D. C.) 235 F. 415.

303. Consent decree.—A consent decree should be construed as if it were a contract. Garrett & Co. v. Sweet Valley Wine Co. (D. C.) 251 F. 371.

307. Decree pro confesso—Effect.—A defendant was as fully bound by a duly rendered decree pro confesso against him as if he had resisted the suit. Ferguson v. Babcock Lumber & Land Co. (C. C. A.) 252 F. 705.

312. Nature and extent of relief.—Cotenant's grantee, who, believing that he has acquired the whole title, improves land, held so far as practicable to be allotted part improved upon partition, or to be given compensation for betterments. Highland Park Mfg. Co. v. Steele, 232 F. 10, 146 C. C. A. 202, affirming decree Steele v. Highland Park Mfg. Co. (D. C.) 212 F. 972, and decree modified on rehearing Highland Park Mfg. Co. v. Steele (C. C. A.) 235 F. 465.

In suit in equity to secure set-off of judgments in actions at law, judgments are immune from attack, and court is without power to require reduction of complainant's judgment as condition to granting of the relief prayed for. J. L. Owens Co. v. Officer, 244 F. 47, 156 C. C. A. 475.

Questions of interest recoverable by each party on an accounting considered. Bothwell Co. v. Bice, 247 F. 60, 159 C. C. A. 278.

313. —— Conditional relief.—In decreeing specific performance against a city of a contract for hydrants and street lights, which has a number of years to run, the court may properly, as a condition, require complainant to assent to such modifications as may be just and equitable. City of La Follette v. La Follette Water, Light & Telephone Co. (C. C. A.) 252 F. 762.

316. —— Mortgage foreclosure.—It is much the better practice for a railroad reorganization committee to formulate its plan before final decree and sale of the property, that dissenting bondholders may be heard and granted such relief by the court as may be equitable. United States & Mexican Trust Co. v.

United States & Mexican Trust Co. (C. C. A.) 250 F. 377.

317. **Conformity to pleadings and proofs.**—The jurisdiction of a court of equity is always limited to the subject-matter in the case before it. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

In suit to partition the only part of tract of which plaintiffs were cotenants in which defendant had interest, relief involving other parties and questions foreign to those properly cognizable held to be denied. Highland Park Mfg. Co. v. Steele, 232 F. 10, 146 C. C. A. 202, affirming decree Steele v. Highland Park Mfg. Co. (D. C.) 212 F. 972, and decree modified on rehearing Highland Park Mfg. Co. v. Steele (C. C. A.) 235 F. 465.

Where the complaint alleged defendant agreed to transfer mining claims to corporation to be formed and to deliver a percentage of stock to complainants, held that corporation, not having been formed, defendant could not be ordered to convey a similar percentage of the claims to complainants. Ellis v. Treat, 236 F. 120, 149 C. C. A. 330.

318. —— **Prayer for relief.**—In suit to enforce mechanic's lien on mortgaged premises, where it appeared that mortgagee advanced sums to owner and that portion of this was deposited to joint account of owner and complainant subject to withdrawal on their joint check, complainant is under his prayer for general relief entitled to order directing owner to join in executing check to enable complainant to withdraw funds. Turner Const. Co. v. Union Terminal Co., 248 F. 120, 160 C. C. A. 260.

In suit for equitable relief, complainant held entitled, under prayer for other and further relief to such relief as was consistent with the pleadings and evidence. Wright v. Barnard (D. C.) 248 F. 756.

323. **Opening or vacating.**—After decree is opened or set aside, action is left still open and undetermined, and further proceedings may be had thereon. Kalehua v. Clark (C. C. A.) 250 F. 612.

325. —— **Time.**—Court of equity held generally to have control over decrees throughout the term, but thereafter to have no power to make a substantial change, except by bill of review; but where suit was dismissed as to earlier of alleged fraudulent conveyances on representation that equity in property subsequently conveyed was then sufficient to pay creditors, court held authorized after the term to set aside the decree. Winslow v. Staab, 242 F. 426, 155 C. C. A. 202, affirming decree (D. C.) 233 F. 305.

326. —— **Grounds.**—A decree entered by stipulation of parties should not be disturbed except on a clear showing of a meritorious defense, the denial of which would work plain injustice. Cushman & Denison Mfg. Co. v. L. F. Grammes & Sons (D. C.) 234 F. 952.

330. **Construction and operation.**—Decree finding railroad company liable for failure of canal company, which it controlled, to make sinking fund appropriations as required by mortgage given to secure bonds, and which ordered railroad company to make payments to sinking fund, was not conclusive adjudication as to distribution of such fund; the sinking fund not then being in existence. Brown v. Pennsylvania R. Co. (C. C. A.) 250 F. 513.

Where judgment decreed superior title to timber lands in oil company as against lumber company, and lumber company was directed to pay over fund collected to pay for timber cut and subsequent judgment in suit in which lumber company was not a party decreed on ground of fraud, title to land and timber in state as against oil company, state was entitled to the fund. Houston Oil Co. of Texas v. State of Texas (C. C. A.) 250 Fed. 572.

A foreclosure decree does not, until deed is made, divest the mortgagee of his lien, or the mortgagor of his right to possession and profits. Eckerson v. Tanney (D. C.) 235 F. 415.

331. **Performance and enforcement.**—Enforcement of judgment against holders of bonds issued as a bonus and transferred to bona fide holders, held to be conditioned on failure to give security and to provide for return of the bonds to them when paid. Williamson v. Collins, 243 F. 835, 156 C. C. A. 347.

333. —— **Sale of property.**—In a suit to foreclose a railroad mortgage, the court in its discretion has full power to make an order concerning an upset price upon the sale, if deemed advisable. Ex parte Equitable Trust Co. of New York, 231 F. 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 231 F. 478.

Decree requiring bidders at foreclosure sale of railroad property to make deposits in cash or bonds of the company, or by certified check, held not to prevent competitive bidding so as to avoid the sale. Rospigliosi v. New Orleans, M. & C. R. Co., 237 F. 341, 150 C. C. A. 355.

The purchaser at sale under judicial decree, which does not order property sold free from lien of taxes, takes it subject to the tax lien. Union Trust Co. v. Great Eastern Lumber Co., 248 F. 46, 160 C. C. A. 186.

The upset price required to be bid for railroad property at a foreclosure sale may fairly be based on the present earning capacity of the road and

the value of property not used in its operation. Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 233 F. 335.

Irregularities in foreclosure proceedings held not to affect title acquired on purchase of land on foreclosure. Eckerson v. Tanney (D. C.) 235 F. 415.

(Y) Bill of review

337. Nature and scope of remedy.—A bill of review deals with the state of things existing at the time it is filed. Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162.

339. Grounds—In general.—A surety company, which permitted judgment to be taken against it by default because of a misunderstanding between its New York counsel and its Massachusetts counsel, each of whom understood that the other would attend to the matter, was not entitled to equitable relief against the judgment, as a court of equity does not interfere with judgments at law unless the complainant has an equitable defense of which he could not avail himself at law, or had a good defense at law which he was prevented from availing himself of by fraud or accident, unmixed with negligence of himself or his agents. Interurban General Contracting Co. of New York v. U. S. (D. C.) 229 F. 588.

340. —— Fraud.—Assignees of a corporation could not have equitable relief from a judgment adverse to them in their suit against the corporation's debtor because he fraudulently denied his signature on the sheriff's certificate, in suit against the corporation in which he was attached, that he was indebted to the corporation, thereby perjuring himself. Scotten v. Rosenblum (D. C.) 231 F. 357.

342. —— New matter.—To warrant a court in permitting the filing of a bill of review for the purpose of introducing new evidence, it must appear that such evidence was unknown to the moving party and could not have been produced on the hearing. Thomas v. South Butte Mining Co., 230 F. 968, 145 C. C. A. 162.

The recognized condition of leave to file a bill of review is that the appellate court must be convinced (1) that the alleged newly discovered evidence would probably lead to a different result and (2) that due diligence was used to discover it before the trial. Suhor v. Gooch, 248 F. 870, 160 C. C. A. 628, denying petition for leave to file bill of review of 244 F. 361, 156 C. C. A. 647.

A judgment cannot be reopened for so-called newly discovered evidence which was available at the time of first trial, nor where the bill of review does not show evidence that would support a different conclusion. Scotten v. Rosenblum (D. C.) 231 F. 357.

344. Right of review.—Party not aggrieved held not entitled to maintain bill of review, though he might have insisted on the error on the original hearing or on appeal. U. S. v. Salomon (D. C.) 231 F. 461, decree affirmed 231 F. 928, 146 C. C. A. 124.

347. Leave to file bill.—Leave to file a bill of review in an equity case on the ground of after-discovered evidence must have the same support as a motion for new trial on the same ground in a law case. Suhor v. Gooch, 248 F. 870, 160 C. C. A. 628, denying petition for leave to file bill of review of 244 F. 361, 156 C. C. A. 647.

352. Form and sufficiency of bill.—A bill of review, alleging that defendant's attorney "wrongly" entered the judgment, pleaded merely a conclusion of law. Scotten v. Rosenblum (D. C.) 231 F. 357.

(Z) Costs

359. Discretion of court.—Apart from court rules, taxing of costs in equity cases is within sound discretion of trial court. Wagner v. Meccano, Limited, 246 F. 603, 158 C. C. A. 573, affirming in part and reversing in part Meccano, Limited, v. Wagner (D. C.) 234 F. 912.

Legal and allowable taxable costs are in the discretion of the court on the dismissal of a bill in equity. Christensen v. General Electric Co. (D. C.) 248 F. 284.

362. Prevailing party.—In suit by a former wife to obtain her share in property which had composed the community estate of herself and her former husband, the costs of reciversship proceedings will not be assessed wholly against the husband's interest, though the wife prevailed, where equities were not all in her favor. Johnson v. Garner (D. C.) 233 F. 756.

363. Dismissal.—Where plaintiff waits until the moment of trial before dismissing, a court of equity should tax as far as possible costs so as to reimburse defendant for expenditures for trial, though it cannot allow costs which could not have been allowed had there been a decree for defendant. Bone v. Walsh Const. Co. (D. C.) 235 F. 901.

Where party stipulated that costs respecting depositions should be taxed on "final determination," dismissal at plaintiffs' cost on their motion held a "final determination," entitling defendant to such costs. Christensen v. General Electric Co. (D. C.) 248 F. 284.

B. Admiralty Practice and Procedure

I. Admiralty Rules.
II. Admiralty Procedure in General.

I. Admiralty Rules

Rule 2. Mesne Process—Suits in Personam

See, particularly, notes 207, 229, post.

Rule 7. Arrest for Sum Exceeding $500

See, particularly, note 216, post.

Rule 8. Suits in Rem—Custody of Property

See, particularly, notes 646, 751, post.

Rule 9. Same—Process of Arrest

See, particularly, note 246, post.

Rule 12. Suits by Material-Men

See, particularly, note 37, post.

Rule 13. Suits for Wages

See, particularly, note 37, post.

Rule 29. Answers to Libels—Default—Decree Pro Confesso

See, particularly, notes 483, 751, post.

Rule 32. Same—Exposing Defendant to Prosecution

See, particularly, note 313, post.

Rule 37. Foreign Attachment

See, particularly, note 280, post.

Rule 38. Bringing Property into Court to Answer Exigencies of Suit

See, particularly, note 338, post.

Rule 40. Rescission of Decree and Rehearing

See, particularly, note 483, post.

Rule 47. Bail—Conforming to State Laws

See, particularly, note 207, post.

Rule 53. Cross-Libel—Security by Respondents

See, particularly, note 745, post.

Rule 54. Limitation of Liability of Shipowners—Libel or Petition

See, particularly, notes 798, 809, post.

Rule 56. Same—Contest of Liability

See, particularly, notes 798, 809, 835, post.

Rule 57. Same—Proceedings in District Courts

See, particularly, note 806, post.

Rule 59. Same—Collision Cases

See, particularly, notes 159, 162, post.

Admiralty Rules for the Second Circuit

The admiralty rules for the second circuit were republished October 16, 1918. The changes made thereby are set forth or indicated below.

RULE 5. CERTIFYING RECORDS

This rule, as set forth in Comp. St. 1916, p. 2707, was changed to read as set forth below.

The appellants shall, within thirty days after giving notice of appeal, procure to be filed in this court the apostles in accordance with the provisions of the act of February 13, 1911.

RULE 6. NEW ALLEGATIONS, ETC.

This rule is the same as former rule 7, as set forth in Comp. St. 1916, p. 2707.

Former rule 6 has been omitted from the rules as republished.

RULE 7. NEW PLEADINGS—NEW TESTIMONY

This rule is the same as former rule 8, as set forth in Comp. St. 1916, p. 2708.

Former rule 7 is now rule 6.

RULE 8. NEW TESTIMONY—HOW TAKEN

This rule is the same as former rule 9, as set forth in Comp. St. 1916, p. 2708.

Former rule 8 is now rule 7.

RULE 9. PRINTING NEW PLEADINGS AND TESTIMONY

This rule is the same as former rule 10, as set forth in Comp. St. 1916, p. 2708, except that the ordinal "23d" before the words "General Rule" is changed to "21st."

Former rule 9 is now rule 8.

RULE 10. WRIT OF INHIBITION

This rule is the same as former rule 12, as set forth in Comp. St. 1916, p. 2708.

Former rule 10 is now rule 9.

RULE 11. EXTENSION OF TIME

This rule is the same as former rule 17, as set forth in Comp. St. 1916, p. 2709.

Former rule 11 has been omitted from the rules as republished.

RULE 12. WHEN RULES OF DISTRICT COURT TO APPLY

This rule is the same as former rule 18, as set forth in Comp. St. 1916, p. 2709.

Former rule 12 is now rule 10.

RULE 13. WHAT GENERAL RULES SHALL BE DEEMED ADMIRALTY RULES

This rule corresponds to former rule 19, as set forth in Comp. St. 1916, p. 2709. It has been changed to read as set forth below.

13. The following of the general rules of this court, and no others, shall be deemed admiralty rules, viz.: Rules 3, 4, 5, 6, 8, 10, 11; section 4, rule 13; rules 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26; section 3 of rule 27; rules 28, 29, 31, 33, and 34.

Former rules 13–17, inclusive, have been omitted from these rules as republished.

II. Admiralty Procedure in General

Notes of Decisions

(*A*) *In general*

1. Nature and source of admiralty law.—The rights of a seaman in the courts of the United States are governed by its statutory law, and not by the law of the flag of the vessel on which he is serving. The Talus (D. C.) 242 F. 954, decree reversed (C. C. A.) 248 F. 670.

3. —— Local or state laws.—A maritime contract for services to be performed on the waters away from a state, mainly on the sea, cannot be nullified, so as to prevent enforcement in

an admiralty court, by the statute of frauds of the state where the contract is made. Union Fish Co. v. Erickson, 39 S. Ct. 112.

6. **General powers of admiralty courts.**—A suit in admiralty by a seaman to recover for an injury alleged to have been caused by defective machinery or appliances on the ship is governed by the admiralty law. Globe S. S. Co. v. Moss, 245 F. 54, 157 C. C. A. 350, certiorari denied 38 S. Ct. 61, 245 U. S. 663, 62 L. Ed. 537.

Where part owner of vessel seeks to employ it in a dangerous and hazardous enterprise without the consent of and over the objection of owner of other half, a court of admiralty, upon application of latter, may order that vessel be sold and proceeds distributed. The Ellenora (D. C.) 252 F. 209.

(B) Remedies in personam and in rem

18. **Mode and form of procedure in general.**—A possessory admiralty suit is not limited by the strict conditions of the remedy by replevin. Brooklyn Ash Removal Co. v. Connell, 161 N. Y. S. 1006, 175 App. Div. 182.

26. —— **Collision.**—While tugs are liable in tort for a collision through their fault, by which their tow is injured, the contractor, who has undertaken to render the service, may also be liable personally for failure to properly perform his contract. The Procida (D. C.) 243 F. 251.

31. **What are proceedings in personam in general.**—"Actions in rem" are prosecuted to enforce a right to the thing arrested, to perfect a maritime privilege or lien attached to a vessel or cargo, or both, and in which the thing to be made responsible is proceeded against as the real party; and "actions in personam" are those in which an individual is charged personally in respect to some matter of admiralty and maritime jurisdiction, and in which the process and proceedings are different from those in an action in rem; so that a suit in the French Tribunal of Commerce at Oran, Algeria, by the master of a British vessel against the master of a Norwegian vessel, claiming damages for collision, in which that tribunal ordered a "protective seizure," and received a letter of indemnity, and released the vessel from attachment, was a suit in personam, and not a proceeding in rem. The Kongsli (D. C.) 252 F. 267.

37. **Grounds for proceedings in personam—Supplies.**—Under Act June 23, 1910, § 4 (Comp. St. 1916, § 7786), and Admiralty Rules 12 and 13, parties having claims for services and supplies held entitled to proceed against owner of vessel, who had received insurance money, in personam. Henslee v. West Kentucky Coal Co., 241 F. 609, 154 C. C. A. 367.

39. —— **Liability of city.**—A city held liable in admiralty for the sinking of a steamer through the negligence of firemen operating from a fireboat. City of Chicago v. White Transp. Co., 243 F. 358, 156 C. C. A. 138, certiorari denied 38 S. Ct. 60, 245 U. S. 660, 62 L. Ed. 535.

47. **Grounds of proceedings in rem.**—A claim of a charterer for dead freight, which is in the nature of one for loss of profits, is not enforceable in a suit in rem as a lien on the vessel. Clinton v. Smith & Terry, 249 F. 119, 161 C. C. A. 171, modifying decree The Benefactor (D. C.) 242 F. 582.

A ship held liable in rem for freight money collected by the owners for the benefit of a charterer, but not paid over. The Seguranca (C. C. A.) 250 F. 19.

51. —— **Salvage services.**—The raising of a sunken vessel, which lay at the bottom of a narrow and much-traveled and navigable stream, was a salvage service, entitling the salvor to a prior lien, enforceable in rem, whether it was rendered under contract or not, for the vessel was in danger, etc. Great Lakes Towing Co. v. St. Joseph-Chicago S. S. Co. (C. C. A.) 253 F. 635.

57. —— **Torts in general.**—A scow, although under demise to a charterer, held liable in rem for injury to another scow in collision. The Willie, 231 F. 865, 146 C. C. A. 61.

The owner of a vessel has a lien arising out of a collision, given by the general maritime law of the United States, which may be enforced by an action in rem. The Kongsli (D. C.) 252 F. 267.

59. —— **Death caused by wrongful act.**—Whether a proceeding in rem can be maintained against a vessel for tort causing death depends upon the construction of the state laws. The Merrimac (D. C.) 242 F. 572.

89. **Defenses in general—Contributory negligence.**—The last clear chance rule is not applicable in collision cases. The Norman B. Ream (C. C. A.) 252 F. 409.

101. **Laches and stale demands.**—See The Alabama, 242 F. 431, 155 C. C. A. 207.

Where proceeds of sale of vessel are insufficient to pay uncontested liens, defense of laches as to one lien can be raised only by one having lien. The Cora P. White (D. C.) 243 F. 246.

124. **Dismissal.**—The premature commencement of a suit in admiralty is not ground for dismissal, but, if the right to libel accrues before hearing, will affect only the matter of costs. Munson S. S. Line v. Glasgow Nav. Co., 235 F. 64, 148 C. C. A. 558.

Mere insufficiency of the evidence

taken in support of a libel in admiralty is not ground for dismissal of the suit if the evidence in support of the answer supplies the deficiency. The Louise Rugge (D. C.) 234 F. 768, decree affirmed (C. C. A.) 239 F. 458.

(C) *Parties*

141. Libelants—Charterer.—A charterer, in a suit by the owner to recover the vessel and also charter hire, held entitled to maintain a cross libel based on claims arising out of the same maritime contract. The Arlyn Nelson (D. C.) 243 F. 415.

158. —— Objections to misjoinder or nonjoinder and waiver thereof.—Right of respondent, in suit begun by libel in personam for death by capsizing of vessel, to object that new claims of new claimants could not be introduced without service of process, held not lost, where respondent excepted that it could not be called upon to answer the amended libel as to additional parties. In re Indiana Transportation Co., 37 S. Ct. 717, 244 U. S. 456, 61 L. Ed. 1253.

159. Defendants.—A motion by the libelant in a collision suit against a tug and her tow to dismiss as to the tug with leave to proceed against the tow alone held properly denied under Admiralty Rule 59. The Teaser, 246 F. 219, 158 C. C. A. 379, affirming decree (D. C.) 229 F. 476.

162. —— Bringing in new parties at instance of defendant.—Dismissal of a petition bringing in a charterer under admiralty rule 59, in a suit for injury to a stevedore, held without prejudice to respondent. The Wilhelmina, 232 F. 430, 146 C. C. A. 424.

Where subcharterer libeled charterer to recover damages to cargo on account of alleged unseaworthiness of vessel, and charterer filed petition under admiralty rule 59 to bring in one who executed charter party as managing owner, and he answered, case should be treated as if libel had originally been filed against both charterer and managing owner. Cuneo Importing Co. v. American Importing & Transportation Co., 247 F. 413, 159 C. C. A. 467, affirming decree (D. C.) 241 F. 421.

Admiralty rule 59 permitting the bringing in of other parties on petition of a respondent, is not limited to collision cases, nor to cases where a joint liability is alleged in the petition. A steamship, libeled for failure to deliver cargo, held entitled to bring in under admiralty rule 59 another vessel, on an allegation that the cargo was transhipped on such vessel, as permitted by the bills of lading. The Cetriana (D. C.) 232 F. 175.

166. Claims to property, and intervention and bringing in new parties.—New claims of new claimants may not, without service of process, be introduced by amended libel into existing suit, begun by libel in personam, for death by capsizing of vessel, though respondent has appeared in suit. In re Indiana Transportation Co., 37 S. Ct. 717, 244 U. S. 456, 61 L. Ed. 1253.

In a proceeding to enforce maritime liens on a vessel which had been chartered, where the owner intervened claiming the vessel, the court might in its discretion allow the owner to file a petition against the charterer to obtain reimbursement for any lien perfected against the vessel. The Louis Dolive (D. C.) 236 F. 279.

Charterer of vessel held not entitled to intervene, filing cross-libel for libelant's failure to comply with contract to furnish a marine railway for use of vessel, unless such contract be the same as one with owner by virtue of which libelant asserted a lien against vessel. The Alliance (D. C.) 236 F. 361.

The suggestion to an admiralty court that a ship sought to be libeled is the property and in possession of a foreign government may be made by the appropriate officer of our government, or by a duly accredited representative of the foreign government. The Maipo (D. C.) 252 F. 627.

While a claim of immunity of a vessel in the service of a foreign government from arrest under process from a court of the United States may properly be presented by the Department of Justice, the court may, in its discretion, act on suggestion of the Embassy of the foreign government. The Roseric (D. C.) 254 F. 154.

186. Death of party.—A libel for injuries to a stevedore filed in the district of Maryland, whose Code Pub. Gen. Laws 1904, art. 75, § 26, provides that no action for personal injuries shall abate by reason of the death of the plaintiff, does not abate on the death of the libelant. The Student (D. C.) 238 F. 936.

(D) *Process and appearance*

194. Property subject to process—Property of government.—Where ship and its equipment was requisitioned into public service, and the officers and crew continued to operate ship, the ship and its officers and crew for the time being became the sovereign's instrumentalities, and the ship was as much in possession of the sovereign as if he had taken it over by a regular charter or manned it for his navy, and is exempt from delay caused by arrest as well as from final condemnation. The Roseric (D. C.) 254 F. 154.

198. Process in general.—The ordinary monition issued in suits in rem held not to give jurisdiction to render decree in personam. The Merrimac (D. C.) 242 F. 572.

202. —— Service in general.—Service of citation on the secretary of a corporation in a proceeding in personam

against it in admiralty is good, he being such a head officer as secures knowledge thereof to it. Norfolk Southern Ry. Co. v. Foreman, 244 F. 353, 156 C. C. A. 639.

207. Process in proceedings in personam—Effect on right to arrest of local statutes abolishing imprisonment for debt.—See Rosasco v. Thompson (D. C.) 242 F. 527.

211. —— Attachment of property to enforce appearance.—District Court held authorized to issue writ of attachment in suit in personam in admiralty, though no rule has been adopted for its issuance. Rosasco v. Thompson (D. C.) 242 F. 527.

216. —— Issue of foreign attachment or garnishment.—Where clerk of court, without direction of judge, entered order directing issuance of foreign attachment in admiralty, held that, despite Supreme Court Rules in Admiralty, rule 7, court might sanction action of clerk after entry of order, same as before entry. Gottesman v. Canada Atlantic & Plant S. S. Co. (D. C.) 246 F. 956.

226. Process in proceedings in rem.—A decree in rem cannot be rendered against a vessel by an admiralty court, where no attachment was ever served. The Merrimac (D. C.) 242 F. 572.

229. —— Sufficiency of warrant.—A warrant of attachment issued in a suit in personam, while not in the prescribed form, held to substantially comply with the requirements of admiralty rule 2. The Horsa (D. C.) 232 F. 993.

231. —— Second arrest.—While normally a vessel, once arrested and discharged, may not be re-arrested for the same cause of action, yet if the stipulation was entered into improvidently, or through fraud or mistake, the court may order a new arrest; so, where vessels libeled for towage service were released, they may be re-arrested on an amended libel setting forth other items, provided such items constitute separate causes of action, but not if the items which were omitted from the original libel were part of the several breaches of a single contract. In re John B. Rose Co. (D. C.) 254 F. 367.

244. Appearance—Effect of appearance in action in personam.—A corporation defendant, appearing specially to object to service of process as insufficient, waives objection by answering and going to trial on the merits, after ruling against it, the court having jurisdiction of subject-matter and the parties being within the court's territorial jurisdiction. Norfolk Southern Ry. Co. v. Foreman, 244 F. 353, 156 C. C. A. 639.

Filing of exceptions to libel and answer thereto, held to give admiralty court jurisdiction to render decree in personam, though process was not served to support such decree. The Merrimac (D. C.) 242 F. 572.

246. —— Effect of appearance in proceedings in rem.—Where the claimant of a vessel libeled had notice and appeared on the return day but did not file its answer, it is immaterial that notice of the seizure and the time when the libel would be heard were not published as required by general admiralty rule 9. St. Charles Amusement & Transportation Co. v. Elhardt (C. C. A.) 254 F. 275.

(G) Bonds, stipulations, or other security

262. Bonds and stipulations in general—Construction of stipulation.—An insurer, which was a damage claimant in a proceeding for limitation of liability, held concluded by a stipulation as to the time from which it was entitled to interest. The Princess Victoria, 242 F. 918, 155 C. C. A. 506.

278. —— Necessity.—The owner of a vessel seized under foreign attachment, who has not been served with process, is not required to give a stipulation for value as a condition precedent to entering appearance to defend the suit. E. G. Lyons & Raas Co. v. Deutsche Dampschiffahrts-Gesselschaft Kosmos (D. C.) 243 F. 202.

280. —— Effect of giving.—A garnishee in admiralty held, under admiralty rule 37, entitled to release from further responsibility by giving a stipulation for the undisputed amount in his hands, to abide the decree of the court. The Olson & Mahony (D. C.) 231 F. 559.

282. Security for release of vessel or other property in proceeding in rem.—See Société Napthés Transports v. Bisso Towboat Co., 241 F. 463. 154 C. C. A. 295, certiorari denied Societe Naphtes Transports v. Same, 38 S. Ct. 11, 62 L. Ed. 532.

(H) Pleading, petitions, and motions

291. Libel.—A libel held not to allege facts which gave libelant a maritime lien on a dredge for the sinking of a barge used in connection with the dredge. The Dixie, 249 F. 46, 161 C. C. A. 106, affirming decree (D. C.) 236 F. 607.

313. Answer.—Admiralty rule 32, providing for dismissal of libel for failure of libelant to answer interrogatories propounded by defendant, is not extended to defendants by equity rule 58, so as to warrant striking of answer for failure to reply to interrogatories. The Fred E. Richards (D. C.) 248 F. 956.

331. Cross-libel.—Where, in a proceeding to enforce maritime lien on a vessel, the owner intervened claiming the vessel and then filed a petition against the corporate charterer, the

owner cannot in that proceeding set up the defective incorporation of the charterer and try out question of liability of stockholders of charterer. The Louis Dolive (D. C.) 236 F. 279.

333. **Reply—Necessity.**—See Keatley v. United States Trust Co. (C. C. A.) 249 F. 29.

338. **Interrogatories—Time and manner of propounding.**—See The Fred E. Richards (D. C.) 248 F. 956.

343. **Exceptions to pleadings—Time for making.**—Under the liberal rules of pleading in admiralty, exceptions to the libel may be taken in the answer, although the better practice is to except before answering. The Elisabeth Van Belgie (D. C.) 248 F. 1006.

345. —— **Hearing and determination.**—Where claimant excepted to libel on ground that no admiralty lien was in existence or had been created, allegations of libel are for purpose of exceptions admitted. The Schuylkill (D. C.) 249 F. 781.

350. **Amendment of pleadings in general—Discretion of court.**—The allowance of an amendment of the libel in a suit in personam, setting up an additional claim for damages growing out of the same alleged breach of charter, held within the discretion of the court. Clinton v. Smith & Terry, 249 F. 119, 161 C. C. A. 171, modifying judgment The Benefactor (D. C.) 242 F. 582.

353. **Amendment of libel.**—Where the libel of one-fourth interest in a steamer failed to show that libelant was the holder of the legal title, an amendment so showing should be allowed, where libelant asserted he intended to plead a legal title, and it appeared that in the event of dismissal libelant would have great difficulty in enforcing his rights. The Olga (D. C.) 254 F. 439.

355. —— **As to parties.**—Leave to add, at trial, amendment to libel whereby original individual libelant and another were made, as partners, joint parties libelant held not improper; cause of action not being changed, liability of sureties on stipulation given to procure release of vessel not being enlarged and amendment of answer so as to deny partnership being granted. The D. J. Sawyer, 236 F. 913, 150 C. C. A. 175.

357. —— **Introducing new cause of action.**—A court of admiralty held to have power in its discretion to permit the amendment of a libel in personam to set up an additional claim growing out of the same breach of charter. The Benefactor (D. C.) 242 F. 582.

Where libel alleged that master of vessel contracted with captain of libelant's tug for towage of vessel into and out of harbor, and that, though libelant was ready and willing, the master repudiated his contract for outward towage, proposed amendment, alleging particulars of contract and circumstances under which it was made, but which did not vary terms of libel, is germane, and was properly allowed. The Holthe (D. C.) 249 F. 783.

361. **Time for amendment of pleadings.**—Where leave to make trial amendments to libel and answer is obtained, such amendments should be put in form and entered of record before final decree is entered. The D. J. Sawyer, 236 F. 913, 150 C. C. A. 175.

376. **Issues, proof, and variance—Pleading and proof.**—Defense of laches in libel to enforce maritime lien, not raised by pleadings, cannot be considered. The Cora P. White (D. C.) 243 F. 246.

To prevent surprise and promote the due administration of justice, parties are held in admiralty, as in other branches of jurisprudence, to the positions respectively taken by them in their pleadings. The Ogeechee (D. C.) 248 F. 803.

377. —— **Evidence admissible under pleadings.**—In admiralty, unless defendant pleads a surprise and procures continuance, testimony of concurring circumstances indicating negligence, though not particularly or specifically pleaded, may be admitted. Norfolk Southern Ry. Co. v. Foreman, 244 F. 353, 156 C. C. A. 639.

(I) Evidence, and taking and filing proofs

392½. **Rules of evidence and mode of proof in general—Judicial notice.**—It is permissible for an admiralty judge, in considering and determining questions of fact relating to navigation, to use his own personal knowledge and experience, The Eleanore, 248 F. 472, 160 C. C. A. 482.

393. **Presumptions in general.**—In absence of proof, it will be presumed that one intervening in libel for supplies and claiming a vessel as agent for owners was authorized to do so. The Bronx, 246 F. 809, 159 C. C. A. 111.

Where heavily loaded lighter in tow of a tug capsized at a time when the vessel was proceeding at a rate not in excess of three miles an hour, and there was nothing to show negligence on the part of the tug, the doctrine of res ipsa loquitur does not apply, and will not support a recovery against the tug. The Edgar F. Coney (D. C.) 250 F. 271.

395. **Burden of proof in general.**—The burden of proving that damage to cargo from sea water which entered the vessel was due to perils of the sea rests upon the vessel. The Jeanie, 236 F. 463, 149 C. C. A. 515, reversing decree The Jeannie (D. C.) 225 F. 178.

The party found in fault upon the merits in a suit for injury to a vessel, although otherwise than in collision, must bear whatever inconvenience of hardship there may be in proving the exact amount of damages sustain-

ed. The Mason, 249 F. 718, 161 C. C. A. 628.

Where canal boat, being towed by a tug through a presumably safe and well-marked channel, was grounded and sunk, the tug has the burden of excusing failure in performance of her undertaking. The Westerly (C. C. A.) 249 F. 938.

The burden of showing that a tug exercised all resources of good seamanship for preservation of its tow is upon the tug in suit for salvage of its tow. The Joseph F. Clinton (C. C. A.) 250 F. 977.

While the burden of proving negligence of a tug ordinarily rests on the libelant, the mere occurrence of injury to the tow may under some circumstances raise a presumption of negligence and cast the burden of proof on the tug. Gilchrist Transp. Co. v. Great Lakes Towing Co. (D. C.) 237 F. 432.

A tug, which relies on inevitable accident as a defense to a suit for injury to her tow, must show what the cause of the injury was, or all possible causes, and in either case that the result was inevitable. Id.

396. —— Burden of proof in collision cases.—Where a vessel has committed a positive breach of a statutory duty, she must show, not only that her fault probably did not contribute to a collision, but that it could not have done so. The Thielbek, 241 F. 209, 154 C. C. A. 129, affirming decree (D. C.) 218 F. 251.

A vessel, proceeding in violation of statutory requirements at the time of a collision, to escape liability, must show such violation did not contribute to the collision. Carroll v. City of New York, 249 F. 453, 161 C. C. A. 411.

If a tow collides with another vessel, it is not liable for the damage caused thereby, unless some negligence contributing to the collision is proved against it. The C. W. Mills (D. C.) 241 F. 204, decree affirmed The Mary Wittich, 241 F. 378, 154 C. C. A. 651.

400. Admissibility of evidence in general—Admissibility and proof of documents.—On an issue as to injury to a tow by stranding, not only the oral testimony of marine surveyors but their reports or surveys, as documentary evidence, are admissible. The Mason, 249 F. 718, 161 C. C. A. 628.

404. Weight and sufficiency of evidence.—Possible claimants, such as the owner of a tow, should be notified of a survey of a tug, whose propeller shaft broke and allowed the tow to be stranded, if the survey is to have any weight as evidence. The Westchester (C. C. A.) 254 F. 576.

411. Pleadings as evidence—Admissions in answer.—Admission as to speed of steamer libeled contained in answer to libelant's interrogatories, which answer was verified by master of the steamer, claimant, must be given weight. The Sagamore, 247 F. 743, 159 C. C. A. 601.

(J) Hearing or trial, and decision

426. Course and conduct of hearing—Order of hearing causes.—In a suit for breach of charter of a boat injured in collision, in which third parties alleged to be in fault for the collision were also joined, the tort issues must be first tried; the charterer not being liable if damages were recovered from the tort-feasors. The Stella (D. C.) 243 F. 216.

436. Decision—Damages and expenses in general.—Where both vessels which collided were at fault, the liability must be divided. The Norman B. Ream (C. C. A.) 252 F. 409; The City of Erie (D. C.) 250 F. 259.

Master and owners of vessel sunk in collision through violation of international rule 16 cannot escape apportionment of damage, though other vessel was palpably at fault. Lie v. San Francisco & Portland S. S. Co., 37 S. Ct. 270, 243 U. S. 291, 61 L. Ed. 726, affirming judgment The Beaver, 219 F. 134, 135 C. C. A. 32.

440. —— Allowance of interest.—As the party responsible for damages resulting from a collision became liable when it occurred, interest on the amount of such damages, if not then paid, was allowable from that date. The El Monte (C. C. A.) 252 F. 59.

In collision cases, the allowance of interest on the award rests in the discretion of the court; but, where there are no special circumstances affecting the matter, the general rule should be applied. The Ada (D. C.) 239 F. 363; In re Great Lakes Dredge & Dock Co. (D. C.) 250 F. 916.

In collision cases, the general rule is that interest on the damages eventually awarded should be computed from the date of the collision, or from the dates when payments for the necessary repairs were actually made. Interest on demurrage should be computed from the time the vessel returned to service. In re Great Lakes Dredge & Dock Co. (D. C.) 250 F. 916.

Where suit for collision was not brought until four years after collision, and was not brought on for trial until two years later, libelant, on recovery, held not entitled to interest. The James McWilliams, 240 F. 951, 153 C. C. A. 637.

Interest on an award of damages for collision held properly allowable only from date of decree. The Mary B. Curtis (C. C. A.) 250 F. 9.

The owners of a chartered ship held entitled to interest on an amount due them from the charterer, but retained by the charterer through a mutual mis-

take, when settlement was made. The Seguranca (C. C. A.) 250 F. 19.

Where a tug was liable for injuries suffered by a ship in towage, interest on the amount actually expended in repairs, etc., held properly allowed, though, because of libelant's delay in bringing the case on for final hearing, interest was not allowed for the full time between the date of injury and the decree. Gray's Harbor Tugboat Co. v. Petersen, 250 F. 956, 163 C. C. A. 206.

448. Rehearing or new trial.—An application, made six months after the hearing in a suit in admiralty for a personal injury, to reopen the same to admit further evidence on the question of damages, held addressed to the discretion of the court. The I. F. Chapman, 241 F. 836, 154 C. C. A. 538, affirming decree (D. C.) 215 F. 127, certiorari denied Scully v. Kazarian, 38 S. Ct. 9, 62 L. Ed. 529.

(*K*) *Commissioners and proceedings before them*

452. Reference to commissioners—When ordered.—While it is an ancient custom to adduce evidence in admiralty before commissioners and examiners, and references of special questions to specially qualified persons, nevertheless an admiralty court cannot, without consent of parties, send merits of cause for trial before commissioner or referee. The Bronx, 246 F. 809, 159 C. C. A. 111.

A marshal's charge for raising an attached vessel being contested on the ground that she sank through his fault, the matter must be referred, and cannot be determined on affidavits. The Neptune (C. C. A.) 252 F. 129.

464. Objections and exceptions to rulings and report—Necessity of exception.—For good cause shown, court may consider exceptions to report of commissioner, although not filed within time prescribed by rules, since findings and conclusions of the commissioner are advisory only. The Coquitlam City (D. C.) 243 F. 767.

(*L*) *Decree, and enforcement thereof*

475. Rendition, form, and requisites in general—On recovery against several defendants.—The owner of a vessel, injured by the concurring fault of a towing tug and the owner of a drawbridge, is entitled in admiralty to a decree for half damages against each, with the right to collect from either any deficiency arising through default in payment by the other. Great Lakes Towing Co. v. Masaba S. S. Co., 237 F. 577, 150 C. C. A. 459.

482. Decree by default or pro confesso—Effect of default.—Where respondents filed an answer, but failed to answer interrogatories addressed by libelant to them, their default does not warrant a decree pro confesso against respondents. The Fred E. Richards (D. C.) 248 F. 956.

483. Opening or setting aside decree by default or pro confesso.—Under general admiralty rule, 29, providing that the court may in its discretion set aside a default of a defendant, the court should consider in a general way the questions proposed to be raised, as bearing on the question whether the defendant has been deprived of any important right. St. Charles Amusement & Transportation Co. v. Elhardt (C. C. A.) 254 F. 275.

The attorneys for the individual defendant, in action against a ship and its owner, having allowed default without notifying the court of his death, motion to allow his representatives to contest the action in his place, made after term of court and time, under admiralty rule 40, for moving to open default, will be denied. The Gilbert R. Green (D. C.) 243 F. 927.

485. —— Grounds.—The refusal of the District Court to set aside a default, and allow the claimant of a vessel libeled to answer after sale, held not an abuse of discretion; it appearing the defendant had actual notice and that irregularities before the sale were merely technical, etc. St. Charles Amusement & Transportation Co. v. Elhardt (C. C. A.) 254 F. 275.

500. Operation and effect of decree—Parties and privies.—Where libelant had previously libeled a vessel in rem for personal injuries, and the vessel had been claimed by respondent through its agent, held, that the judgment rendered in the first proceeding might be pleaded by respondent as res judicata. Sullivan v. Nitrate Producers' S. S. Co. (D. C.) 254 F. 361.

505. —— Issues raised and determined.—That a vessel in a suit for collision unsuccessfully contended that she was not in fault does not estop her from alleging such fault in a subsequent suit to charge her pilot with responsibility therefor; but an adjudication that a vessel was in fault for a collision because of the place and manner of her anchorage is conclusive of such fact in a subsequent suit by the vessel against her pilot to charge him with responsibility therefor. Strathleven Steamship Co. v. Baulch, 244 F. 412, 157 C. C. A. 38, certiorari denied Baulch v. Strathleven S. S. Co., 38 S. Ct. 61, 245 U. S. 663, 62 L. Ed. 537.

Where libelant had previously libeled a vessel and respondent, by its agent, appeared and claimed the vessel, held that, as both proceedings were intended to enable libelant to recover for personal injuries, the fact that libelant alleged additional acts of negligence in the second does not of itself prevent the first judgment from being a bar to

the second libel. Sullivan v. Nitrate Producers' S. S. Co. (D. C.) 254 F. 361.

542. **Setting aside sale.**—Where, on libel, a perishable cargo, consisting of cocoa beans, was sold to appellant for 6½ cents a pound, held, that it was proper to set sale aside on objections by master; the beans selling for obviously less than their market value. The Appam, 240 F. 676, 153 C. C. A. 474.

576. **Disposition of proceeds or remnants—Priorities of claims in cases arising upon the lakes.**—Although the season rule appears to have been recognized and followed upon the Great Lakes, yet, where a tug-boat was actively engaged beyond the season, the rule that claims of equal rank incurred in the same calendar year should have equal priority, while those in subsequent years should have priority over any earlier, is properly applied. The John J. Freitus (D. C.) 252 F. 876.

(*M*) *Appeal*.

599. **Decisions reviewable—Finality of judgment in general.**—A decree in a suit in rem, which releases the vessel, leaving nothing upon which the court can take further action, is in effect a final decree, and appealable. The Attualita, 238 F. 909, 152 C. C. A. 43.

605. **Right of review.**—Acceptance by a libelant of payment of the portion of a decree in his favor held not a bar to his right of appeal from another part of the decree against him on a separate cause of action. The C. S. Holmes, 237 F. 785, 150 C. C. A. 539.

606. **Presentation and reservation in lower court of grounds of review.**—The defense that respondent, who chartered a scow, was liable only for injuries resulting from negligence, the charter being a demise, cannot for the first time be raised on appeal from a decree for the owner. Kennelly v. Frederick Starr Contracting Co. (C. C. A.) 250 F. 229.

607. **Parties.**—Where joint and several decrees were entered against the claimant of a libeled vessel and the surety on its bond for release, an appeal cannot be maintained by the claimant without the joinder of the surety or a summons and severance. The Rylands, 231 F. 101, 145 C. C. A. 289, certiorari denied Joseph F. Wilson & Co. v. South Atlantic S. S. Co., 36 S. Ct. 727, 241 U.S. 679, 60 L. Ed. 1233.

To an appeal by claimants in a suit in rem in admiralty, a surety company, which executed the stipulation for release of the libeled vessels, is an indispensable party, and must either be joined or notified and a severance effected. The Mary B. Curtis (C. C. A.) 250 F. 9.

620. **Taking and perfecting appeal—Assignment of errors.**—See Kennelly v. Frederick Starr Contracting Co. (C. C. A.) 250 F. 229.

An appellant in admiralty, as in equity, is confined to the limits he voluntarily imposes when he appeals, and the court is not required to review in his interest provisions of the decree which he has not challenged by his appeal. The Stadacona, 242 F. 624, 155 C. C. A. 314.

643. **Amendments, new pleadings, and proofs, and trial of cause anew—Trial de novo in general.**—In view of previous practice in admiralty appeals from District to Circuit Court, and rule 14, pars. 6–10 (Comp. St. 1916, p. 1294), relating to the record in admiralty causes, Circuit Court of Appeals hears appeal in admiralty case de novo and may increase decree for libelant, though respondent alone appealed. Consolidated Coastwise Co. v. Conley (C. C. A.) 250 F. 679.

On appeal in admiralty, appellate court has authority to consider case de novo. The Kaiser Wilhelm II, 246 F. 786, 159 C. C. A. 88, L. R. A. 1918C, 795, reversing decree (D. C.) 230 F. 717.

An appeal in admiralty brings up the whole case for trial de novo and the fact that one party did not appeal does not preclude the court from directing a decree more favorable to him. The Canadia, 241 F. 233, 154 C. C. A. 153, modifying decrees, Field v. Hafnia S. S. Co. (D. C.) 234 F. 187 and 236 F. 599.

646. —— **Amendment of pleadings.**—Under rules 7–10 in admiralty of the Circuit Court of Appeals for the Second Circuit, a libelant on appeal may properly be allowed to make new allegations in a supplemental libel. Munson S. S. Line v. Glasgow Nav. Co., 235 F. 64, 148 C. C. A. 558.

648. —— **New proofs in general.**—Under rules 7–10 in admiralty of the Circuit Court of Appeals for the Second Circuit, a libelant on appeal may properly be allowed to take new proofs in the Circuit Court of Appeals. Munson S. S. Line v. Glasgow Nav. Co., 235 F. 64, 148 C. C. A. 558.

652. **Review—Scope and extent of review in general.**—See § 1585.

Where both parties to a proceeding to collect a penalty prescribed by Harter Act, § 5 (Comp. St. 1916, § 8033), consented to treat it as one in admiralty, though, as the libel was in personam, it was not within the admiralty jurisdiction of the court, the award of the District Court should on appeal be treated as an admiralty award, and not as a finding of a jury. U. S. v. James W. Elwell & Co. (C. C. A.) 250 F. 939.

655. —— **Review of interlocutory decree on appeal from final decree.**—An appeal to a Circuit Court of Appeals from a District Court in admiralty brings the case up for trial de novo so that the court may review interlocutory

decree not appealed from. Reid v. Fargo, 36 S. Ct. 712, 241 U. S. 544, 60 L. Ed. 1156, reversing decree 213 F. 771, 130 C. C. A. 285.

656. —— **Persons entitled to allege error in general.**—Although one respondent alone appeals in admiralty, it may assign error in the failure to hold a corespondent liable. The Willie, 231 F. 865, 146 C. C. A. 61.

657. —— **Errors alleged by one not appealing.**—An appeal in admiralty brings up the whole case for trial de novo and the fact that one party did not appeal does not preclude the court from directing a decree more favorable to him. The Canadia, 241 F. 233, 154 C. C. A. 153, modifying decrees Field v. Hafnia S. S. Co. (D. C.) 234 F. 187 and 236 F. 599.

666. —— **Review of discretion of lower court.**—An application, made six months after the hearing in a suit in admiralty for a personal injury, to reopen the same to admit further evidence on the question of damages, held addressed to the discretion of the court, and its action not reviewable by an appellate court. The I. F. Chapman, 241 F. 836, 154 C. C. A. 538, affirming decree (D. C.) 215 F. 127, certiorari denied Scully v. Kazarian, 38 S. Ct. 9, 62 L. Ed. 529.

667. —— **Review of weight and sufficiency of evidence in general.**—See notes under § 1585.

670. —— **Review of evidence by circuit court of appeals.**—See notes under § 1585.

672. —— **Review of amount of recovery.** See notes under § 1585.

674. —— **Harmless error in general.**—Where admiralty court had jurisdiction of res and parties, order directing commissioner to hear and determine issues, while erroneous, was not jurisdictional error; commissioner having treated reference direction as one to compute and assess damages. The Bronx, 246 F. 809, 159 C. C. A. 111.

676. **Determination and disposition of cause.**—The Supreme Court, in the exercise of its appellate jurisdiction, cannot only correct error in the judgment below, but make such disposition of the case as justice may now require, considering changes in fact and in law occurring since the judgment, especially in an admiralty case triable de novo on appeal; so that where, after dismissal in the discretion of the court of a suit, because between alien belligerents in a court of a neutral nation by entry of the United States in the war, it becomes a suit between one belligerent in a court of a cobelligerent against a common enemy, decree will be reversed, as inconsistent with demands of justice under changed circumstances. Watts, Watts & Co. v. Unione Austriaca Di Navigazione, 39 S. Ct. 1, 63 L. Ed. —.

684. —— **Modification as to amount.**—There being nothing to show on appeal in a salvage case that the value of the cargo was estimated at point of shipment, and not at point of destination, there is no ground for adding freight money. The Kin Ora (C. C. A.) 252 F. 507.

687. —— **Remand of case in general.**—Decision of an appellate court in admiralty, reversing a decree and remanding for a decree in accordance therewith, construed, and the authority of the lower court thereunder considered. The Steam Dredge A, 229 F. 682, 144 C. C. A. 92.

(*N*) *Costs*

704. **Parties to and against whom awarded.**—Respondents in a suit in admiralty, who were exonerated from liability, held, entitled to costs from a corespondent, who was held liable to libelant. The Louise Rugge, 239 F. 458, 152 C. C. A. 336, affirming decree (D. C.) 234 F. 768.

Where suit for collision was not brought until four years after collision, and was not brought on for trial until two years later, libelant, on recovery, held not entitled to costs. The James McWilliams, 240 F. 951, 153 C. C. A. 637.

705. —— **Protection of proctor.**—Relative to taxation of costs, a controversy with respect to a contract between a proctor and his client for fees cannot be litigated in the admiralty suit. The Johnson Lighterage Co. No. 24, 248 F. 74, 160 C. C. A. 214, modifying decree (D. C.) 240 F. 435.

726. —— **Costs where each party is in part successful.**—A libelant, who sues on two claims and recovers on only one, is nevertheless entitled to recover costs, where both were prima facie good, so that the burden of proof rested on the respondent, and both were contested. The John Twohy (D. C.) 243 F. 720.

727. —— **Mutual fault in collision cases.**—Where, in a suit for collision in which there is no cross-libel, the court finds both vessels in fault and enters a decree for libelant for half damages, the costs also should be divided. The Garden City (D. C.) 236 F. 302.

Under the rule of the First circuit libelant in a suit for collision in which neither cross-libel nor counterclaim is filed is entitled to recover full costs, although he recovers but half damages. Pennsylvania R. Co. v. Golden (D. C.) 243 F. 256; The Yarmouth (D. C.) 244 F. 317.

729. —— **Unnecessary litigation.**—Where libel was filed for and on behalf of a ship, its owners, and crew, seeking to recover salvage, and members of the crew intervened unnecessarily, held, that they should bear the costs

of the intervention. The Portugal (D. C.) 253 F. 264.

745. Security for payment—Necessity in general.—Under admiralty rule 53 security for costs and for damages claimed by respondents in their cross-libels will not be required, where libelant is a receiver or trustee in bankruptcy. Chesbrough v. Boston Elevated Ry. Co. (D. C.) 250 F. 922.

Where a libelant assigned his claims, the assignees cannot be required to give security for libelant's payment of claims asserted in cross-libels by the respondents, where such claims were of a distinctly different character from that on which libels were founded. Id.

That libelant had assigned his claims to third persons is no ground for requiring him to give security for costs or for damages claimed by the respondents in their cross-libels, where such security would not otherwise be required. Id.

746. —— Necessity in actions by seamen.—In view of Act July 20, 1892, c. 209, § 1, as amended by Act June 25, 1910, c. 435 (Comp. St. 1916, § 1626), held that, under Sundry Civil Appropriation Act July 1, 1916, foreign seamen may sue for wages without paying or making deposits for costs. The Memphian (D. C.) 245 F. 484.

749. —— Waiver of right to require.—Delay on part of cross-libelants, which continued for several years, in demanding that libelant furnish security for costs and damages claimed, warrants denial of the motion. Chesbrough v. Boston Elevated Ry. Co. (D. C.) 250 F. 922.

751. —— Additional security.—Under admiralty rule 29, the court may on motion and proper showing require a libelant to increase the amount of his stipulation for costs given under rule 8. The Frances L. Skinner (D. C.) 248 F. 816.

769. Amount and items—Marshal's fees and disbursements in general.—The amount of fees due United States marshal, under Rev. St. § 829, subd. 15 (Comp. St. 1916, § 1386), where claimant of a vessel libeled pays the amount of a decree, having secured its release from custody by giving bond, should be included in the decree as part of the costs. The Eros (D. C.) 245 F. 814.

782. Costs on appeal.—A party to a suit in admiralty, who without appealing fails in an attempt to either vary or sustain the decree of the court below, will be treated as an appellant as to costs. The Bronx (C. C. A.) 250 F. 843.

792. Payment and remedies for collection—Priority of claim for costs.—The claimant of a vessel libeled for salvage service must pay the cost of the stipulation required before the property could be released, even though it was excessive. The Portugal (D. C.) 253 F. 264.

(O) *Proceedings to limit liability of ship owner*

798. Nature of proceeding in general.—See The Ethelstan (D. C.) 246 F. 187.

Under admiralty rules 54, 56, and R. S. §§ 4283, 4285 (Comp. St. 1916, §§ 8021, 8023), the proceedings for limitation of liability seem to include the complete settlement of every issue raised between owner and claimants seeking to hold the vessel liable for loss or damage. The Rochester (D. C.) 230 F. 519.

802. Conditions precedent to bringing of proceedings.—Where libels assert the liability of a vessel, the owner may maintain a proceeding for limitation of liability for the claims, although no property has been attached thereunder. The Rochester (D. C.) 230 F. 519.

803. Jurisdiction of proceedings in general.—A District Court held to have jurisdiction of proceedings for limitation of liability. Strong v. Holmes, 238 F. 554, 151 C. C. A. 490.

806. Venue of proceedings.—Admiralty rule 57, relating to venue of suits for limitation of liability, construed. Strong v. Holmes, 238 F. 554, 151 C. C. A. 490.

809. Persons entitled to institute proceedings—Contesting liability in original suit.—Admiralty rule 56 indicates that the owner can contest his liability or the liability of the vessel for any loss or damage. The Rochester (D. C.) 230 F. 519.

820. Libel, petition, or application—Amendment.—Where the petitioner for limitation of liability, as owner of a vessel, was in no way misled in the presentation of its case by the statement of the amount of damages contained in the libel, and in no way altered its position in reliance thereon, the damage claimant's motion to amend should be allowed. In re Great Lakes Dredge & Dock Co. (D. C.) 250 F. 916.

825. Stipulations for value and appraisal of interest or value.—The giving of a stipulation for release of a vessel libeled in collision is not a waiver of the right to subsequently maintain proceedings for limitation of liability under Rev. St. § 4283 (Comp. St. 1916, § 8021). Société Napthés Transports v. Bisso Towboat Co., 241 F. 463, 154 C. C. A. 295, certiorari denied Societe Naphtes Transports v. Same, 38 S. Ct. 11, 62 L. Ed. 532.

The owner of a vessel in collision, who after the end of the voyage moved her to another port for sale, without appraisal, held not entitled to deduct towage from the price realized in lim-

itation of liability proceedings. The Ethelstan (D. C.) 246 F. 187.

828. Enjoining or staying proceedings in other suits.—Petitioners in suit for limitation of liability held not entitled to injunction to restrain action against them in state court to recover prepaid charter hire. In re Sugar Products Co. (D. C.) 247 F. 623.

835. Scope and extent of hearing or decision.—In a proceeding for limitation of liability, the questions presented are whether there is any liability in fact, and, if so, whether a proper case for limitation of liability is presented. The Rochester (D. C.) 230 F. 519.

Despite Supreme Court Admiralty Rule 56, petition for limitation of liability under Rev. St. §§ 4283–4289, as amended by Act June 26, 1884, and Act June 19, 1886 (Comp. St. 1916, § 8021), by a shipowner not entitled to limit his liability, should be dismissed, and court of admiralty should not determine the ultimate question of liability. The Erie Lighter 108 (D. C.) 250 F. 490.

842. Appeal.—In proceeding to limit the liability of the owner of a tug and barge for collision with a launch, claimant, passenger on launch, who suffered contusion of thigh and dislocation of four ribs, held entitled to $1,500 damages, to be paid from fund representing value of vessels at fault. The Barge No. 12 (D. C.) 250 F. 923.

843. Costs and expenses.—In a proceeding for limitation of liability, the petitioner is primarily liable for the fees of the commissioner, and such fees are a part of the costs. Indra Line v. Palmetto Phosphate Co., 239 F. 94, 152 C. C. A. 144.

§ 1537. (R. S. § 914.) Practice and proceedings in other than equity and admiralty causes to conform to practice, etc., in courts of State.

I. NATURE OF REQUIREMENT OF CONFORMITY

1. In general.—The federal courts follow the state practice. Quirk v. Bank of Commerce & Trust Co., 244 F. 682, 157 C. C. A. 130.

The result of the Conformity Act (Rev. Stat. § 914; Comp. Stat. 1916, § 1537), the Rules of Decision Act (Rev. Stat. § 721; Comp. Stat. 1916, § 1538), and the Competency of Witnesses Act (Rev. Stat. § 858; Comp. Stat. 1916, § 1464), is to make state statutes relating to the competency of witnesses and the competency of testimony, as well as the state law of evidence generally, binding on the federal courts sitting within such state, except where in conflict with the federal Constitution, statutes, or treaties. American Issue Pub. Co. v. Sloan (C. C. A.) 248 F. 251.

This section does not deprive a federal court of its rightful jurisdiction of a cause on removal from a state court. Webb v. Southern Ry. Co. (D. C.) 235 F. 578.

2. What state practice governs.—Public policy defined by Rev. Cr. St. Tex. 1911, arts. 538, 539, relating to dealings in futures, held not violated by enforcement in a federal court in that state of a contract made in New York, and valid therein between citizen of New York and citizen of Texas, for sale of cotton for future delivery. Bond v. Hume. 37 S. Ct. 366. 243 U. S. 15, 61 L. Ed. 565.

A state statute, establishing a rule of procedure in actions for injuries at railroad crossings, held not to apply to a case brought in a federal court in another state. Hall v. West Jersey & S. R. Co., 244 F. 104, 156 C. C. A. 532.

Under conformity statute (Rev. St. §§ 913, 914, 916, 917 [Comp. St. 1916, §§ 1536, 1537, 1540, 1543]), the state practice is adopted only as to common-law actions. Brown v. Fletcher (D. C.) 239 F. 360.

6. Jurisdiction of courts.—In determining whether equitable relief should be granted against default judgment obtained through misunderstanding of counsel, court held not bound by state decisions; the matter concerning the power of the court. Interurban General Contracting Co. of New York v. U. S. (D. C.) 229 F. 588.

When the question of the jurisdiction of a federal court is raised in an action pending therein, that court is not bound by the laws of the state, but follows its own rule of practice; the so-called Conformity Act not being applicable. Golden, Belknap & Swartz v. Connersville Wheel Co. (D. C.) 252 F. 904.

9. Effect of federal statutes regulating procedure.—This section has no application to matters of jurisdiction and service of process covered by the provisions of Judicial Code, §§ 24–27, 40–68.—Vitkus v. Clyde S. S. Co. (D. C.) 232 F. 288

Under Judicial Code, § 262 (Comp. St. 1916. § 1239), empowering District Courts to issue writs of scire facias, they may do so in a state which has abolished the writ. Universal Transp. Co. v. National Surety Co. (D. C.) 252 F. 293.

II. APPLICABILITY TO PARTICULAR CLASSES OF ACTION OR PROCEEDINGS

16½. Bankruptcy proceedings.—This section does not make state rules of procedure applicable to bankruptcy courts, practice and procedure of those

courts being prescribed by the Bankruptcy Act, and general orders and regulations pursuant thereto; so one creditor, within Bankruptcy Act, may join as petitioning creditor, though not real party in interest under state practice. In re Veler, 249 F. 633, 161 C. C. A. 543.

19. **Scire facias.**—Act Tenn. 1897, c. 47, § 1 (Shannon's Code Supp. p. 853), sets forth the form of scire facias issued on a conditional judgment rendered on a recognizance or bail bond, while section 1a of the act provides that the statutory form may be so changed as to give the parties notice of the nature of the obligation on which the judgment is rendered, and it shall not be necessary to set out in full all the jurisdictional facts in any scire facias, and when any writ fails to contain the necessary allegations it may be amended. Held that, in view of Shannon's Code Tenn. § 7119, declaring that a bail bond valid as a common-law bond shall be valid under the statutes, a writ of scire facias issued out of the federal District Court for Tennessee upon a conditional judgment on a bail bond may be amended so as to supply the jurisdictional averment that the offender was admitted to bail by the judge. Ewing v. U. S. (C. C. A.) 240 F. 241.

21. **Admiralty causes.**—This section does not require United States courts in the trial of admiralty causes to conform with the procedure in like causes in the state courts. Waldo v. Wilson, 231 F. 654, 145 C. C. A. 540, reversing decree Wilson v. Waldo (D. C.) 221 F. 505, and certiorari denied 36 S Ct. 724, 241 U. S. 673, 60 L. Ed. 1231.

A state statute as to how process may be served on a railroad corporation is not controlling in a proceeding in personam in admiralty to which the Conformity Act does not apply. Norfolk Southern Ry. Co. v. Foreman, 244 F. 353, 156 C. C. A. 639.

22. **Criminal causes.**—On a criminal trial in a federal court, the court is not conclusively bound by the rules of evidence as they stood in 1789. Greer v. U. S., 38 S. Ct. 209, 245 U. S. 559, 62 L. Ed. 469, affirming judgment 240 F. 320, 153 C. C. A. 246.

State statutes relating to criminal procedure have no application to prosecutions in the federal courts. McClendon v. U. S., 229 F. 523, 143 C. C. A. 591; U. S. v. Bopp (D. C.) 232 F. 177.

Except where Congress has made specific provisions, common law governs procedure in criminal trials in federal courts, and, no such provision being made, local state statute as to accomplice testimony is inapplicable to prosecution in federal court. Bandy v. U. S. 245 F. 98, 157 C. C. A. 394.

As Rev. Laws Okl. 1910, § 5884, does not apply to prosecution in federal court for introducing intoxicating liquors into Oklahoma, held, that instruction that testimony of witness, if an accomplice, should be scrutinized, sufficiently protected accused's rights. Id.

Indictments in federal courts are not amenable to state laws. Simpson v. U. S., 245 F. 278, 157 C. C. A. 470, certiorari denied 38 S. Ct. 133, 245 U. S. 667, 62 L. Ed. 538.

State statutes regulating admission of testimony in criminal cases have no application to trial of such cases in federal courts. Denning v. U. S., 247 F. 463, 159 C. C. A. 517.

Rev. Laws Mass. c. 218, § 22, declaring that a misdescription of a written instrument is not a variance, has no application to a criminal prosecution in the federal courts for such state. U. S. v. Phelan (D. C.) 250 F. 927.

Though there are no common-law offenses against the United States, and criminal cases are controlled by federal statutes, state statutes and decisions may be persuasive. U. S. v. De Bolt (D. C.) 253 F. 78.

Rev. Codes Idaho, § 4003, requiring clerk of court to transmit to Supreme Court a certified copy of record of an attorney's conviction of a felony or misdemeanor involving moral turpitude, is not obligatory upon federal courts or their officers. In re Hofstede (Idaho) 173 P. 1087.

III. EXCLUSION OF EQUITY CAUSES

(A) *In general*

25. **Rules governing practice and procedure—Application of local statutes and procedure.**—This section does not require United States courts, in the trial of equity causes, to conform with the procedure in like causes in the state courts. Waldo v. Wilson, 231 F. 654, 145 C. C. A. 540, reversing decree Wilson v. Waldo (D. C.) 221 F. 505, and certiorari denied Id., 36 S. Ct. 724, 241 U. S. 673, 60 L. Ed. 1231.

While the statute of frauds is equally binding upon courts of equity and courts of law, its requirements will be relaxed in equity, where to enforce the statute will make it an instrument of fraud. Kresge v. Crowley, 47 App. D. C. 13.

26. —— **Cases arising in Louisiana.**—Where, under the state practice, complainant could not, in Louisiana, maintain a suit for partition of an estate in which he was interested, the interdiction on account of his incompetency not having been removed, he cannot maintain a bill for partition in the federal

court.—Gasquet v. Fenner (D. C.) 235 F. 997.

(B) Effect of statutes conferring new rights and remedies or enlarging jurisdiction of local equity courts

28. In general—Statutory rights and remedies of an equitable nature.—That a state statute authorizes a suit in certain cases by bill in equity does not confer jurisdiction on a federal court to entertain such a bill. John A. Roebling's Sons Co. of California v. Kinnicutt (D. C.) 248 F. 596.

29. —— Statutory rights and remedies not inherently equitable.—Code Va. 1904, § 2964, providing for issuance of attachment on bill in equity to enforce any claim, legal or equitable, does not extend equitable jurisdiction of federal District Court for Virginia, so as to give that tribunal jurisdiction over suit on West Virginia judgment wherein attachment under such statute was sought against property of judgment debtor located in Virginia. Williams v. Miller (D. C.) 249 F. 495.

35½. Corporation stockholder's liability.—The equity jurisdiction of the federal courts is not affected by state legislation providing an equitable remedy for the enforcement of stockholder's liability, but to authorize relief in such a controversy by a federal court there must be original ground of equity jurisdiction. Second Nat. Bank of Erie v. Georger (D. C.) 246 F. 517.

37½. Injunction against waste.—In proper case, and irrespective of what remedy the state courts afford, federal equity will apply its own remedy in action in equity by assignee of oil and gas lease to restrain others from operating on land. Shaffer v. Marks (D. C.) 241 F. 139.

(D) Effect of statutes creating remedy at law in state courts

55. General rule.—An adequate remedy at law, which can be administered only in a state court, is not sufficient to compel a federal court to dismiss an equitable cause over which its jurisdiction is complete, and relegate the complainant for his only alternative relief to a state court. Nevada-California Power Co. v. Hamilton (D. C.) 235 F. 317.

(E) Effect of limitation statutes

62. Application of laches in conformity with limitation statutes.—Equitable suit in federal District Court for Eastern District of Kentucky will not be barred by Ky. St. § 2514, prescribing 15-year limitation, though such period had elapsed, unless delay amounts to laches or works estoppel. Pond Creek Coal Co. v. Hatfield, 239 F. 622, 152 C. C. A. 456.

63. Application of laches before statutory period has expired.—State statutes of limitations are not binding on federal courts in equity suits, and question whether relief is barred depends on whether complainant has been guilty of laches; federal courts frequently finding laches in delay less than period of limitations. Estep v. Kentland Coal & Coke Co., 239 F. 617, 152 C. C. A. 451.

(F) Effect of statutes restricting jurisdiction in probate matters

67. Probate of will.—Under Const. Tex. art. 5, §§ 6, 8, and Vernon's Sayles' Ann. Civ. St. 1914, arts. 1705, 1706, 1712, 1763, 1764, 1766, 1771, 3206, 3207, and 5699, suit which in part sought to annul a probated will held not within jurisdiction of federal court because under the state practice it could be maintained only in the probate court. Sutton v. English, 38 S. Ct. 254, 246 U. S. 199, 62 L. Ed. 664.

IV. PROCEDURE IN TRIAL COURT

71. Limitations and time to sue.—Cause of action under Sherman Act held to have accrued when damage occurred, and so Pennsylvania limitation act (Purdon's Dig. Pa. [13th Ed.] p. 2282), which statute was applied because action was begun in Pennsylvania, was properly treated as beginning to run at time damage occurred. Bluefields S. S. Co. v. United Fruit Co., 243 F. 1, 155 C. C. A. 531.

In action under Sherman Act, statute of limitations where action is brought governs. Id.

South Dakota statute of limitations (Code Civ. Proc. S. D. § 60), declaring that it includes action on liability created by statute, other than penalty of forfeiture, applies to action created by statute, though liability is in nature of specialty. Chicago & N. W. Ry. Co. v. Ziebarth, 245 F. 334, 157 C. C. A. 526.

Plaintiff's right of action for compensation for acting as agent of defendant, a nonresident, within the state of Washington, did not accrue so as to start running the three-year period of Rem. & Bal. Code Wash. § 168, until the appointment of his successor on whom process could be served. Société Nouvelle d'Armement v. Barnaby, 246 F. 68, 158 C. C. A. 294.

Action on interest coupons attached to bonds issued by irrigation district, under Act Cal. March 7, 1887, §§ 12, 15, 16, 42, falls within four-year period prescribed by Code Civ. Proc. Cal. § 337, and does not come within exception of section 312. Rialto Irr. Dist. v. Stowell (C. C. A.) 246 F. 294; Same v. Chellis (C. C. A.) 246 F. 308.

The right of action of an interstate carrier for an undercharge will be barred by the state statute of limitations

which affects the remedy, though the carrier be entitled by federal laws to recover the difference between the amount charged and the rates fixed by the Interstate Commerce Act. Yazoo & M. V. R. Co. v. Willis (Miss.) 71 So. 563.

74. **Form of action or proceeding.**—A statutory remedy for the enforcement of liabilities not created by statute is not exclusive. Second Nat. Bank of Erie v. Georger (D. C.) 246 F. 517.

Replevin is a mixed action, being both a demand for a thing and damages for withholding; and in replevin for property that defendant knew belonged to plaintiff, held, that plaintiff could recover damages for that eloigned. Olivier v. Mt. Union Tanning & Extract Co. (D. C.) 253 F. 593.

Where at most an assignment could only make plaintiff a joint owner of property held by defendant as joint owner, replevin cannot be maintained; for, being a possessory action, replevin cannot be maintained, unless plaintiff is entitled to immediate exclusive possession. Id.

74½. **Election of remedies.**—Where there was but a single breach of contract, though evidence might show the breach occurred in different ways, held, that plaintiffs would be required to elect between separate statements of the cause of action, or, at their option, to amend. Wilson v. Leigh Banana Case Co. (D. C.) 241 F. 987.

75. **Notice of lis pendens.**—Bona fide purchaser from a patentee of land against whom suit was pending in federal court held, despite this section, exempting equity cases, not charged with notice of suit; no lis pendens having been filed as required by Act La. No. 22 of 1904. U. S. v. Calcasieu Timber Co., 236 F. 196, 149 C. C. A. 386.

76. **Parties.**—In view of Milliken & V. Code Tenn. 1884, § 3559, now Shannon's Code Tenn. 1896, § 4568, judgments denying recovery on bonds against town of Athens, an alleged Tennessee municipality, cannot be treated as nullities, because municipality was found not to have been validly organized, and city of Athens, whose incorporation was provided for by Act Tenn. March 25, 1891 (Acts 1891, c. 70), was not organized until thereafter. Beyer v. City of Athens, Tenn. (C. C. A.) 249 F. 849.

Where notice to bidders required performance bond, and written agreement made bond and notice part of contract, contractor and surety on bond became jointly and severally liable for performance of all conditions in contract, though surety's liability was limited to penalty in bond, so both at common law and under Gen. Code Ohio, §§ 11256, 11258, joint or separate action might be brought against contractor and surety in case of breach of contract. Walsh Const. Co. v. City of Cleveland (D. C.) 250 F. 137.

77. **Death of party and revival of action.**—See The Student (D. C.) 238 F. 936.

Local state statutes in respect to abatement and survival of actions have no application to action depending solely on statute of United States; but in that case rules of common law, which include judicial opinions, must be looked to, to determine whether action survives. Imperial Film Exch. v. General Film Co. (D. C.) 244 F. 985.

In absence of federal statute, causes of action under the common law or a state statute are governed as to survivorship by the lex loci, and causes of action under the United States laws by the common law. Van Choate v. General Electric Co. (D. C.) 245 F. 120.

Whether a right of action for damages under the Sherman Anti-Trust Act survives the death of the person injured is to be determined by the rules of the common law, regardless of the state law. Caillouet v. American Sugar Refining Co. (D. C.) 250 F. 639.

79. **Process—Nature, issuance, and requisites.**—In view of Rev. St. U. S. § 787 (Comp. St. 1916, § 1311), and under this section, held, that one federal District court sitting in New York cannot issue process to be served on a person residing in the state, but in another district. Sewchulis v. Lehigh Valley Coal Co., 233 F. 422, 147 C. C. A. 358.

80. —— **Service in general.**—Evidence held to show that defendant was served in an Iowa suit in accordance with Code Iowa 1897, § 3516, authorizing service of process by any person not a party to the action. Cooper v. Jewett, 233 F. 618, 147 C. C. A. 426.

This section has no application to matters of jurisdiction and service of process covered by the provisions of Judicial Code, §§ 24–27, 40–68. Vitkus v. Clyde S. S. Co. (D. C.) 232 F. 288.

Objection to service in a federal court, either for insufficiency of the service or for want of jurisdiction over the defendant, may be made by motion or plea. Id.

An objection that summons was not properly served can be raised by motion to set aside the service upon the face of the complaint. Tauza v. Pennsylvania R. Co. (D. C.) 232 F. 294.

In an action at law, brought in the federal court, service of summons should be made in conformity to the state law. McCullough v. United Grocers' Corporation (D. C.) 247 F. 880.

81. —— **Service on corporation.**—Resident director and vice president of a foreign corporation may not be served with process in action against such corporation not doing business in the state. Toledo Railways & Light Co. v. Hill, 37 S. Ct. 591, 244 U. S. 49, 61 L. Ed. 982.

Service upon agent designated by foreign corporation, pursuant to Pub. Laws Me. 1911, c. 152, § 1, held to give jurisdiction to federal court. Boulthee v. International Paper Co., 229 F. 951, 144 C. C. A. 233.

A sales agent held not to have been managing agent of foreign corporation, on whom process against the corporation could be served, under Code Civ. Proc. N. Y. § 432, subd. 3. American Oil & Supply Co. v. Western Gas Const. Co., 239 F. 505, 152 C. C. A. 383.

Service on foreign corporation under state statute held good in the federal courts unless insufficient as due process of law. Beach v. Kerr Turbine Co. (D. C.) 243 F. 706.

Under Comp. St. 1916, § 6923, for protection of persons furnishing materials and labor for public works, service upon surety company, doing business under act beyond state or territory of incorporation, through clerk of District Court, being manifestly personal, there must be personal service upon resident agent of such company; this section having no application. United States v. Southern Dredging Co. (D. C.) 251 F. 400.

86. **Pleading—in general.**—Where a purchaser, after being admitted into possession, defaulted, and the vendor forfeited the contract, such purchaser, having recovered damages on account of the vendor's inability to convey the title as agreed, cannot thereafter recover on account of improvements which it placed on the premises, for causes of action cannot be split. Crocker v. Ingersoll Engineering & Constructing Co., 249 F. 31, 161 C. C. A. 91.

An injury to the person and one to property, though resulting from the same tortious act, constitute different causes of action. Borden's Condensed Milk Co. v. Mosby (C. C. A.) 250 F. 839.

In trespass on the case, two causes of action growing out of substantially the same transactions, and depending upon substantially the same evidence, as for criminal conversation and for alienation of the wife's affections, may be joined. Harper v. Harper (C. C. A.) 252 F. 39.

In a declaration by the assignor of a contract, the joinder of a count to recover in plaintiff's own right with one to recover for the benefit of the assignee held permissible, under Rev. Laws Mass. c. 173, § 16, cl. 1. Light v. Gray & Davis (D. C.) 250 F. 631.

87. —— **Amendment.**—Under Code S. C. § 194, which governs the federal courts in actions at law in that state, no amendment proposed at the trial can be allowed for the purpose of introducing a new cause of action. Chamberlain v. Mensing (C. C.) 51 F. 511.

Where cause begun in state court is removed to federal court question as to amendments of pleadings pursuant to Rev. St. § 954 (Comp. St. 1916, § 1591), relating to curing of defects in forms is one solely for decision of federal tribunal. Salyer v. Consolidation Coal Co., 246 F. 794, 159 C. C. A. 96, certiorari denied Consolidation Coal Co. v. Salyer, 38 S. Ct. 345, 246 U. S. 669, 62 L. Ed. 931.

Under section 542 of the New York Code, as applied by this section to the practice and pleading in the federal courts within the state of New York, a complaint is amendable by the party at any time within 20 days after a demurrer thereto. Rosenbach v. Dreyfuss (D. C.) 1 F. 391.

In action against carrier for damages to interstate shipment of hogs, that the original petition was on a written contract and the amendment to petition was on an implied contract was immaterial, being matter of procedure governed by state practice. Bowles v. Quincy, O. & K. C. R. Co. (Mo. App.) 187 S. W. 131.

87½. —— **Bill of particulars.**—See O-So-Ezy Mop Co. v. Channell Chemical Co. (D. C.) 230 F. 469.

Denial of a motion by defendant for bill of particulars held not error. Shryock v. S. P. Calkins & Co., 248 F. 649, 160 C. C. A. 549.

88. —— **Complaint, declaration, or petition.**—Essential elements of declaration for libel stated. Shryock v. S. P. Calkins & Co., 248 F. 649, 160 C. C. A. 549.

89. —— **Plea or answer in general.**—Under the Conformity Act, Shannon's Code Tenn. §§ 4627, 4636, regulating pleas and the evidence admissible thereunder, is controlling in the federal courts. Kalloch v. Hoagland, 239 F. 252, 152 C. C. A. 240.

An answer to an action on a promissory note, to state a defense of want of consideration, must aver that the payee did not thereby suffer a loss or detriment. Pierce v. Harper (C. C. A.) 249 F. 867.

Under Shannon's Code Tenn. § 2910 (Thompson & S. Code, § 4631), declaring that all allegations in declaration not denied in plea shall be taken as true falsity of charges set up as basis of action of slander were admitted, where defendant pleaded the general issue merely, with no plea of justification. Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712.

Under Practice Act (Act Pa. May 14, 1915 [P. L. 483]) § 20, defendant cannot by affidavit of defense practically incorporate into the statement of claim matter unnecessary therefor, and thereon raise a question of law in limine. McCarty v. Neilson (D. C.) 239 F. 151.

In an action for the purchase price of certain machines, the defenses that the sale had been procured by fraudu-

lent representations and that the machines were mechanically imperfect should be separately pleaded. Burroughs Adding Mach. Co. v. Scandinavian-American Bank (D. C.) 239 F. 179.

Under the code system of pleading in force in Washington, inconsistent defenses may not be pleaded. Tomkins v. Paterson (D. C.) 239 F. 402.

In action against a New Jersey corporation, removed to federal court sitting in New York, though judgment on plea to jurisdiction should go for plaintiff, held that, plaintiff having concealed fact that he was an alien, defendant should be permitted to reinstate its answer on the merits. Sawickas v. Singer Mfg. Co. (D. C.) 241 F. 600.

Defendant, filing plea to jurisdiction after mistrial, held entitled to reinstate answer, though plea was filed as result of inaccurate information given its counsel by its agents and servants. Kever v. Philadelphia & Reading Coal & Iron Co. (D. C.) 241 F. 883.

Pleas in action on contract, which fail to negative all of breaches alleged, are subject to demurrer, not being defenses to whole declaration. Harrison v. City of Tampa (D. C.) 247 F. 569.

Defect in the return of service of process appearing on the face of the record is properly the subject of a motion to quash, and need not be taken up under a plea of abatement. U. S. v. Southern Dredging Co. (D. C.) 251 F. 400.

A person cannot deny existence of a statute upon information and belief. Martin v. Kennecott Copper Corporation (D. C.) 252 F. 207.

92. —— **Pleading set-off or counterclaim.**—All defenses and set-offs available against an assignor of a chose in action are available against his assignee. Wagner v. Central Banking & Security Co., 249 F. 145, 161 C. C. A. 197.

In an action in the federal District Court of Ohio, the question whether a claim is available as a counterclaim, is controlled by the state laws. Walsh Construction Co. v. City of Cleveland (D. C.) 250 F. 137.

94. —— **Demurrer.**—Upon overruling of demurrer to replication, court held to have properly heard and determined issue raised by replication, though under Rev. St. Me. c. 84, § 35, judgment would have followed in state court. Boultbee v. International Paper Co., 229 F. 951, 144 C. C. A. 233.

Whether the trial court will allow a demurrant to withdraw his demurrer is a matter of discretion, and whenever a demurrer is interposed the demurrant takes that risk. U. S. v. Oregon-Washington R. & Nav. Co. (C. C. A.) 251 F. 211.

A demurrer, for the purpose of the demurrer, admits as true the allegations of the pleading attacked. Tatum v. Louisville & N. R. Co. (C. C. A.) 253 F. 898.

While a demurrer admits all facts well pleaded, it does not admit conclusions. Rensselaer & S. R. Co. v. Irwin (D. C.) 239 F. 739.

95. —— **Verification.**—Under Rev. Codes Idaho, § 4201, by which the "genuineness and due execution" of an instrument pleaded in defense is deemed admitted, unless denied by an affidavit filed, the failure to file such affidavit does not preclude plaintiff from denying the effectiveness of a release interposed as a defense. Gold Hunter Mining & Smelting Co. v. Bowden (C. C. A.) 252 F. 388.

96. —— **Issues, proofs, and variance.**—Answer to action on promissory note, averring want of consideration, must be supported by proof. Pierce v. Harper (C. C. A.) 249 F. 867.

97. —— **Defects, objections, and waiver.**—In assumpsit in a federal court in Pennsylvania, where, after an affidavit of defense is filed, plaintiff, under Procedure Act Pa. May 25, 1887, § 7, moves the court to direct the entry of a plea in behalf of defendant, which is accordingly done, this constitutes a waiver of his right to move for judgment on the ground of the insufficiency of the affidavit of defense. Edison General Electric Co. v. Johnstown Electric Light Co. (C. C.) 56 F. 456.

When a demurrer is irregularly filed, it may be wholly disregarded or taken from the files upon motion of the complainant, and, where neither of these things has been done, the complainant will not be heard to complain upon appeal that the demurrer was irregularly filed because unaccompanied by the required certificate of counsel and affidavit of defendants. Brazoria County v. Youngstown Bridge Co., 80 F. 10, 25 C. C. A. 306.

Error in the sustaining of a demurrer to a complaint is not waived by the filing of an amended complaint, where the latter is stricken from the files. Snowden v. Ft. Lyon Canal Co., 238 F. 495, 151 C. C. A. 431.

98. **Dismissal or nonsuit before trial.**—Where plaintiff did not use diligence, and follow Code Civ. Proc. N. Y. § 528, though he claimed defendant's answer was insufficiently verified, the answer could not be disregarded, but put the case at issue, so that dismissal might be entered for want of prosecution. S. M. Hamilton Coal Co. v. Watts, 232 F. 832, 147 C. C. A. 26, reversing order Watts v. S. M. Hamilton Coal Co. (D. C.) 219 F. 1003.

A stipulation in a state court held not ground for dismissal of an action in the federal court between the same parties. Alsop v. McCombs, 235 F. 507, 149 C. C. A. 53.

Plaintiff in personal injury action begun in federal court is entitled to dismiss his action at any time before sub-

mission, defense being mere denial, though that will enable him to begin new action in different form. Cybur Lumber Co. v. Erkhart, 247 F. 284, 159 C. C. A. 378.

In an action in Pennsylvania District Court, held that, despite Practice Act, plaintiff's discontinuance would be stricken off, defendant having filed a counterclaim in nature of set-off. Pyrene Mfg. Co. v. Castle (D. C.) 240 F. 841.

Though plaintiff negligently delayed engaging other counsel after death of his first counsel, held that, as he endeavored to have the case put on trial docket after entry of "neither party," closing case, it should be restored on his giving security for payment of costs already accrued. Craven v. Clark (D. C.) 247 F. 622.

99. Evidence.—In the federal courts, in an action for the injury or death of an employé, the burden of proving contributory negligence rests on the defendant, regardless of any contrary rule in the state courts. New Ætna Portland Cement Co. v. Hatt, 231 F. 611, 145 C. C. A. 497.

Testimony of plaintiff's witnesses that plaintiff's intestate was killed by coming in contact with a return electric wire is sufficient to warrant a finding to that effect, notwithstanding conflicting expert testimony. Sunday Creek Co. v. Gray, 238 F. 325, 151 C. C. A. 341.

Direct and positive testimony, the good faith of which is undisputed, may not be overcome by inferences of the most general character unsupported by a single detail. Illinois Surety Co. v. Standard Underground Cable Co., 238 F. 546, 151 C. C. A. 482.

In an action on an accident insurance policy, where insured had died of appendicitis shortly after falling on the sidewalk and injuring his abdomen, and an expert witness had testified that appendicitis was caused by the fall, the jury were justified in so finding. Ætna Life Ins. Co. v. Wicker, 240 F. 398, 153 C. C. A. 324.

While collateral or irrelevant facts that fix the time at which a relevant fact occurred are admissible in evidence so far as necessary, that rule cannot be employed as a pretext for the admission of evidence in itself incompetent and prejudicial. Bingham Mines Co. v. Bianco, 246 F. 936, 159 C. C. A. 208.

The rule that the burden of proof of contributory negligence of a passenger is upon the carrier will be enforced by the federal courts, even where the rule of state practice is otherwise. Harmon v. Barber, 247 F. 1, 159 C. C. A. 219, certiorari denied 38 S. Ct. 335, 246 U. S. 666, 62 L. Ed. 929.

Burden of proof, as fixed by examination of pleadings, does not change, although during progress of trial burden of going forward with evidence to rebut prima facie case may shift. Cowen Co. v. Houck Mfg. Co., 249 F. 285, 161 C. C. A. 293.

The test of "relevancy" of evidence is that an evidentiary fact can be considered as admissibly relevant only when the desired conclusion based upon it is a more probable or natural, or at least a probable or natural hypothesis, and when the other hypothesis or explanations of the fact, if any, are either less probable or natural, or at least not more probable or natural. Lee v. Malleable Iron Range Co. (D. C.) 247 F. 795.

101. Witnesses.—The practice of the federal courts as to the scope allowed in cross-examination in criminal cases is not affected by the practice or rules of the courts of the state. Hendrey v. U. S., 233 F. 5, 147 C. C. A. 75.

Gen. Code Ohio, § 11497, construed as giving a party an unlimited right to cross-examine an adversary called by him, is a matter of trial administration, which the federal courts need not follow, under the Conformity Act. American Issue Pub. Co. v. Sloan, 248 F. 251, 160 C. C. A. 329.

103. Examination of party, production of evidence, or view before trial.—Statutory provision of a state, under which a party to an action at law may require the production of books or writings containing evidence in advance of trial, do not apply to procedure in the federal courts. General Film Co. v. Sampliner, 232 F. 95, 146 C. C. A. 287.

104½. Trial—Conduct of trial.—A remark of the trial judge in the presence of the panel on adjourning the trial held not to prejudice the jury, so as to show an abuse of discretion in denying a continuance for the term. Pennsylvania Co. v. Fanger, 231 F. 851, 146 C. C. A. 47.

In action in federal courts it is not improper for judge to suggest to plaintiff that he might elect on which count to proceed. Victor American Fuel Co. v. Tomljanovich, 232 F. 662, 146 C. C. A. 588, affirming orders Tomljanovich v. Victor American Fuel Co. (D. C.) 227 F. 951, and 230 F. 467.

105. —— Mode of trial.—Under Practice Act Pa. 1915 (P. L. 486) § 20, where the questions sought to be raised by hearing on affidavit of defense may be raised as trial questions, it is better practice to do so to avoid appeals from interlocutory judgments. U. S. v. John A. Heitz, Inc. (D. C.) 238 F. 1002.

107. —— Reception of evidence.—Where evidence was admissible for particular purpose, and no request that its effect be restricted to that purpose was made, held, that there was no error. Lauderdale County v. Kittel, 229 F. 593, 143 C. C. A. 615.

It was not error to exclude evidence which was merely cumulative because the record already showed the facts

desired to be proved. Wheeler v. City and County of Denver, 231 F. 8, 145 C. C. A. 196.

Exclusion of evidence inadmissible for the purpose for which it was offered is proper, though evidence was admissible on another theory. Flowers v. Bush & Witherspoon Co. (C. C. A.) 254 F. 519.

108. —— Dismissal or nonsuit at trial, and direction of verdict.—Under this section, and Revisal N. C. 1905, § 539, defendant, which, after denial of motion to dismiss at close of plaintiff's case introduced evidence, and did not renew motion, cannot complain of denial. R. D. Cole Mfg. Co. v. Mendenhall, 240 F. 641, 153 C. C. A. 439.

Under this section, it is proper in federal District Court to allow nonsuit before verdict, where such nonsuit is permissible under state practice. Cybur Lumber Co. v. Erkhart, 247 F. 284, 159 C. C. A. 378.

Under Rev. St. Mo. 1909, § 1980, providing that "the plaintiff shall be allowed to dismiss his suit * * * at any time before the same is finally submitted," which by this section governs federal courts in that state, a plaintiff may of right take a nonsuit at any time before the jury has actually retired. Alsop v. McCombs (C. C. A.) 253 F. 949.

A complaint, sufficient in its allegations, may be dismissed on admissions made by plaintiff's counsel in his opening clearly showing plaintiff had no cause of action. Smith v. Standard Sanitary Mfg. Co. (C. C. A.) 254 F. 427.

The state court practice should be followed, where the case is submitted to the jury, or where the jury has been waived. In the first event, the plaintiff cannot take a nonsuit after the jury has retired, nor in the latter, after the case has been submitted to the court for decision. Pannill v. Roanoke Times Co. (D. C.) 252 F. 910.

Where there is no state practice as to the granting of a nonsuit, the federal courts of the state are governed only by the general law. Id.

109. —— Instructions and control of deliberations of jury.—Plaintiff in error, one of the defendants in a prosecution for a conspiracy, held not entitled to complain of an instruction on admissions of conspiracy, etc., by another defendant. Shepard v. U. S., 236 F. 73, 149 C. C. A. 283.

Comp. St. Ann. 1916, § 1537, does not make Act Pa. May 11, 1911 (P. L. 279), applicable in the federal courts, notwithstanding rule 10, § 2, of District Court for the Eastern District of Pennsylvania, and rule 10, § 1, of Circuit Court of Appeals, Third Circuit (Comp. St. 1916, p. 1289), forbidding general exceptions to the charge. Philadelphia & R. Ry. Co. v. Marland, 239 F. 1, 152 C. C. A. 51.

The giving of a supplemental charge, in which the court impressed on the jury the duty to reach an agreement, but did not indicate an opinion as to the merits, or comment on the facts, held not error. Bernal v. U. S., 241 F. 339, 154 C. C. A. 219.

Though judge may express opinion as to facts, he may not persuade jury as to the facts, or argue the case for either side. Oppenheim v. U. S., 241 F. 625, 154 C. C. A. 383, reversing judgment U. S. v. Oppenheim (D. C.) 228 F. 220.

110½. —— Argument of counsel.—In crossing accident case tried in federal District Court for New York, held, that statement by plaintiff's counsel that he claimed $50,000 damages was no ground for objection, though cause of action arose in Pennsylvania, where such statement would have been improper. Philadelphia & R. Ry. Co. v. Skerman, 247 F. 269, 159 C. C. A. 363.

114. Receivers.—See notes under § 1047.

115. Motions in general.—Jurisdiction of federal District Court over a foreign corporation not doing business within the state may, notwithstanding this section challenged by a motion to quash, though under the local practice the question can only be raised by demurrer. Meisukas v. Greenough Red Ash Coal Co., 37 S. Ct. 593, 244 U. S. 54, 61 L. Ed. 987.

The granting of a judgment upon the pleadings on motion is not regarded with favor by the court. Betsch v. Umphrey (C. C. A.) 252 F. 573.

117. Requisites, record, and effect of judgment.—Any entry, whatever its form, is a sufficient entry of a judgment if it clearly shows that it was intended as the determination of the court, and shows the nature and scope of the relief granted. Smith v. Smith, 247 F. 461, 159 C. C. A. 515.

Without valid service of process upon defendant in the absence of its voluntary appearance, there can be no recovery. U. S. v. Southern Dredging Co. (D. C.) 251 F. 400.

118. Vacation of judgment.—After decree in government's suit to cancel a patent of coal lands, the court, upon stipulation by government and defendants, purchasers of land at foreclosure sale in another suit and entitled to deed therefor, that on purchasers' conveyance of adjoining tract to it government would relinquish claim to land in suit, had jurisdiction to modify its decree. U. S. v. Trogler, 237 F. 181, 150 C. C. A. 327.

119. Execution and proceedings after judgment.—Under Rev. St. §§ 913, 914, 916, 917 (Comp. St. 1916, §§ 1536, 1537, 1540, 1543), and new equity rule 8 (Comp. St. 1916, p. 2498), a trustee against whom a decree was rendered in

his representative capacity may be examined in supplementary proceedings. Brown v. Fletcher (D. C.) 239 F. 360.

120. Fees and costs in general.—Conformably to the Minnesota statute and practice, which allow recovery by the prevailing party of "disbursements necessarily paid or incurred," where the United States, in an action to recover penalties for violation of the Hours of Service Act, includes a number of independent and unrelated causes of action, and recovers on but one, it is not entitled to tax as disbursements fees of witnesses who testified only in relation to causes of action on which it was defeated. U. S. v. Minneapolis, St. P. & S. S. M. Ry. Co. (D. C.) 235 F. 951.

V. PROCEDURE IN APPELLATE COURT

122. Practice in general.—See Pollack v. Meyer Bros. Drug Co. (C. C. A.) 233 F. 861, dissenting opinion of Sanborn, J.

Rule that only parties to the record may appeal from decree of federal court is not affected by local practice under Code Prac. La. art. 571, allowing appeals by strangers to the record. United States ex rel. State of Louisiana v. Boarman, 37 S. Ct. 605, 244 U. S. 397, 61 L. Ed. 1222, affirming decree U. S. v. Same, 217 F. 757, 133 C. C. A. 487.

Act Cong. March 3, 1891, § 11 (Comp. St. 1916, § 1647), fixing time for taking appeals to or suing out writs of error from Circuit Courts of Appeals, should have same construction in various circuits, and varying state rules as to computation of time should not be deferred to, under this section. Siegelschiffer v. Penn Mut. Life Ins. Co., 248 F. 226, 160 C. C. A. 304.

123. —— Appeal, or writ of error.—Despite this section, held that, in an action at law, defendant cannot procure review of the judgment on appeal to Circuit Court of Appeals, but must sue out a writ of error. Smith v. Currie, 230 F. 803, 145 C. C. A. 113.

In an action at law, known as claim and delivery, under the Code of North Carolina (Revisal 1905, §§ 790–802), judgment having gone against defendant, the Circuit Court of Appeals is without jurisdiction, notwithstanding this section, of an appeal by defendant, though bond was given and citation issued to plaintiff, for, the action being one at law, the judgment can be reviewed in the federal courts only on writ of error. Id.

126. —— Presentation of questions in trial court.—What is necessary in a District Court to render rulings reviewable is determined by federal statutes, and, where they are silent by the common-law practice prevailing in the federal courts. Chicago Great Western R. Co. v. Le Valley, 233 F. 384, 147 C. C. A. 320, denying rehearing 227 F. 1016, 141 C. C. A. 664.

Where defendant objected to a question to its witness as to whether he had been indicted for forgery, it was not a waiver of the objection and exception for defendant's counsel to state in the presence of the jury that he was not trying to keep anything back, and would like to have the witness explain the matter, as he stated he could. Walker Grain Co. v. Blair Elevator Co. (C. C. A.) 254 F. 422.

128. —— Effect of transfer of cause.—When appeal is taken under California practice, the action is still pending, and the judgment does not become final until the appellate court has passed its order. Blue Goose Mining Co. v. Northern Light Mining Co., 245 F. 727, 158 C. C. A. 129.

129. —— Record.—The requirement by the New York statute that a city condemning a reservoir site shall furnish the owner with three printed copies of the evidence does not relieve the owner from liability for costs for certifying the record on appeal and the supervision fee and for printing the record in the Circuit Court of Appeals. In re Bensel (D. C.) 230 F. 932.

131. —— Mandate and proceedings in lower court.—Under Code Miss. 1906, § 802, applicable to action in federal District Court for that state, plaintiff, after reversal on appeal of judgment in his favor, held on remand entitled to take voluntary nonsuit before submission of case to second jury, though appellate court directed, should evidence be same on retrial verdict should be directed for defendant. Cybur Lumber Co. v. Erkhart, 247 F. 284, 159 C. C. A. 378.

CITED WITHOUT DEFINITE APPLICATION

Golden, Belknap & Swartz v. Connersville Wheel Co. (D. C.) 252 F. 904; Central Ry. Signal Co. v. Jackson (D. C.) 254 F. 103.

§ 1538. (R. S. § 721.) Laws of the States; rules of decision.

I. LAWS AS RULES OF DECISION

8. State laws as authority in federal courts.—The result of the Conformity Act (Rev. Stat. § 914; Comp. Stat. 1916, § 1537), the Rules of Decision Act (Rev. Stat. § 721; Comp. Stat. 1916, § 1538), and the Competency of Witnesses Act (Rev. Stat. § 858; Comp. Stat. 1916, § 1464), is to make state statutes relating to the competency of witnesses and the competency of testimony, as well as the state law of evidence generally, binding on the federal courts sitting within such state, except where in conflict with the federal Constitution, stat-

utes, or treaties. American Issue Pub. Co. v. Sloan (C. C. A.) 248 F. 251.

As there is no common law of United States, general law administered by federal courts is that of state in which they may be sitting as to matters within their concurrent jurisdiction. Consolidated Ordnance Co. v. Marsh, 116 N. E. 394, 227 Mass. 15.

9. —— Exception of questions involving federal government, constitution, or laws.—See The Sagamore, 247 F. 743, 159 C. C. A. 601.

No state has power to abolish the well-recognized maritime rules concerning the measure of recovery by a seaman injured while in service of a vessel and substitute therefor the full indemnity rule of the common law. Chelentis v. Luckenbach S. S. Co., 38 S. Ct. 501, 247 U. S. 372, 62 L. Ed. 1171, affirming judgment 243 F. 536, 156 C. C. A. 234.

Under Bankr. Act, § 60b, and in view of amendments and of section 47a (Comp. St. 1916, §§ 9644, 9631), a chattel mortgage given by a bankrupt more than four months before the filing of petition is, where not recorded until a few days of filing, voidable by trustee as a preference, being a conveyance required to be recorded by Kirby's Dig. Ark. § 5396, regardless of the construction of law by state courts. Bunch v. Maloney, 233 F. 967, 147 C. C. A. 641, affirming decree In re T. H. Bunch Commission Co. (D. C.) 225 F. 243.

In an action under the federal Employers' Liability Act, measure of damages is to be determined according to the provisions of the act itself and the general common law as administered by the federal courts, unaffected by state legislation and decisions of state courts. Laughlin v. Kansas City Southern Ry. Co. (Mo.) 205 S. W. 3.

11. What state law governs.—Public policy defined by Pen. Code Tex. 1911, arts. 538, 539, relating to dealings in futures, held not violated by enforcement in a federal court in that state of a contract made in New York, and valid therein between citizen of New York and citizen of Texas, for sale of cotton for future delivery. Bond v. Hume, 37 S. Ct. 366, 243 U. S. 15. 61 L. Ed. 565.

Whether a note executed and made payable in Missouri was negotiable, so as not to be subject to the defense of a failure of consideration in the hands of a bona fide purchaser, was to be determined by the laws of Missouri, though suit thereon was brought in the District Court for the District of Kansas. Kobey v. Hoffman (C. C. A.) 229 F. 486.

12. Judicial notice of state laws.—In determining whether fees for inspection of oils and gasoline exacted by state of Minnesota are so much in excess of cost of inspection as to constitute law a revenue measure, invalid as burden on interstate commerce, Supreme Court of United States takes judicial notice that inspection fee on oil and gasoline in tank cars was twice reduced by the Legislature. Pure Oil Co. v. State of Minnesota, 39 S. Ct. 35, 63 L. Ed. ——.

In action by New Hampshire corporation in federal District Court for New Hampshire, held, that court would take judicial notice that defendant was incorporated under Laws N. H. 1835, c. 14, and Laws 1841, c. 6. Peterborough R. R. v. Boston & M. R. R., 239 F. 97, 152 C. C. A. 147.

Federal court will take judicial notice of state legislative action, making river within state public navigable stream, and authorizing damming of one of its branches. Keystone Wood Co. v. Susquehanna Boom Co., 240 F. 296, 153 C. C. A. 222, affirming judgment (D. C.) 235 F. 800.

District Court of Alaska may take judicial notice of statutes of a state. Jesson v. Noyes, 245 F. 46, 157 C. C. A. 342, certiorari denied 38 S. Ct. 133, 245 U. S. 667, 62 L. Ed. 538.

Federal courts take judicial notice of the statutes of the states. Southern Ry. Co. v. O'Dell (C. C. A.) 252 F. 540.

The federal District Court for Western District of Virginia takes judicial notice that a circuit court of Virginia is and was in 1856 a court of record and of general jurisdiction. Virginia & West Virginia Coal Co. v. Charles (D. C.) 251 F. 83.

The Supreme Court may take judicial notice of the history of the Central Canal and of the legislation relative thereto. City of Indianapolis v. Indianapolis Water Co. (Ind.) 113 N. E. 369.

18. Questions governed by state laws—Bonds, notes, and loan contracts.—The rights of a banker, who advanced funds to purchase property and delivered the same to a manufacturer under a trust receipt, are, on bankruptcy of the manufacturer, governed by the state laws. In re Bettman-Johnson Co. (C. C. A.) 250 F. 657.

19. —— Questions affecting transfers, title, or interest in property.—In determining whether a chattel mortgage is a conveyance working a fraud on creditors, the state law governs. Johnson-Baillie Shoe Co. v. Bardsley, Elmer & Nichols, 237 F. 763, 150 C. C. A. 517.

The question of the validity of a chattel mortgage given by bankrupts is one of local law. Garrison v. Kurt, 249 F. 672, 161 C. C. A. 582.

In determining whether title to chattels passed to bankrupt, or remained in seller, state law governs. In re Farmers' Dairy Ass'n (D. C.) 234 F. 118, judgment affirmed Shook v. Levi (C. C. A.) 240 F. 121.

Costs made on writ of attachment

against a bankrupt prior to the bankruptcy proceedings held provable, and entitled to preference under the state law. In re Romm (D. C.) 235 F. 383.

In proceedings to reclaim property from trustee in bankruptcy, the question whether the contract under which the bankrupt held the property was a bailment for hire, or a sale, conditional or absolute, must be determined by the law of the state in which it was made. In re Eagle Ice & Coal Co. (D. C.) 241 F. 393.

Unless the bankrupt law otherwise provides, validity of an assignment or claim is to be determined by local law. Davis v. Billings, 99 A. 163, 254 Pa. 574.

Unless the bankruptcy law otherwise provides, the validity of a claim is to be determined in accordance with the principles of the local law. Bennett v. North Philadelphia Trust Co., 66 Pa. Super. Ct. 261.

20. —— **Liability for negligence or torts.**—Since the federal Employers' Liability Act merely provides the order in which classes of relatives of the deceased workman can recover, the portion of recovery by each class is governed by the state statute. In re Stone (N. C.) 91 S. E. 852.

21. —— **Administration of estates and construction of wills.**—It is within the power of the state to determine the order in which debts of an estate shall be paid. Therefore the federal courts must give effect to Rev. Laws Nev. § 6052, declaring priorities. Johnson v. Garner (D. C.) 233 F. 756.

23. —— **Laws or regulations affecting corporations.**—Legislative construction given by Civ. Code Ariz. 1913, pars. 2277–2362, to the words "corporations" and "public service corporations" in Const. Ariz. art. 15, creating Corporation Commission, will be followed by federal Supreme Court, in absence of decision of Arizona Supreme Court to the contrary, notwithstanding article 14, defining "corporation," since the Legislature was empowered by article 15, § 6, to enlarge powers of such commission. Van Dyke v. Geary, 37 S. Ct. 483, 244 U. S. 39, 61 L. Ed. 973, affirming order (D. C.) 218 F. 111.

In a case involving the contractual liability of a stockholder, the statutes and decisions of the highest court of the state where the company was organized govern the controversy. Second Nat. Bank of Erie v. Georger (D. C.) 246 F. 517.

Whether a stockholder of a bankrupt corporation is liable to the estate for the difference between the par value of the stock held by him and the amount originally paid therefor is determined by the law of the state where the corporation was incorporated. In re Manufacturers' Box & Lumber Co. (D. C.) 251 F. 957.

24. —— **Liens and mortgages.**—In determining the priority of liens in a bankruptcy case, the state law governs. Preetorius v. Anderson, 236 F. 723, 150 C. C. A. 55.

Federal courts will enforce vendor's liens if in harmony with jurisprudence of state in which action is brought. Farrell v. Wysong (C. C. A.) 246 F. 281.

The laws of the state where the assets of a bankrupt are, control as to the nature and effect of a lien thereon for debts of a testator. In re McAusland (D. C.) 235 F. 173.

Courts of admiralty are not inclined to recognize local statutes purporting to establish a lien, where the maritime law gives none, unless the right is unequivocal. The Saturnus (D. C.) 242 F. 173.

II. DECISIONS OF STATE COURTS

32. **Authority in general.**—Ruling of state court, on right of principal to recover from agent money received by him in carrying out arrangement between them involving violation of criminal statute, turning on question of local law, cannot be re-examined by national court. Danciger v. Cooley, 39 S. Ct. 119, 63 L. Ed. ——.

Decisions of the Montana state court as to the validity of mining locations are not precedents binding on the federal courts in a suit involving the validity of locations in that state made prior to the rendition of such decisions of the Montana court. Butte & Superior Copper Co. v. Clark-Montana Realty Co., 248 F. 609, 160 C. C. A. 509, affirming decree Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547, and certiorari denied Butte & Superior Copper Co. v. Clark-Montana Realty Co., 38 S. Ct. 581, 247 U. S. 516, 62 L. Ed. 1245.

While federal court having jurisdiction in particular state is an independent forum, yet it administers no different law than that administered by state courts, and in question involving state, public policy should defer to decisions of state courts. Keystone Wood Co. v. Susquehanna Boom Co., 240 F. 296, 153 C. C. A. 222, affirming judgment (D. C.) 235 F. 800.

In determining the nature of transactions between bankrupt and others, decisions of highest state court, if not controlling are of great weight. In re Shea (D. C.) 245 F. 363.

In proceeding involving validity of bankrupt's assignment for creditors, bankruptcy court will treat matter as undecided by state court, where judge of state court, in making order involving matter, filed no opinion showing that he adjudged assignment invalid, and parties were disagreed as to that fact. In re Colwell Lead Co. (D. C.) 241 F. 922.

33. **Construction of state constitutions and statutes—In general.**—The federal courts accept the interpretation put by the courts of a state upon its own Constitution and statutes. Colorado Yule Marble Co. v. Collins, 230 F. 78, 144 C. C. A. 376.

In construing the statute of Alaska, transplanted from Oregon, the Oregon decisions, unless departed from by Alaska judgments, are to be considered as local law. In re Seward Dredging Co., 242 F. 225, 155 C. C. A. 65, certiorari denied Sands v. Estabrook, 38 S. Ct. 11, 245 U. S. 651, 62 L. Ed. 531.

34. —— **Constitutions.**—Decisions of state Supreme Court construing provisions of state Constitution are conclusive on national courts. Bush v. Branson, 248 F. 377, 160 C. C. A. 387; Hill v. Hill (D. C.) 231 F. 345; Harmon v. Bolley (Ind.) 120 N. E. 33.

35. —— **Statutes.**—The construction of a state statute by the highest court of the state must be accepted by the federal courts. La Tourette v. McMaster, 39 S. Ct. 160, 63 L. Ed. —; Lauderdale County v. Kittel, 229 F. 593, 143 C. C. A. 615; Old Colony Trust Co. v. City of Tacoma, 230 F. 389, 144 C. C. A. 531, affirming decree (D. C.) 219 F. 775; Atlas Portland Cement Co. v. Hagen, 233 F. 24, 147 C. C. A. 94; Union Stockyards Bank of Wichita, Kan., v. Hamilton, 246 F. 580, 158 C. C. A. 550; Bank of Follansbee v. Follansbee Lumber Co., 248 F. 645, 160 C. C. A. 545; Ludlow v. City of Ludlow (C. C. A.) 252 F. 559; Gillespie v. Riggs (C. C. A.) 253 F. 943; In re Davidson (D. C.) 233 F. 462; Pennsylvania R. Co. v. Peddrick (D. C.) 234 F. 781; Chicago, M. & St. P. Ry. Co. v. Incorporated Town of Lost Nation (D. C.) 237 F. 709; Hebe Co. v. Calvert (D. C.) 246 F. 711.

The constitutionality of the compulsory insurance provisions of Iowa elective Workmen's Compensation Act, § 42, will not be considered by the federal Supreme Court at the instance of an employer not accepting the act, where the highest state court has held that an employer not accepting is not compelled to insure. Hawkins v. Bleakly, 37 S. Ct. 255, 243 U. S. 210, 61 L. Ed. 678, affirming decree Same v. Bleakley (D. C.) 220 F. 378.

Requisite diversity of citizenship to sustain federal jurisdiction exists where citizen of Arkansas, as administrator under appointment in Tennessee, sues corporation for wrongful death, in view of decision of Supreme Court of Tennessee as to effect of Acts Tenn. 1903, c. 501. Memphis St. Ry. Co. v. Moore, 37 S. Ct. 273, 243 U. S. 299, 61 L. Ed. 733, affirming judgment Same v. Bobo, 232 F. 708, 146 C. C. A. 634.

As to contracts executed before the construction of a state statute by its court of last resort, the courts of the United States are not conclusively governed by the construction thereafter placed upon it by the state court. Kobey v. Hoffman (C. C. A.) 229 F. 486.

A decision by the Oklahoma Supreme Court construing Comp. Laws Okl. 1909, § 5553, as denying benefit of limitations in favor of any person or corporation while it is without the state, is binding on federal courts, so limitations do not run in favor of a foreign corporation, though it maintained a statutory process agent. Quinette v. Pullman Co., 233 F. 980, 147 C. C. A. 654, denying rehearing 229 F. 333, 143 C. C. A. 453.

Where the highest court of a state has interpreted a state statute in a way showing that it is considered a positive enactment and not merely a re-enactment of the common law, as to rights arising thereafter, its construction is binding on the federal courts. Babbitt v. Read, 236 F. 42, 149 C. C. A. 252, affirming decree (D. C.) 215 F. 395.

Ordinarily, a federal court accepts construction of statutes of state by highest court thereof, but if such decision is rendered after rights have accrued or liabilities have been incurred, which are subject of determination by federal court, latter court is not bound by such decision, although it will lean to agreement with state court. State of Missouri v. Angle, 236 F. 644, 149 C. C. A. 640, affirming order In re Sage (D. C.) 224 F. 525.

Holding of Supreme Court of Porto Rico that Rev. Civ. Code 1902, § 187, authorizing inheritance by an illegitimate child who was acknowledged by its father, is not retroactive, when in harmony with prior decisions of that court and the Supreme Court of Spain, held not to be disturbed. Maldonado v. Esteras, 242 F. 912, 155 C. C. A. 500.

Generally a federal court treats the construction of a state statute by the highest court of the state as part of it and read into it. Turner v. Board of Trade of City of Chicago, 244 F. 108, 156 C. C. A. 536, certiorari denied 38 S. Ct. 133, 245 U. S. 667, 62 L. Ed. 538.

Decision of state court construing local statutes of limitation and with respect to administration are binding on federal court. Salyer v. Consolidation Coal Co., 246 F. 794, 159 C. C. A. 96, certiorari denied Consolidation Coal Co. v. Salyer, 38 S. Ct. 345, 246 U. S. 669, 62 L. Ed. 931.

Instruction, in action in federal court to recover Texas land, in accordance with the latest decision of Texas Supreme Court, that under ten-year statute claim of right required more than entry with intention to acquire adverse title, was erroneous; Texas Supreme Court, after submission, reannouncing original rule to contrary that naked

trespasser might by ten years' adverse possession acquire title. Richardson v. Ball, 246 F. 824, 159 C. C. A. 126.

Decision of the highest state court, construing local limitation statutes as to actions for wrongful death, though contrary to previous decisions of inferior courts, is binding on the federal courts. Farley v. Carey Show Print Co., 249 F. 476, 161 C. C. A. 434.

Under the rule that federal courts follow the interpretation of state statutes adopted by the state's highest judicial tribunal, where no question of general or commercial law or the violation of the federal Constitution is involved, the federal court was bound to follow a decision of the Supreme Court of Oklahoma erroneously construing the statute of limitations (Rev. Laws Okl. 1910, § 4657, subd. 3, and section 4660). St. Louis & S. F. R. Co. v. Quinette (C. C. A.) 251 F. 773.

The federal courts will, save in very exceptional cases, follow the construction placed upon the statutes of a state by the courts of last resort of the state. Emerson-Brantingham Implement Co. v. Lawson (D. C.) 237 F. 877.

The decisions of the highest court of a state on the question of the conformity of a statute to the state Constitution are final and conclusive, and a federal court is reluctant to declare the statute invalid on that ground before the question has been considered by the state tribunal. Bergman v. Kearney (D. C.) 241 F. 884.

Decisions by Louisiana Supreme Court, holding that similar laws were not invalid, under Const. La. art. 229, are binding on federal court in considering contention that Act La. No. 145 of 1916 was invalid, under same article. Union Sulphur Co. v. Reed (D. C.) 249 F. 172.

36. Decisions by other than supreme courts.—It is only the highest court of a state whose decisions, construing the state Constitution or statutes, are binding on the federal courts. Skaggs v. Kansas City Terminal Ry. Co. (D. C.) 233 F. 827.

37. Dicta and decisions on questions not directly involved.—Where the Supreme Court of a state deliberately considered and construed a statute relating to notice to property owners of proposed changes in valuation, the federal courts will abide by the construction given, though it be questioned as dictum. Skagit County v. Puget Mill Co. (C. C. A.) 249 F. 965.

37½. Conflicting decisions.—In the absence of uniform recognized decisions by the state court governing the rights and conduct of persons regarding the matter under consideration, the federal court may regard with equal respect the decisions of courts of other states. Toby v. Scranton Ry. Co. (D. C.) 245 F. 365.

38. Questions involving licenses or taxation—In general.—Supreme Court accepts decision of state court respecting construction of statute, imposing tax, but must determine questions under federal Constitution upon its own judgment of the operation and effect of the tax. Crew Levick Co. v. Commonwealth of Pennsylvania, 38 S. Ct. 126, 245 U. S. 292, 62 L. Ed. 295, reversing judgment Commonwealth v. Crew Levick Co., 100 A. 952, 256 Pa. 508.

The question whether the lien of a mortgage on personal property is paramount to the lien for the personal property tax is a question of state law, governed by the state decisions. Bear River Paper & Bag Co. v. City of Petoskey, 241 F. 53, 154 C. C. A. 53.

A decision by the highest court of a state, interpreting a revenue law, is binding on the federal courts. Polk County, Iowa, v. Burns, 247 F. 399, 159 C. C. A. 453, reversing judgment In re Hosmer (D. C.) 233 F. 318.

39. —— Assessments and levy of tax.—Federal courts will follow decision of highest state courts of Kentucky in construing Ky. St. §§ 4077–4081, relating to valuation of intangible property of interstate railroad. Louisville & N. R. Co. v. Greene, 37 S. Ct. 683, 244 U. S. 522, 61 L. Ed. 1291, Ann. Cas. 1917E, 97, modifying decree Same v. Bosworth (D. C.) 230 F. 191; Illinois Cent. R. Co. v. Greene, 37 S. Ct. 697, 244 U. S. 555, 61 L. Ed. 1309, affirming decree Same v. Bosworth (D. C.) 209 F. 465.

Judgment of the highest court of the state as to what is a public use for which money may be raised by taxation under the Fourteenth Amendment is entitled to the highest respect. Jones v. City of Portland, 38 S. Ct. 112. 245 U. S. 217, 62 L. Ed. 252, L. R. A. 1918C, 765, Ann. Cas. 1918E, 660, affirming judgment 93 A. 41, 113 Me. 123.

Construction by state court of statute governing notice of proposed increase in valuation of board of equalization held binding on the federal court. Puget Mill Co. v. Skagit County (D. C.) 242 F. 333.

Holding of Ohio Supreme Court that tax imposed under Conservancy Act, § 43, is to be imposed with reference to benefits and burdens upon real estate, held binding on federal court. Orr v. Allen (D. C.) 245 F. 486.

41. —— Collection and payment.—The holding of the Court of Appeals of Kentucky that Ky. St. 1894, § 4131, as amended in 1906 (Acts 1906, c. 22, art. 8, § 3), authorizes the appointment of special collectors, each charged with the duty of collecting only a designated part of the assessed county taxes, must be accepted by the federal Supreme Court. Hendrickson v. Apperson, 38 S. Ct. 44, 245 U. S. 105, 62 L. Ed. 178, affirming judgment 238 F. 473, 151 C. C. A. 409; Same v. Creager, 38 S. Ct. 46, 245 U.

S. 115, 62 L. Ed. 185, affirming judgment Same v. Apperson, 238 F. 473, 151 C. C. A. 409.

A decision of the highest court of the state construing statutes authorizing distress for personal property taxes is conclusive on the federal courts. Bird v. City of Richmond, 240 F. 545, 153 C. C. A. 349.

Decision of highest state court concerning state statutes regarding tax penalties is conclusive on federal courts. Bright v. State of Arkansas (C. C. A.) 249 F. 953.

44. —— **Licenses.**—In determining constitutionality of state statutes enacted at different dates under which license taxes were assessed federal Supreme Court should follow decision of state court and construe them as being part of single scheme. International Paper Co. v. Commonwealth of Massachusetts, 38 S. Ct. 292, 246 U. S. 135, 62 L. Ed. 624, Ann. Cas. 1918C, 617, reversing judgment International Paper Co. v. Commonwealth, 117 N. E. 246, 228 Mass. 101.

The state court having construed an ordinance declaring it unlawful to engage in peddling any goods without a license to apply to an isolated transaction, a sale of two small articles at rest in the state before the sale, though defendant's business was otherwise interstate commerce, judgment of state court must be affirmed. Watters v. People of State of Michigan, 39 S. Ct. 29, 63 L. Ed. —.

In so far as ruling of state court, that the state is not concluded by assessor's entry as to whether tax was on property or privilege, turns on the authority of the state board and the assessor under the state statute, and the relative effect to be given their acts, it is not reviewable by the national court. Wells Fargo & Co. v. State of Nevada, 39 S. Ct. 62, 63 L. Ed. —.

45. **Decisions affecting corporations, stockholders, and officers thereof—Charters and organizations.**—Holding of state court that no written acceptance of state Constitution is necessary to entitle railroad company to rights under future legislation, pursuant to Const. Ala. 1901, § 246, held binding on a federal court. Bryan v. Louisville & N. R. Co., 244 F. 650, 157 C. C. A. 98, writ of error dismissed and certiorari denied 38 S. Ct. 334, 246 U. S. 651, 664, 62 L. Ed. 921.

47. —— **Stock and stockholders.**—The federal Supreme Court, when determining rights under the laws of a state, should follow a ruling of the state court that subscribers to syndicate agreement for purchase of corporate stock and coal properties may rescind for fraud of the promoters, whom they created their agent by merely tendering the stock received. Sim v. Edenborn, 37 S. Ct. 36, 242 U. S. 131, 61 L. Ed. 199, reversing judgment Edenborn v. Sim, 206 F. 275, 124 C. C. A. 339; Alder v. Same, 37 S. Ct. 38, 242 U. S. 137, 61 L. Ed. 204, reversing judgment Edenborn v. Sim, 206 F. 275, 124 C. C. A. 339.

The liability of the stockholders of a Minnesota corporation for the difference between the par value of the stock and the amount they paid is a question of local law, on which the decisions of the courts of that state are controlling. Courtney v. Croxton, 239 F. 247, 152 C. C. A. 235.

Holding of state court that liability of stockholder under state Constitution and laws was discharged, where, after his transfer of his stock, indebtedness was extended, held to be followed by federal court in suit against another stockholder. Way v. Mortenson, 242 F. 903, 155 C. C. A. 491.

48. —— **Rights, powers, and liabilities.**—The Oklahoma Supreme Court's construction of Const. Okl. art. 23, § 9, is binding on the federal court in an action for the delay in delivering a telegram to which provision is applicable. Gardner v. Western Union Telegraph Co., 231 F. 405, 145 C. C. A. 399.

A decision of a state court construing a state statute, limiting the powers of local corporations, is binding on the federal court. West Penn Chemical & Mfg. Co. v. Prentice, 236 F. 891, 150 C. C. A. 153.

Decision of state court determining character of bonds issued by irrigation district under state statute is conclusive and binding on federal courts. Rialto Irr. Dist. v. Stowell (C. C. A.) 246 F. 294; Same v. Chellis (C. C. A.) 246 F. 308.

Decisions of South Carolina Supreme Court construing similar railway charters held binding on federal courts, being adjudications as to meaning of a state statute, so that lessee of South Carolina railroad company was not entitled to right of way 100 feet each side of its road, without showing that it entered and constructed road without any written contract. Southern Ry. Co. v. Board of Com'rs of Public Works of City of Union, S. C., 246 F. 383, 158 C. C. A. 447.

50. —— **Insolvency and dissolution.**—The federal court should adopt the rulings of the highest court of Illinois upon the authority of a court of equity to dissolve Illinois corporation. Tevander v. Ruysdael (C. C. A.) 253 F. 918.

52. **Questions affecting counties, municipal corporations, townships, or districts—Municipal corporations.**—Decision of highest court of state that certain ordinance challenged as repugnant to federal Constitution is within powers conferred by state Legislature on city is conclusive on federal Supreme Court. Thomas Cusack Co. v. City of Chicago, 37 S. Ct. 190, 242 U. S. 526, 61 L. Ed. 472, L. R. A. 1918A, 136, Ann. Cas. 1917C, 594, affirming decree

108 N. E. 340, 267 Ill. 344, Ann. Cas. 1916C, 488.

Where there had been no decision of highest state court upholding bonds issued by a city in excess of constitutional limitation, decisions of the state court construing such limitation are binding on a federal court, where the bondholder sought relief in that tribunal. Sidey v. City of Marceline, Mo., 237 F. 168, 150 C. C. A. 314.

Act Ohio April 5, 1893 (90 Ohio Laws, p. 100), creating board of park commissioners for cities of first grade, second class, and conferring on board corporate powers, should, in view of decision of Ohio Supreme Court that similar acts of April 6, 1900 (94 Ohio Laws, p. 517), and April 16, 1900 (94 Ohio Laws, p. 670), were invalid, be held in federal court unconstitutional, under Const. Ohio, art. 2, § 26, and article 13, § 1, requiring uniform operation of laws, etc. Nichols v. City of Cleveland, 247 F. 731, 159 C. C. A. 589, certiorari denied City of Cleveland v. Nichols, 38 S. Ct. 336, 246 U. S. 668, 62 L. Ed. 930.

Federal courts generally follow decisions of highest court of state as to character and limits of powers and liabilities of municipal and quasi municipal corporations of state. Vincennes Bridge Co. v. Board of County Com'rs of Atoka County, Okl., 248 F. 93, 160 C. C. A. 233.

Decision of state court, construing local municipal ordinance, must be followed by federal court. Lutz v. City of New Orleans (D. C.) 235 F. 978, order affirmed Lutze v. Same, 237 F. 1018, 150 C. C. A. 654.

54. —— Districts.—A basic contention of plaintiff appellant, seeking injunction against enforcement of state drainage statute, which assumes that the statute has a significance which Supreme Court of state has expressly decided it has not, also that Constitution of state forbids exertion of legislative power which same court has expressly held Legislature possesses, cannot be sustained. Orr v. Allen, 39 S. Ct. 23, 63 L. Ed. ——.

When brought in question in a federal court, the powers and duties of an Oklahoma county and a drainage district must be determined from the applicable Oklahoma statutes, as interpreted by the courts of that state. Board of Com'rs of Kay County, Okl., v. Pollard-Campbell Dredging Co. (C. C. A.) 251 F. 249.

Decision of the Supreme Court of Louisiana, holding valid Act No. 199 of 1916, relating to special road districts, etc., is binding on the federal courts. Lancaster v. Police Jury, Parish of Avoyelles, State of Louisiana (D. C.) 254 F. 179.

55. Construction of statutes relating to judgments.—In determining whether securing judgment on two of series of notes given for motors purchased under conditional sale made in Michigan passed title to buyer, the decisions of the Michigan Supreme Court will be followed. In re Sutton (D. C.) 244 F. 872.

56. Construction of statutes relating to attachment, injunction, and execution.—The remedy by attachment being statutory, the rights of an attaching creditor in a federal court are governed by the state law, as declared by the highest court of the state. Loewe v. Savings Bank of Danbury, 236 F. 444, 149 C. C. A. 496, modifying judgment Same v. Union Savings Bank of Danbury (D. C.) 226 F. 294, and judgment affirmed Savings Bank of Danbury v. Loewe, 37 S. Ct. 172, 242 U. S. 357, 61 L. Ed. 360.

Where state Supreme Court denied certiorari, applied for on claim that Comp. Laws Mich. 1915, § 13765, was unconstitutional, held, that a federal court could not consider the contention that the statute violated the state Constitution. Ex parte Merrill (D. C.) 245 F. 778.

57. Questions involving condemnation proceedings.—In action in federal court involving condemnation proceeding under Act Ohio April 5, 1893 (90 Ohio Laws, p. 100), decision of Ohio Supreme Court, declaring similar legislation invalid, rendered after commencement of proceeding, is controlling, resting on cases decided prior to act. Nichols v. City of Cleveland, 247 F. 731, 159 C. C. A. 589, certiorari denied City of Cleveland v. Nichols, 38 S. Ct. 336, 246 U. S. 668, 62 L. Ed. 930.

59. Construction and effect of contracts—In general.—As to contracts executed before the construction of a state statute by its court of last resort, the federal courts are not conclusively governed by the construction thereafter placed upon it by the state court. Kobey v. Hoffman, 229 F. 486, 143 C. C. A. 554.

Questions whether widow could maintain equitable action on antenuptial agreement, and whether abandonment of husband constituted failure of consideration, held questions of local law, and decision of state court of last resort, would not be reviewed. Schnepfe v. Schnepfe, 230 F. 781, 145 C. C. A. 91.

In construing a contract made within a state as affected by state laws, the state decisions will govern. Reichardt v. Hill, 236 F. 817, 150 C. C. A. 79.

The determination of whether, under a contract for the transportation of live stock and an attendant, the attendant is a passenger for hire, is a question on which the federal courts are not bound by state decisions. Tripp v. Michigan Cent. R. Co., 238 F. 449, 151 C. C. A. 385.

The federal courts are as to ques-

tions of liens created either by chattel mortgage or pledge, controlled by decision of highest court of state where cases arise. In re P. J. Sullivan Co. (D. C.) 247 F. 139.

A chattel mortgage having been executed and performed within the state of Michigan, a bankruptcy court, in determining rights thereunder, will follow the decisions of the court of that state concerning the construction and effect of the instrument. In re Drag (D. C.) 254 F. 474.

61. —— **Bonds and notes.**—A rule established for years by the highest court of a state, affecting the rights of parties arising out of contracts for municipal improvements and sureties on statutory bonds given by the contractor, if fixed and definite, and uniform in application, should be followed by the federal courts. American Surety Co. of New York v. Bellingham Nat. Bank (C. C. A.) 254 F. 54.

62. —— **Sales and transfers.**—Respective rights of a seller of property by a contract of conditional sale and creditors of the buyer are to be determined in a federal court by the law of the state so far as applicable. General Electric Co. v. Richardson, 233 F. 84, 147 C. C. A. 154, affirming decree (D. C.) 228 F. 758.

In determining whether a sale has been consummated, the federal courts will follow the state rules. In re Ricketts, 234 F. 285, 148 C. C. A. 187.

In construing a contract for the furnishing of building materials to general contractors for a courthouse, decisions of the state courts, though not conclusive, will be persuasive. Northwestern Terra Cotta Co. v. Caldwell, 234 F. 491, 148 C. C. A. 257.

63. —— **Insurance.**—Where form of fire policy is prescribed by state statute, meaning of policy calls for construction of statute, so that decision of highest court of state will control. Grant Lumber Co. v. North River Ins. Co. of New York (D. C.) 253 F. 83.

71. **Decisions relating to title, transfers, and liens on property—Conveyances or other transfers.**—Deed conveying land in trust for S. for life, and at his death to convey to his appointees or heirs, held, following state court, to create executory trust, so that S. did not take fee. Highland Park Mfg. Co. v. Steele, 232 F. 10, 146 C. C. A. 202, affirming decree Steele v. Highland Park Mfg. Co. (D. C.) 212 F. 972, and decree modified on rehearing Highland Park Mfg. Co. v. Steele (C. C. A.) 235 F. 465.

Law of the state where land is situated held the question for determination, in determining whether construction and operation of deed is in doubt so as to require agreement with state court. Id.

72. —— **Mortgages.**—The federal Supreme Court is not disposed to disturb a judgment of the Supreme Court of the Philippine Islands, construing local laws and announcing a rule applicable in such Islands respecting the right of redemption from a mortgage. Gauzon v. Compania General De Tobacos de Filipinas, 38 S. Ct. 46, 245 U. S. 86, 62 L. Ed. 165.

73. —— **Lease.**—A Minnesota mining lease is governed by the law of that state, and in construing such lease the federal courts must follow the decisions of the state courts. Nelson v. Republic Iron & Steel Co., 240 F. 285, 153 C. C. A. 211.

The validity of an oil and gas lease, which the lessee could surrender at his option, is a local question, the decision of which by the court of the state in which the land is located is binding on the federal court. Lindlay v. Raydure (D. C.) 239 F. 928.

A decision of the state court that $1 is such an inadequate consideration for an option to purchase real estate as to invalidate the option does not require the holding that a similar consideration is not sufficient to support an oil and gas lease. Id.

Decisions of a state court, construing oil and gas leases, in so far as they announce the court's view on equitable principles, are persuasive, but not binding. Downey v. Gooch (D. C.) 240 F. 527.

In determining whether Oklahoma oil and gas lease, reserving to lessee right to surrender it at any time on payment of $1 to lessor, was valid contract, resort will be had to decisions of Oklahoma courts prior to lease, and, absent any decision holding such leases void, its validity will be determined by general law. Shaffer v. Marks (D. C.) 241 F. 139.

In cases involving construction of contracts affecting interests in real estate, even where, when the rights of the parties accrued, there was no settled law of decision in the state establishing a rule of property binding on federal courts, such courts should, unless strongly convinced of their error, follow the state decisions. Norfolk Bank for Savings & Trusts v. Whipple (D. C.) 254 F. 195.

74. —— **Liens and priorities of claims.**—In matters of lien, local law held controlling, if ascertainable with sufficient clearness; but otherwise federal courts will form their own judgment. In re Seward Dredging Co., 242 F. 225, 155 C. C. A. 65, certiorari denied Sands v. Estabrook, 38 S. Ct. 11, 245 U. S. 651, 62 L. Ed. 531.

77. —— **Registration of instruments.**—The construction of the South Carolina recording acts as not applying to the assignment of choses in action is

binding on the federal courts. Ward v. American Agricultural Chemical Co., 232 F. 119, 146 C. C. A. 311, affirming decree In re Floyd & Hayes (D. C.) 225 F. 262.

78. Exemption laws.—Exemption of crop growing on homestead held under laws of United States held governed by laws of the state as construed by its highest court. Olmsted-Stevenson Co. v. Miller, 231 F. 69, 145 C. C. A. 257, affirming order In re Miller (D. C.) 221 F. 690.

Under Bankruptcy Act July 1, 1898, § 6 (Comp. St. 1916, § 9590), providing that exemptions allowed to bankrupts by the state laws shall not be affected, the bankruptcy court, in determining the nature and amount of the exemptions to which the bankrupts are entitled, will follow and adopt the laws of the state of the bankrupts' residence. In re Solomon & Johnson (D. C.) 254 F. 503.

The bankruptcy court is bound by construction of exemption by highest courts of state forbidding sale of reversionary interest. Watters v. Hedgpeth (N. C.) 90 S. E. 314.

80. Construction of wills and administration of estates.—Ruling of Supreme Court of Tennessee that purpose of Acts Tenn. 1903, c. 501, is to determine privileges in state courts of nonresidents appointed as administrators or executors, is conclusive on federal Supreme Court. Memphis St. Ry. Co. v. Moore, 37 S. Ct. 273, 243 U. S. 299, 61 L. Ed. 733, affirming judgment Same v. Bobo, 232 F. 708, 146 C. C. A. 634.

In construing a will affecting title to real estate in Kansas, the federal court is controlled by the construction placed on similar provisions by the Supreme Court of that state. Lucas v. McNeill, 231 F. 672, 145 C. C. A. 558.

In determining rights under a will, decisions of the courts of the state of the testator's residence, wherein the property was located, are controlling. Swann v. Austell (D. C.) 253 F. 807.

81. Liability for negligence and torts.—In absence of state statute, federal courts in determining liability of master for injuries to his servant are governed, not by state decisions, but by common law and decisions of federal tribunals. Union Pac. R. Co. v. Marone, 246 F. 916, 159 C. C. A. 188.

Decision by state court that violation of statute limiting operation of motor vehicles is negligence per se is binding on federal courts. Harmon v. Barber, 247 F. 1, 159 C. C. A. 219, certiorari denied 38 S. Ct. 335, 246 U. S. 666, 62 L. Ed. 929.

Construction by the Missouri Supreme Court that Rev. St. Mo. 1909, § 7828, requiring the guarding of machinery, abolishes the defense of assumption of risk by the employé, is conclusive on the federal courts. National Enameling & Stamping Co. v. Zirkovics (C. C. A.) 251 F. 184.

Where an alleged tort was committed upon navigable waters of the United States and also within a state, the applicable rules will be determined by the state laws, except where displaced by federal statutes and admiralty law. The Bart Tully (C. C. A.) 251 F. 856.

Whether under the Nebraska statutes the right of action for death from a defective county highway inures to personal representative, or the surviving spouse and next of kin, is peculiarly a question of local law upon which the decision of the highest state tribunal is controlling. Sarpy County v. Galvin (C. C. A.) 251 F. 888.

82. Decisions relating to public lands.—Where mining rights are granted in view of a local rule of the state, such rule will be followed by the federal courts in construing the grant, whether or not it is to be considered strictly as a rule of property. Marquette Cement Mining Co. v. Oglesby Coal Co. (D. C.) 253 F. 107.

83. Questions affecting officers, receivers, and attorneys.—Federal Supreme Court will accept ruling of highest state court under state statute that a proceeding authorized by 3 Lord's Or. Laws, tit. 43, c. 6 (Laws 1913, cc. 82, 86, 97), to determine irrigation rights, is, while before state board, administrative and not judicial. Pacific Live Stock Co. v. Lewis, 36 S. Ct. 637, 241 U. S. 440, 60 L. Ed. 1084, affirming decree (D. C.) 217 F. 95.

On writ of error to state court, Supreme Court must accept state court's definition of authority of state Public Service Commission under state law. Pennsylvania R. Co. v. Towers, 38 S. Ct. 2, 245 U. S. 6, 62 L. Ed. 117, L. R. A. 1918C, 475, affirming decree 94 A. 330, 126 Md. 59, Ann. Cas. 1917B, 1144.

The decisions of the state court are binding as to the liability of sureties on a constable's bond executed under a local statute. Sclarenco v. Chicago Bonding Co. (D. C.) 236 F. 592.

On suit by statutory receiver of an Illinois insurance company, the federal court is bound by the decision of the Illinois Supreme Court as to the interpretation of the receiver's statutory powers. Hopkins v. Lancaster (D. C.) 254 F. 190.

84. Construction of criminal statutes.—The federal courts follow the interpretation of the criminal statutes of the state by the state court of last resort. Central Consumers' Co. of New Jersey v. Austin (D. C.) 238 F. 616.

88. Decisions establishing rules of property—Property in general.—Where at the time of the making of a contract, to be performed in the state where made, there is a settled rule of decision in that state as to the damages recoverable for its breach, such

rule governs in an action for its breach in a federal court. Gilman v. Lamson Co., 234 F. 507, 148 C. C. A. 273.

In action, based on diversity of citizenship, against hospital chartered as a charitable corporation, federal court should follow state decisions as to liability of such hospitals; such decisions having become rule of property. Paterlini v. Memorial Hospital Ass'n of Monongahela City, Pa., 247 F. 639, 160 C. C. A. 49, affirming judgment Same v. Memorial Hospital Ass'n of Monongahela City (D. C.) 241 F. 429, certiorari denied 38 S. Ct. 334, 246 U. S. 665, 62 L. Ed. 929.

A state statute, limiting the time for presentation of claims against an estate is a rule of property, and as such binding on a federal court sitting in equity. Goodno v. Hotchkiss (D. C.) 237 F. 686.

89. —— Land titles and interests in real estate.—Illinois decisions that seller, upon buyer's refusal to accept, may vest the buyer with title and sue for the purchase price, held binding on federal court. Kawin & Co. v. American Colortype Co., 243 F. 317, 156 C. C. A. 97.

Decisions of a state court, construing oil and gas leases, in so far as they establish rules of property, are binding on the federal court. Downey v. Gooch (D. C.) 240 F. 527.

Federal courts, in determining estate and rights created by Oklahoma oil and gas lease, must accept and apply decisions of Supreme Court of that state, when contract was entered into, as rules of property. Shaffer v. Marks (D. C.) 241 F. 139.

A decision of the highest state court as to title to land is a binding precedent in subsequent litigation in federal court, in so far as principles of law upon which it was based have become rules of property in state, and application of such principles should be deemed prima facie correct, though not conclusive on parties. Rowe v. Kidd (D. C.) 249 F. 882.

90. Authority of inconsistent decisions—Conflicting decisions in state courts.—Where the decisions of a state Supreme Court construing state laws are conflicting, a federal court will attribute a declaration of law in a case to the facts therein, and deny its application to other cases involving different situations. Kardo Co. v. Adams, 231 F. 950, 146 C. C. A. 146, reversing decree American Ball Bearing Co. v. Same (D. C.) 222 F. 967.

Where state Supreme Court, after action was brought, but before trial, overruled prior decision construing statute, held, that the last construction would be followed. Denver & R. G. R. Co. v. U. S., 241 F. 614, 154 C. C. A. 372.

As to cause of action accruing prior to rendition of decision by state court overruling prior decisions, federal court held not bound by such decision. Dernberger v. Baltimore & O. R. Co., 243 F. 21, 155 C. C. A. 551, affirming judgment (D. C.) 234 F. 405.

State decisions as to title by limitations being binding on the federal courts, a judgment of the federal District Court for Texas, following the then latest decision of the state court on the question of limitation title, should be reversed on writ of error, where pending the writ the state court altered its decision. Conn v. Drew (C. C. A.) 250 F. 852.

A state decision construing a mortgage clause assigning rents held controlling on the federal court, rather than a later state decision construing a clause not so similar. In re Israelson (D. C.) 230 F. 1000.

91. —— Conflicting decisions between federal courts and state courts.—As to questions depending on construction of state laws, decision of state court is controlling on writ of error to it; and this, even though a similar provision of a federal statute has been differently construed by the federal court. Detroit & M. Ry. Co. v. Fletcher Paper Co., 39 S. Ct. 13, 63 L. Ed. —.

93. Decisions of federal courts previous to decisions by state courts—In general.—In the absence of a well-established rule by the state court, the federal court is warranted in forming its independent judgment. Dernberger v. Baltimore & O. R. Co., 243 F. 21, 155 C. C. A. 551, affirming judgment (D. C.) 234 F. 405.

94. —— Construction of constitutions or statutes.—Where, between a federal court's construction of a state statute controlled by the decision of the state Supreme Court, and the time when the federal court is again called upon to decide the question, or to enforce its decision therein, the state Supreme Court has reversed its former ruling, or decided at variance with the federal court, the latter court must conform to the latest state decision, as an exception to the rule of law of the case. St. Louis & S. F. R. Co. v. Quinette (C. C. A.) 251 F. 773.

98. Questions involving process, remedies, or procedure.—Whether state Constitution gave consent of state to be sued is a question of local state law, decision of which by state Supreme Court is controlling with federal courts; no federal right being involved. Palmer v. State of Ohio, 39 S. Ct. 16, 63 L. Ed. —.

Whether an action at law for breach of contract will lie in a federal court against one not a party, but who has assumed the contract, is to be determined by the state law. Gibson v. Vic-

tor Talking Mach. Co. (D. C.) 232 F. 225.

99. Exception of decisions involving federal questions—Questions involving federal government.—Decisions of state courts in construing state statutes held not to govern in construing indictment in federal court. McClendon v. U. S., 229 F. 523, 143 C. C. A. 591.

100. —— Questions involving constitution or treaties.—Supreme Court accepts decision of state court respecting construction of statute, imposing tax, but must determine questions under federal Constitution upon its own judgment of the operation and effect of the tax. Crew Levick Co. v. Commonwealth of Pennsylvania, 38 S. Ct. 126, 245 U. S. 292, 62 L. Ed. 295, reversing judgment Commonwealth v. Crew Levick Co., 100 A. 952, 256 Pa. 508.

Theory of state as to nature of tax on property employed in interstate commerce, while not conclusive on national courts, should not be rejected, unless it can be said to be ill founded. Cudahy Packing Co. v. State of Minnesota, 38 S. Ct. 373, 246 U. S. 450, 62 L. Ed. 827, affirming judgment State v. Cudahy Packing Co., 151 N. W. 410, 129 Minn. 30.

A decision of a state court affirming the constitutionality of a state statute is not conclusive on the federal courts, where the statute is attacked as in violation of the federal Constitution. Webb v. Southern Ry. Co., 248 F. 618, 160 C. C. A. 518, reversing judgment (D. C.) 235 F. 578, and certiorari denied Southern R. Co. v. Webb, 38 S. Ct. 582, 247 U. S. 518, 62 L. Ed. 1245.

The decisions of state courts as to the validity of state statutes are not binding upon the federal courts, so far as rights secured under the federal Constitution are concerned. Knapp v. Bullock Tractor Co. (D. C.) 242 F. 543.

Whatever views a state court may have expressed regarding the validity of a state statute under the federal Constitution, the courts of the United States must decide the question according to their own convictions. Orr v. Allen (D. C.) 245 F. 486.

A decision of the state court, construing the federal Constitution, is not binding on the national court sitting within such state. Bryan v. Barriger (D. C.) 251 F. 328.

102. —— Impairing obligation of municipal contracts.—The federal Supreme Court will not disturb a decision of the state court that a municipal ordinance requiring a street railway company to pave its tracks with asphalt did not impair the obligations of its charter, where the state court found that the use of crushed stone by the railway company would interfere with the pavement of the other parts of the street. Southern Wisconsin Ry. Co. v. City of Madison, 36 S. Ct. 400, 240 U. S. 457, 60 L. Ed. 739, affirming judgment City of Madison v. Southern Wisconsin Ry. Co., 146 N. W. 492, 156 Wis. 352.

Where the validity of municipal bonds depended upon the construction to be given Acts Tenn. 1897, c. 13, and Acts Tenn. 1901, c. 450, incorporating the municipality, and the contract had been entered into before an interpretation of the statutes by the Tennessee court, the federal courts are not bound by a decision of the Tennessee court holding the bond issue invalid, and, having obtained jurisdiction of a suit involving the validity of some of the bonds, they may exercise an independent judgment. Town of Newbern v. National Bank of Barnesville, Ohio (C. C. A.) 234 F. 209.

103. —— Questions involving federal laws.—See Moore v. Douglas (C. C. A.) 230 F. 399.

Congress having occupied the field with respect to interstate telegrams by Act Cong. June 18, 1910, amending the Interstate Commerce Act of 1887, state regulations and decisions no longer govern as to the validity of contractual limitations of liability. Poor v. Western Union Telegraph Co. (Mo. App.) 196 S. W. 28; Meadows v. Postal Telegraph & Cable Co. (N. C.) 91 S. E. 1009; Western Union Telegraph Co. v. Schade, 192 S. W. 924, 137 Tenn. 214. Contra, Western Union Telegraph Co. v. Piper (Tex. Civ. App.) 191 S. W. 817.

A ruling of a state court that the "next of kin" under Act April 22, 1908, as amended by Act April 5, 1910, are the legitimate children of the same mother, who is dead, negatives any right to trace the parentage to the father. Seaboard Air Line Ry. v. Kenney, 36 S. Ct. 458, 240 U. S. 489, 60 L. Ed. 762, affirming judgment Kenney v. Seaboard Air Line R. Co., 82 S. E. 968, 167 N. C. 14.

A state decision, which in generally construing limitation acts denied their benefit to a foreign corporation, must be followed by the federal courts, though it also adjudicated that a foreign corporation was not entitled to the benefit of limitation acts unless it became a resident and waived its right to remove actions to the federal courts. Quinette v. Pullman Co., 233 F. 980, 147 C. C. A. 654, denying rehearing 229 F. 333, 143 C. C. A. 453.

The liability of a railroad company, subject to the Interstate Commerce Act, on a contract with an interstate shipper, is not governed by state law, but is a federal question, governed by uniform rule. United Metals Selling Co. v. Pryor, 243 F. 91, 155 C. C. A. 621, certiorari denied 38 S. Ct. 61, 245 U. S. 662, 62 L. Ed. 536.

As precedents, judgments, one by a federal District Court, and the other by a state Supreme Court, that defendant had no exclusive right to use the word "Tabasco" in connection with pepper sauce, are not controlling in the

federal Circuit Court of Appeals. McIlhenny Co. v. Gaidry (C. C. A.) 253 F. 613.

Where rights as to mining claims had become vested by patents issued before state court decisions as to validity of locations, federal court would exercise independent judgment as to effect of defective verification of declaratory statements on validity of locations. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

Congress having undertaken by the Anti-Trust Acts to deal with monopolies affecting interstate commerce, and having conferred jurisdiction of questions arising thereunder on the federal courts, in determining such questions those courts exercise an independent judgment, unaffected by the decisions of the state courts. Skaggs v. Kansas City Terminal Ry. Co. (D. C.) 233 F. 827.

When a cause is removed from a state to a federal court, the latter tribunal will determine for itself whether jurisdiction has been validly acquired, in such respect not being bound by state statutes and decisions. Hudson Nav. Co. v. Murray (D. C.) 236 F. 419.

A decision of the state court, construing its statute fixing the time in which a defendant shall answer or plead in the state court, must be followed by the United States court in determining whether the petition for removal was filed in time. Waverly Stone & Gravel Co. v. Waterloo, C. F. & N. Ry. Co. (D. C.) 239 F. 561.

A federal court is not bound by the construction of statutes of a state by its highest court, where the inquiry is whether they as enforced effect results contrary to inhibition of federal statutes. Iowa Loan & Trust Co. v. Fairweather (D. C.) 252 F. 605.

The bankruptcy court, in allowing exemptions under the state laws, must be governed by the construction and interpretation of the highest court of the state. In re Libby (D. C.) 253 F. 278.

The holdings of state courts that injuries received before voyage began do not fall under the term "transportation" or the contract of shipment are not controlling in case of an interstate shipment, in view of provision including such injuries in term "transportation" in Interstate Commerce Act, § 1. Chicago, R. I. & G. Ry. Co. v. Whaley (Tex. Civ. App.) 190 S. W. 833.

A judgment of the Supreme Court of Texas that Act Cong. June 18, 1910, c. 309, does not supersede the state law as to the liability of a telegraph company for negligence in delivery of an interstate message is controlling authority upon the Court of Civil Appeals until the contrary is held by the Supreme Court of the United States. Postal Telegraph-Cable Co. v. Prewitt (Tex. Civ. App.) 199 S. W. 316.

III. AUTHORITY OF STATE LAWS ON PARTICULAR SUBJECTS

104. Enforcement of rights under state statutes.—The United States courts will follow and apply a state statute determining the status of an insurance agent. Maryland Casualty Co. v. Eddy, 239 F. 477, 152 C. C. A. 355.

Rights created by the statutes of the state, to be pursued in the state courts, may be enforced and administered in the national courts, either at law, in equity, or in admiralty, as the nature of the rights or remedies may require. Landon v. Public Utilities Commission of Kansas (D. C.) 234 F. 152.

Defendant, buyer, would not, four months after institution of suit by plaintiff, seller, for rescission for nonpayment of purchase price, have right to make payment of note given for purchase price and demand surrender of stock sold, but held by plaintiff as collateral, in view of Civ. Code Louisiana, art. 2564, as to dissolution taking place "of right"; that is, as a matter of course. Atkins v. Garrett (D. C.) 252 F. 280.

105. —— Right to maintain or defend suit or action.—Married woman's guaranty of husband's debts, being unenforceable in Texas state court, held unenforceable in federal District Court sitting in Texas. Union Trust Co. v. Grosman, 38 S. Ct. 147, 245 U. S. 412, 62 L. Ed. 368, affirming decree Grosman v. Union Trust Co., 228 F. 610, 143 C. C. A. 132, Ann. Cas. 1917B, 613.

If a state gives parties the right to bring an action or suit to annul will or set aside probate, the federal courts can enforce the same remedy; but this relates only to independent suits, and not to procedure incidental or ancillary to the probate. Sutton v. English, 38 S. Ct. 254, 246 U. S. 199, 62 L. Ed. 664.

106. —— Equitable rights and defenses.—See Williams v. Provident Life & Trust Co. of Philadelphia, 242 F. 417, 155 C. C. A. 193.

Jurisdiction to appoint a receiver, contrary to the general principles of equity jurisprudence, cannot be conferred upon a federal court of equity by a state statute authorizing such appointment by courts of the state. Davis v. Hayden, 238 F. 734, 151 C. C. A. 584.

The remedies in equity afforded by state statutes may, with proper parties and averments, be made available in the equity courts of the United States. Jennings v. Smith (D. C.) 232 F. 921.

107. —— Rights of citizens of other states.—Where the state law authorized administration by next of kin, or, in their absence, by creditors (Park's Ann. Civ. Code Ga. § 3943), and persons not related to or creditors of deceased obtained administration, equity would in-

terpose to protect the endangered rights of citizens of another state. Jennings v. Smith (D. C.) 232 F. 921.

113. —— Rights under mortgages.—A federal court in mortgage foreclosure suit held without power to decree sale without right of redemption of mining apparatus, which under Civ. Code S. D. § 189, is realty. Hardin v. Graham (S. D.) 159 N. W. 895.

114. —— Right to liens.—As federal Employers' Liability Act authorizes actions in state courts and makes state practice applicable, Gen. St. Minn. 1913, § 4955, giving attorneys lien on cause of action of their clients, is properly applied to action brought in courts of that state under federal act where defendant settled claim with the client. Dickinson v. Stiles, 38 S. Ct. 415, 246 U. S. 631, 62 L. Ed. 908, affirming judgment Holloway v. Dickinson, 163 N. W. 791, 137 Minn. 410.

118. —— Assessment and collection of taxes.—A state statute, providing that the amount of any tax paid erroneously shall be refunded, entitles a taxpayer to maintain an action therefor in the federal courts, if the elements of federal jurisdiction, such as diverse citizenship, be present. Smith v. Douglas County, Neb., 242 F. 894, 155 C. C. A. 482.

120. Commercial or other general law.—On questions of general commercial law, decisions of state courts are not controlling in federal courts, but rules enunciated by various national courts should be applied. Colorado Yule Marble Co. v. Collins, 230 F. 78, 144 C. C. A. 376; In re Jarmulowsky, 249 F. 319, 161 C. C. A. 327, affirming orders In re H. & L. Jarmulowsky (D. C.) 243 F. 632; Aktieselskabet Korn-og Foderstof Kompagniet v. Rederiaktiebolaget Atlanten (C. C. A.) 250 F. 935.

Federal courts sitting in the state should defer to decisions of the state courts applying principles of law to local conditions. Old Colony Trust Co. v. City of Tacoma, 230 F. 389, 144 C. C. A. 531, affirming decree (D. C.) 219 F. 775.

A federal court is not bound by a decision of the highest court of a state upon a question of general law, which was not rendered until after the commencement of the suit in which it is invoked. Hart v. Adair, 244 F. 897, 157 C. C. A. 247.

While the decisions of a state court upon a general legal proposition not covered by statute are not binding upon the federal courts, they are naturally given considerable weight by such courts. Paterlini v. Memorial Hospital Ass'n of Monongahela City, Pa. (D. C.) 229 F. 838, judgment reversed (C. C. A.) 232 F. 359, 146 C. C. A. 407.

While recognizing importance of harmony in judicial decisions, federal courts on questions of law are not bound by decisions of state courts, though leaning to agreement with such courts if question is doubtful. U. S. v. Brewer-Elliott Oil & Gas Co. (D. C.) 249 F. 609.

123. —— Liability for torts.—Whether an action for death arising under the statute of one state may be maintained in a federal court sitting in another state is a question of general jurisprudence, upon which the state decisions are not conclusive. Lauria v. E. I. Du Pont de Nemours & Co. (D. C.) 241 F. 687.

125. —— Liability of master for torts of servant.—In federal courts telegraph company is not liable for willfulness of servant in failing to deliver telegram, unless it had knowledge before event or afterwards ratified act. Berg v. Western Union Telegraph Co. (S. C.) 96 S. E. 248.

126. —— Contracts in general.—Even though price of goods refused by buyer is recoverable in Illinois merely as damages, held, that federal courts will lean toward an agreement with the state court. Kawin & Co. v. American Colortype Co., 243 F. 317, 156 C. C. A. 97.

It is the rule in the federal courts that, unless debtor agrees to accept partial assignment of debt due him, he is not bound thereby. Sheatz v. Markley, 249 F. 315, 161 C. C. A. 323, certiorari denied Kirby-Smith v. Sheatz, 38 S. Ct. 581, 247 U. S. 518, 62 L. Ed. 1245.

Federal law does not recognize mental anguish as an element of damage in actions against telegraph companies for failure to deliver messages. Berg v. Western Union Telegraph Co. (S. C.) 96 S. E. 248.

129. —— Negotiable instruments.—Upon questions of general law decisions of the state courts are not binding on the federal courts sitting within their borders; therefore a decision of the state court that a municipality was not estopped from denying the validity of its bonds, which had passed into the hands of a bona fide purchaser for value without notice, is not binding on the federal courts. Town of Newbern v. National Bank of Barnesville, Ohio (C. C. A.) 234 F. 209.

135. Laws relating to procedure in general.—See General Film Co. v. Sampliner (C. C. A.) 232 F. 95; U. S. v. Minneapolis, St. P. & S. S. M. Ry. Co. (D. C.) 235 F. 951; Devost v. Twin State Gas & Electric Co. (C. C. A.) 250 F. 349.

136. Limitation of actions.—Where there was only one debt due from insolvent, his direction to put to his credit note delivered to creditor must be construed as payment on debt, and to have revived same, although barred by limitations. In re Salmon, 249 F. 300, 161 C. C. A. 308, reversing order (D. C.) 239 F. 413.

Limitation of actions in federal courts

held governed by state law as construed by its highest court, though legislation or judicial construction differs from that prevailing elsewhere. City of Memphis, Tenn., v. Board of Directors of St. Francis Levee Dist. (D. C.) 231 F. 217.

Federal courts, in enforcing claims against estates of decedents and executors and administrators, are bound by the same statutes and rules that govern the local tribunals, including the statute limiting the time for filing claims. Goodno v. Hotchkiss (D. C.) 237 F. 686.

137. —— **Enforcement of particular limitation laws.**—The conversion of a suit in equity into an action at law, or vice versa, is not alone sufficient to constitute the beginning of a new action within the limitation statutes. Friederichsen v. Renard, 38 S. Ct. 450, 247 U. S. 207, 62 L. Ed. 1075, reversing judgment 231 F. 882, 146 C. C. A. 78.

Where a bill to cancel for fraud a contract for the exchange of lands and a deed, was transferred to the law side of the court under equity rule 22 (Comp. St. 1916, p. 2502) because plaintiff had put it out of his power to restore defendants to their former position, an amended petition, filed by order of court, setting up same transaction and fraud, cannot be regarded as stating a new cause of action, but must be considered continuation of original suit. Id.

Ky. St. 1909, § 2545, extending the period of limitation where a first action is dismissed for want of jurisdiction, held to apply where the first action was brought in a federal court in Kentucky. Merko v. Sturm & Dillard Co., 233 F. 68, 147 C. C. A. 138.

Limitation held not to begin to run, under Kirby's Dig. Ark. § 81, against an action to recover property which an administratrix held in trust for the heirs, until she repudiated the trust. Bumpass v. McGehee, 247 F. 306, 159 C. C. A. 400.

Under Code Civ. Proc. Cal. §§ 352, 370, held that, where woman's husband joined her in action for damages for malicious prosecution, she could not, having been nonsuited, begin new action, in which husband joined, after expiration of period of limitations, on ground that her coverture tolled running of statute. Lee v. Levison, 247 F. 478, 159 C. C. A. 532.

Under Code Civ. Proc. Cal. § 355, plaintiff in California state court, who suffered nonsuit, which was affirmed on appeal, cannot within one year after affirmance commence new action; period of limitations having elapsed. Id.

Letter of a corporation held to contain a sufficient acknowledgment of an antecedent debt to raise the bar of the statute of limitations of New Jersey (3 Comp. St. N. J. 1910, p. 3167, § 10). Stokes v. Williams, 249 F. 114, 161 C. C. A. 166.

Balances due upon unpaid capital stock of a corporation do not become payable, so as to start the running of limitation, until there has been a call or assessment. In re Phœnix Hardware Co., 249 F. 410, 161 C. C. A. 384.

In view of Code Civ. Proc. N. Y. § 820, held, that New York trust company doing banking business, on being sued for deposit by foreign government, might interplead private individual, who had previously instituted action seeking to impose trust on such funds. Kingdom of Roumania v. Guaranty Trust Co. of New York (D. C.) 244 F. 195.

138. **Actions to which state limitation laws apply.**—Action by carrier to recover full charges authorized, brought in federal court under commerce statute, is governed by local state statutes of limitation. Yazoo & M. V. R. Co. v. Zemurray, 238 F. 789, 151 C. C. A. 639; Chicago & N. W. Ry. Co. v. Ziebarth, 245 F. 334, 157 C. C. A. 526; Cincinnati, N. O. & T. P. Ry. Co. v. Malsby Co. (Ga. App.) 96 S. E. 710; Atlantic Coast Line R. Co. v. Virginia Mfg. Co. (Va.) 89 S. E. 103.

For the sake of uniformity, federal courts will accept state statutes of limitation whenever by so doing they are not required to abrogate their own principles. Pond Creek Coal Co. v. Hatfield, 239 F. 622, 152 C. C. A. 456.

An action by a connecting carrier for unpaid freight claimed to be due on an interstate shipment held based on the bill of lading, so that, where brought in the federal District Court for California, Code Civ. Proc. Cal. § 337, prescribing a period of four years, is applicable, instead of sections 338, 339. New York Cent. R. Co. v. Mutual Orange Distributors (C. C. A.) 251 F. 230.

The provision of the Employers' Liability Act U. S. § 6 (U. S. Comp. St. 1916, § 8662), that actions must be commenced within two years from the date of accrual, is not a mere limitation, but affects the remedy, and the provisions of Revisal N. C. 1905, § 370, allowing a new action to be brought within 12 months after nonsuit, has no application to such act. Belch v. Seaboard Air Line Ry. Co. (N. C.) 96 S. E. 640.

140. —— **Conflict of limitation laws.**—Although, ever since the federal Judiciary Act of 1789 (Rev. St. U. S. § 721 [U. S. Comp. St. 1916, § 1538]), the state statute has been the general rule of limitations as to common-law actions in the federal courts, yet no such rule can obtain where a later federal statute governing the matter expressly provides otherwise. Belch v.

Seaboard Air Line Ry. Co. (N. C.) 96 S. E. 640.

141. Laws of evidence.—See New Orleans & N. E. R. Co. v. Harris, 38 S. Ct. 535, 247 U. S. 367, 62 L. Ed. 1167.

Tax Law N. Y. § 258, providing that mortgage subject to tax shall not be received in evidence, held not applicable in the federal courts. Marsh v. Leseman, 242 F. 484, 155 C. C. A. 260.

Code Miss. 1906, § 1985, as amended by Laws Miss. 1912, c. 215, the so-called prima facie statute does not apply to a suit under the federal Employers' Liability Act, in which case burden is on plaintiff to prove negligence, being a matter of substance not subject to control by law of states. New Orleans & N. E. R. Co. v. Hanna (Miss.) 78 So. 953.

141½. Evidence in criminal prosecutions.—On criminal trial, witness convicted of forgery, held competent, though incompetent under state law when Judiciary Act of 1789, superseded by this section, was passed. Rosen v. U. S., 38 S. Ct. 148, 245 U. S. 467, 62 L. Ed. 406, affirming judgments 237 F. 810, 151 C. C. A. 52, and Pakas v. U. S., 240 F. 350, 153 C. C. A. 276.

Conviction of an infamous crime does not render the person incompetent to testify in the federal court, though making him incompetent to testify in state court. Brown v. U. S., 233 F. 353, 147 C. C. A. 289; Rosen v. U. S. (C. C. A.) 237 F. 810; Pakas v. U. S., 240 F. 350, 153 C. C. A. 276; Reed v. U. S. (C. C. A.) 252 F. 21; Safford v. U. S. (C. C. A.) 252 F. 471; Manuel v. U. S. (C. C. A.) 254 F. 272.

Communications made in good faith to an attorney at law for the purpose of obtaining advice or assistance are privileged, though no fee is paid. Lew Moy v. U. S., 237 F. 50, 150 C. C. A. 252.

The competency of a witness to testify against codefendants of her husband after he had pleaded guilty depends, in the absence of state or federal statute, on the common law of the state at the time of the first judiciary act. Knoell v. U. S., 239 F. 16, 152 C. C. A. 66, affirming judgment U. S. v. Knoell (D. C.) 230 F. 509.

Under Laws Wash. 1854, p. 186, §§ 289–293, now Ballinger's Ann. Codes & St. §§ 5990–5993, and Const. Wash. art. 1, § 11, held, that one offered as witness in federal District Court for Washington, cannot, under this section, be rejected as incompetent because of want of belief in Supreme Being; no such rule as to competency having prevailed in Washington when federal court was established. Louie Ding v. U. S., 247 F. 12, 159 C. C. A. 230; overruling U. S. v. Miller (D. C.) 236 F. 798.

As Judiciary Act of 1789 adopted state laws in force at time states were admitted, held that, under Const. Fla. 1839, art. 17, § 1, and Act March 15, 1843 (Laws Fla. 1843, No. 37), in force at time of admission, one offered as witness, who was convicted of felony in District Court for Arkansas is competent to testify in District Court sitting for Florida. McCoy v. U. S., 247 F. 861, 160 C. C. A. 83.

§ 1539. (R. S. § 915.) Attachments, etc., in common-law causes as provided by laws of State.

1. Operation and effect in general.—The remedy by attachment being statutory, the rights of an attacking creditor in a federal court are governed by the state law, as declared by the highest court of the state. Loewe v. Savings Bank of Danbury, 236 F. 444, 149 C. C. A. 496, modifying judgment Same v. Union Savings Bank of Danbury (D. C.) 226 F. 294, and judgment affirmed Savings Bank of Danbury v. Loewe, 37 S. Ct. 172, 242 U. S. 357, 61 L. Ed. 360.

4. Attachments as original process for commencing suits.—Where there was personal service on defendant, though its property was attached, action is personal one; attachment being for purposes of security only. Rederiaktiebolaget Amie v. Universal Transp. Co., 245 F. 282, 157 C. C. A. 474.

Under this section jurisdiction cannot be acquired in action begun in federal court by issue and levy of attachment, but personal service on defendant is indispensable; issue and levy of attachment being permitted only in action begun in federal court in which personal service has been or can be made. Cleveland & Western Coal Co. v. J. H. Hillman & Sons Co. (D. C.) 245 F. 200.

28. Service and return of process.—Where valid personal judgment has been obtained on domiciliary service, though empowered through garnishment proceedings, after debtor had become a nonresident, to inquire as to validity of her claim against life insurance company, court could not, without further personal service, bind her by a judgment requiring payment of the fund in court over to insured. New York Life Ins. Co. v. Dunlevy, 36 S. Ct. 613, 241 U. S. 518, 60 L. Ed. 1140, affirming judgment 214 F. 1, 130 C. C. A. 473.

30. State attachment and garnishment statutes construed—Actions in

which attachment will lie.—See W. D. Reeves Lumber Co. v. Leavenworth, 248 F. 686, 160 C. C. A. 586.

32. —— **Property subject to attachment.**—See In re Fuetl (D. C.) 247 F. 829.

39. —— **Levy—Requisites, validity, and manner of making.**—See Ellis v. Reed, 238 F. 341, 151 C. C. A. 357.

Cited without definite application, Golden, Belknap & Swartz v. Connersville Wheel Co. (D. C.) 252 F. 904.

§ 1540. (R. S. § 916.) Executions, etc., in common-law causes as provided by laws of State.

2. **Construction and operation in general.**—Under conformity statute (Rev. St. §§ 913, 914, 916, 917 [Comp. St. 1916, §§ 1536, 1537, 1540, 1543]), the state practice is adopted only as to common-law actions. Brown v. Fletcher (D. C.) 239 F. 360.

12. **Adoption by courts of state statutes.**—Under Code Civ. Proc. N. Y. § 2446, and this section, and a rule of the United States District Court, held, that bank account could not be seized on execution under a judgment imposing a fine. Berkman v. New York Produce Exch. Bank (Mun. Ct.) 167 N. Y. S. 441, 101 Misc. Rep. 282.

20. **Enforcement of judgments in general.**—An execution on a judgment against a county or other public corporation may not be lawfully issued and levied on the funds or property acquired by it in its governmental capacity, unless expressly authorized by statute. Clearwater County v. Pfeffer, 236 F. 183, 149 C. C. A. 373.

Under this section and the statutes of Minnesota, a federal court is without authority to issue and levy an execution for the immediate enforcement of a judgment rendered against a county. Id.

23. —— **Supplementary proceedings.**—Under Rev. St. §§ 913, 914, 916, 917 (Comp. St. 1916, §§ 1536, 1537, 1540, 1543), and new equity rule 8 (Comp. St. 1916, p. 2498), a trustee against whom a decree was rendered in his representative capacity may be examined in supplementary proceedings. Brown v. Fletcher (D. C.) 239 F. 360.

24. —— **Action at law.**—To authorize recovery on a judgment, there should be some evidence, either by the recitals of the judgment or otherwise, that the court had acquired jurisdiction over the defendant or to raise a presumption of jurisdiction. Denny v. Giles (C. C. A.) 250 F. 987.

30. **Local laws construed and applied.**—Under Rev. Laws Mass. c. 189, § 1, providing that "any person or corporation may be summoned as trustee of the defendant," one of a number of defendants jointly sued in tort may also be summoned as trustee of any or all of the others. Susquehanna Coal Co. v. Pratt & Young (D. C.) 251 F. 665.

Cited without definite application, Golden, Belknap & Swartz v. Connersville Wheel Co. (D. C.) 252 F. 904.

§ 1541. (Act June 1, 1874, c. 200.) Rights and remedies of occupying claimants of land as given by statutes of State.

Claimant entitled to benefit of statute.—This section has no application to homestead entries. Patterson v. Chaney, 173 P. 859, 24 N. M. 156.

§ 1543. (R. S. § 917.) Power of the Supreme Court to regulate the practice of district courts.

10. **Equity practice.**—Under Rev. St. §§ 862, 863, 917 (Comp. St. 1916, §§ 1470, 1472, 1543), and equity rules 47, 56 (Comp. St. 1916, pp. 2517, 2520), plaintiff could not, after expiration of time for taking depositions prescribed by rules, take deposition on notice to defendant without order of court. Block v. Arrowsmith Mfg. Co. (D. C.) 243 F. 775.

10½. **Supplementary proceedings.**—Under Rev. St. §§ 913, 914, 916, 917 (Comp. St. 1913, §§ 1536, 1537, 1540, 1543), and new equity rule No. 8 (Comp. St. 1916, p. 2498), a trustee against whom a decree was rendered in his representative capacity may be examined in supplementary proceedings. Brown v. Fletcher (D. C.) 239 F. 360.

Cited without definite application, Rosasco v. Thompson (D. C.) 242 F. 527; Central Ry. Signal Co. v. Jackson (D. C.) 254 F. 103.

§ 1544. (R. S. § 918.) Practice in the several courts to be regulated by their own rules.

2. **Power to establish rules.**—See Central Ry. Signal Co. v. Jackson (D. C.) 254 F. 103.

Under this section a Circuit Court had power to require the clerk of such court to supervise the printing of the record in suits in equity and on demurrers and orders to show cause. U. S. v. Oliphant (C. C. A.) 230 F. 1.

5. **Effect of rules.**—Rev. St. § 839 (Comp. St. 1916, § 1404), provides that

no clerk of a District or Circuit Court shall be allowed to retain of the fees or emoluments of his office for his personal compensation a sum exceeding $3,500 a year. Section 833 (Comp. St. 1916, § 1394) requires every such clerk semi-annually to make to the Attorney General a written return of all fees and emoluments of his office, and Act June 28, 1902 (Comp. St. 1916, § 1398), similarly provides, and further provides that "emoluments" shall be understood as including all amounts received in connection with certain matters and all other amounts received for "services in any way connected with the clerk's office." Section 918 (Comp. St. 1916, § 1544) authorizes Circuit and District Courts to make rules and orders to govern their procedure, and otherwise regulate their practice. Thereunder a Circuit Court adopted a rule requiring the record in suits in equity and on demurrers and rules to show cause to be printed under the supervision of the clerk, upon payment by the parties of the estimated cost, and providing that the costs for printing should be taxed against the losing party. Held that, where the clerk charged litigants for printing an amount in excess of the amount paid by him for the printing, the amount so received by him was for services connected in a way with the clerk's office, and should have been reported and paid to the government, as the rule had the force of law and demanded of the clerk a service in connection with that part of the court's business peculiarly related to his office. U. S. v. Oliphant (C. C. A.) 230 F. 1.

8. Modification, suspension, or abrogation of rules.—The rule of court fixing the fees in case of reference to the referee as a special master cannot be changed nunc pro tunc, after reference, so as to allow him greater fees. In re Growe Const. Co. (D. C.) 253 F. 981.

8½. Admiralty practice.—Under admiralty rule 38 of the Southern district of New York, libelant, who did not obtain leave of court before filing interrogatories for answer by respondent, is not entitled to aid of court on account of respondent's failure to answer, notwithstanding ordinary practice in district of filing interrogatories without leave. The Fred E. Richards (D. C.) 248 F. 956.

9½. Bankruptcy proceedings.—See In re Greenbaum (D. C.) 243 F. 965, citing rule 29, district of Michigan; Wing v. McCallum (D. C.) 244 F. 197, citing rule 110, District Court, S. D. Florida.

Under bankruptcy rule 15 of Southern district of New York, an order may be reviewed on petition filed more than 10 days after rendition, where time was actually extended by referee, although not embodied in his return. In re Grant, 238 F. 132, 151 C. C. A. 208.

Under rule of District Court and General Order in Bankruptcy No. 27 (Comp. St. 1916, p. 11390), held that, two years after a referee had entered an order practically denying petitioner's claim, it was too late to have review, and a subsequent referee was without jurisdiction to allow the claim. International Agr. Corporation v. Cary, 240 F. 101, 153 C. C. A. 137.

District Court cannot, in action by trustee in bankruptcy to recover property on ground that it was delivered as a preference, review under rule of court, findings of fact by referee, where parties stipulated for that mode of trial. Grant v. National Bank of Auburn (D. C.) 232 F. 201.

Creditor cannot oppose discharge and at same time sue on his claim in state courts, on ground that it is not provable in bankruptcy and not dischargeable. The proper practice, under District Court rule 15, in such case, is for bankrupt to request referee to certify matter up to District Court, and not to apply in District Court for stay in first instance. In re Menzin (D. C.) 233 F. 333.

10. Briefs and transcripts.—Under a rule of a Circuit Court requiring the records in equity cases and on demurrers and rules to show cause to be printed under the clerk's supervision, the clerk made a practice of procuring and retaining extra copies of the record as so printed and using one of them for the transcript of the record returned to the Circuit Court of Appeals, and claimed the right to retain the fees received from litigants for making such transcripts, on the theory that he owned the copies of the record used and could sell them and keep the proceeds. Held, in view of sections 1383, 1394, 1404, 1414, that it was his duty to demand and collect fees at the rate prescribed by statute, and to report and pay such fees to the government. U. S. v. Oliphant (C. C. A.) 230 F. 1.

11. Costs and fees.—See In re Wester (C. C. A.) 242 F. 465; In re Weissbord (D. C.) 241 F. 516.

Where the parties to a reclamation proceeding, by consent referred to the referee as a special master, orally agreed that the successful party should pay the master's fee, etc., held, as the matter was not one devolving on the referee by virtue of his office, that he could collect only the compensation provided for by the court rules; there being no stipulation as therein provided for increased compensation. In re Growe Const. Co. (D. C.) 253 F. 981.

15½ Exceptions.—See Graboyes v. U. S., 250 F. 793, 163 C. C. A. 125.

Comp. St. Ann. 1916, § 1537, does not make Act Pa. May 11, 1911 (P. L. 279), applicable in the federal courts, notwithstanding rule 10, § 2, of District Court for the Eastern District of Penn-

sylvania, and rule 10, § 1, of Circuit Court of Appeals, Third Circuit (Comp. St. 1916, p. 1289), forbidding general exceptions to the charge. Philadelphia & R. Ry. Co. v. Marland, 239 F. 1, 152 C. C. A. 51.

Under rule 10, § 2, of Rules of District Court of United States for Eastern District of Pennsylvania, and rule 10, § 1, of Rules of United States Circuit Court of Appeals for Third Circuit (Comp. St. 1916, p. 1289), mere general exception to whole charge will not support specifications of error with reference to specific instructions given and omitted. Letterman v. U. S., 246 F. 940, 159 C. C. A. 212.

17. **Judgments by default or pro confesso.**—Default judgment rendered by District Court for Eastern District of Tennessee against defendant, upon whom substituted service was made in North Carolina, held binding upon such defendant. Babcock Lumber & Land Co. v. Ferguson (D. C.) 243 F. 623.

20. **New trial.**—A breach of a court rule requiring motions for new trial to be made four days after entry of verdict is a mere error of procedure not affecting jurisdiction. Abbott v. Brown, 36 S. Ct. 689, 241 U. S. 606, 60 L. Ed. 1199.

22. **Pleadings, verification of.**—In assumpsit on a contract, plaintiff, while filing its affidavit of claim, served no copy on defendant, so as to attempt to lay the foundation for a judgment for want of an affidavit of defense. Under a rule on defendants to plead and to furnish a bill of particulars of the defense, defendants filed a plea of non assumpsit and one of set-off, and also denied the several averments of the complaint. Plaintiff made the guardian of the principal defendant a party defendant. The rules of the district court provide for verification of plaintiff's statement in assumpsit, and that no evidence shall be admitted save as set forth in defendant's affidavit in traverse of the statement of claim. Held that, as defendant's counterclaim for moneys paid under the contract asserted the defendant's incapacity, there was a substantial compliance with the rules, entitling defendants to assert the defense of want of capacity. Arkansas Grand Prairie Oil & Gas Co. v. Davidson (C. C. A.) 233 F. 641.

27. **Proceedings in vacation.**—A term of federal District Court, Southern District of Florida, which under Judicial Code, §§ 9–11, and 76, must always be open as a court of admiralty and equity, was not brought to an end, so far as criminal business was concerned, so as to prevent granting of new trial, by adjournment in accordance with court rule requiring, pending temporary absence of the judge, the clerk be present for transaction of business under orders of the judge. Abbott v. Brown, 36 S. Ct. 689, 241 U. S. 606, 60 L. Ed. 1199.

28. **Jury.**—It is within the powers of a District Court to make and enforce a rule prohibiting the disclosure of names of jurymen drawn for a term to any party prior to two days before the beginning of the term, and such rule may be enforced in criminal cases, where the offense is less than capital. Hendrickson v. U. S. (C. C. A.) 249 F. 34.

§ 1545. (R. S. § 919.) Suits for duties, imposts, taxes, penalties, or forfeitures.

Form of action.—It is the general rule, applicable, not only to customs duties, but to internal revenue taxes, that a common-law action of debt lies in favor of the government whenever, by accident, mistake, or fraud, the government has not received full payment of duties and excise taxes. U. S. v. Nashville, C. & St. L. Ry., 249 F. 678, 161 C. C. A. 588.

In action to recover revenue taxes, such as excise tax on corporations, rule which denies use of any but statutory remedy has no application to general government, unless clearly and specifically so declared. Id.

Whether or not an action is for a penalty or forfeiture depends on the character of the liability sought to be enforced. If it is to recover compensation for a loss sustained by plaintiff it is not, but if the sum claimed has no relation to any such loss, but is arbitrarily exacted for some act or omission of defendant, the action is essentially penal. U. S. v. Joles (D. C.) 251 F. 417.

Recovery of unpaid duties.—Notwithstanding Act June 22, 1874, and Act Oct. 3, 1913, § 3 (Comp. St. 1916, § 5594), that the liquidation of the amount of customs duties shall be final and conclusive, United States can maintain an action to recover customs duties where it has been defrauded of the amount actually due. U. S. v. John A. Heitz, Inc. (D. C.) 238 F. 1002.

§ 1547. (R. S. § 921.) Orders to save costs, and consolidation of causes of a like nature.

1. **Discretion of court.**—An order consolidating actions at law against different defendants and cross-actions by them for trial together to the same jury held within the discretion of the court under this section. Columbia-

Knickerbocker Trust Co. v. Abbot, 247 F. 833, 160 C. C. A. 55, certiorari denied 39 S. Ct. 6, 63 L. Ed. —.

5. Order or stipulation for consolidation.—There being no basis for a location of income between different parts of railway system covered by separate mortgages, an order consolidating causes is not erroneous in failing to order receiver in parent suit to segregate income derived from part of system covered by mortgage involved in outstanding foreclosure suit. Bankers' Trust Co. v. Missouri, K. & T. Ry. Co. (C. C. A.) 251 F. 789.

12. Causes properly consolidated—Foreclosure suits.—Where entire railway system was in possession of receiver for benefit of holders of all liens, and all issues involved would have to be decided by same court, it was not abuse of discretion to consolidate another suit to foreclose a mortgage on a part of the system with receivership suit. Bankers' Trust Co. v. Missouri, K. & T. Ry. Co. (C. C. A.) 251 F. 789.

That one of defendants in foreclosure suit is a Texas corporation, and is not a party to a receivership suit, is no obstacle to consolidation of such foreclosure suit with the receivership cause; no deficiency judgment against such corporation being sought. Id.

Cited without definite application, Earl v. Ellison (Ark.) 210 S. W. 342.

§ 1565. (R. S. § 939.) Sale after condemnation.

Contempt.—The judge of the District Court appointed three appraisers under sections 939, 940, Rev. St. U. S. 1878 (U. S. Comp. St. 1916, §§ 1565, 1566), to appraise and place a value upon certain fur seal skins seized by United States revenue cutters in Bering Sea, and brought to Sitka for condemnation and sale. The United States marshal interfered with the appraisers and forbade them from appraising the skins claiming they were in his possession. Held, guilty of contempt of court. In re Atkins, 5 Alaska, 20.

§ 1567. (R. S. § 941, as amended, Act March 3, 1899, c. 441.) Delivery bond in admiralty proceedings; general bond by owner of vessel.

10. Form of bond or stipulation in general.—A letter of indemnity, taken after a "protective seizure" by the French Tribunal of Commerce in Oran, Algeria, upon which a vessel was released from attachment arising out of a collision, did not have the force of a bond given to discharge a vessel arrested upon a suit in rem, in which latter case the bond discharges the lien, and releases the vessel, and takes the place of the vessel itself. The Kongsli (D. C.) 252 F. 267.

25. Effect of giving stipulation—Recall or rearrest of property after release.—A court held, under the facts shown, to have power to order the arrest of a vessel in a suit in rem after the giving and acceptance of a stipulation for value without appraisal. The I. F. Chapman, 241 F. 836, 154 C. C. A. 538, affirming decree (D. C.) 215 F. 127, certiorari denied Scully v. Kazarian, 38 S. Ct. 9, 62 L. Ed. 529.

38. Cancellation of stipulations on dismissal of libel.—An admiralty court may properly cancel a stipulation for release of a vessel libeled in collision, given without appraisal, on the subsequent institution of proceedings by the owner for limitation of liability and the giving of a bond for the appraised value of the vessel. Société Napthés Transports v. Bisso Towboat Co., 241 F. 463, 154 C. C. A. 295, certiorari denied Societe Naphtes Transports v. Same, 38 S. Ct. 11, 62 L. Ed. 532.

§ 1571. (R. S. § 945.) Bail and affidavits.

Cited without definite application, U. S. v. Schallinger Produce Co. (D. C.) 230 F. 290.

§ 1573. (R. S. § 947.) When clerks may take bail de bene esse.

Cited without definite application, The Eros (D. C.) 245 F. 814.

§ 1574. (Act March 3, 1887, c. 359, § 4.) Proceedings in suits against United States.

See Mill Creek & Minehill Nav. & R. Co. v. U. S. (D. C.) 246 F. 1013.

Review.—Judgments of the District Courts, in the exercise of the power conferred on them, concurrently with the Court of Claims, by the Tucker Act of March 3, 1887, to decide claims against the United States, are reviewable exclusively and directly by the Supreme Court, and this remedy is unaffected by the general distribution of appellate power by Judiciary Act 1891, or by the Judicial Code; implications of repeal being prevented by sec-

tions 294, 295, thereof (Comp. St. 1916, §§ 1271, 1272), and Tucker Act, § 4 (Comp. St. 1916, § 1574), being excepted from the repealing clause. J. Homer Fritch, Inc., v. U. S., 39 S. Ct. 158, 63 L. Ed. —.

§ 1575. (Act March 3, 1887, c. 359, § 5.) Petition in suit against United States.

Waiver.—Since the Tucker Act, under which a corporation sued United States to recover moneys, payment of which it was contended was wrongfully required, is for benefit of the suitor, jurisdictional objections may be waived by government. Everett Ry., Light & Power Co. v. U. S. (D. C.) 236 F. 806.

Oral motion, in suit under Tucker Act against United States for extension of time to appear, move, or answer, held a general appearance, waiving objections that suit was not brought in district for state wherein corporate plaintiff was created. Id.

§ 1583. (R. S. § 566.) Trial of issues of fact.

1. Validity and scope of provision.—This section has no application to the District Courts as now organized. Wm. Edwards Co. v. La Dow (C. C. A.) 230 F. 378.

1½. Questions for and functions of jury in general.—Facts are either "evidential facts," meaning facts which can be directly established by testimony or evidence, or "ultimate facts," which can only be deduced by inference from evidential facts. Evidential facts, if in controversy, must be found by a jury, if the case is a jury case; but ultimate facts need not be submitted, if only one inference can fairly and reasonably be drawn. Real Estate Title Insurance & Trust Co. v. Lederer (D. C.) 229 F. 799.

Where the evidence is such that a verdict based thereon would be set aside, it is proper for trial court, particularly in negligence actions, to direct verdict for defendant; the scintilla rule not prevailing. Dernberger v. Baltimore & O. R. Co. (D. C.) 234 F. 405. The controlling question is whether the testimony as a whole is inconsistent with any other conclusion than that claimed by plaintiff. Dickinson v. Scruggs, 242 F. 900, 155 C. C. A. 488. And although juries are recognized triers of fact, federal court in civil case may direct verdict, when evidence, with all inferences that jury could properly draw, would be insufficient to support contrary verdict, and it would be necessary to set such verdict aside, if rendered. Lauria v. E. I. Du Pont De Nemours & Co. (C. C. A.) 250 F. 353.

Whenever the evidence is such that reasonable men may reasonably differ as to the inferences to be drawn therefrom, the case should be submitted to the jury. Dernberger v. Baltimore & O. R. Co., 243 F. 21, 155 C. C. A. 551, affirming judgment (D. C.) 234 F. 405; Pacific Mut. Life Ins. Co. of California v. Vogel, 232 F. 337, 146 C. C. A. 385; Chicago & N. W. Ry. Co. v. United States, 234 F. 272, 148 C. C. A. 174; Hobbs v. Kizer, 236 F. 681, 150 C. C. A. 13; Carolina, C. & O. Ry. Co. v. Stroup, 239 F. 75, 152 C. C. A. 125; Hudson & M. R. Co. v. Iorio, 239 F. 855, 152 C. C. A. 641; McCarthy v. New York, N. H. & H. R. Co., 240 F. 602, 153 C. C. A. 406. And a case is properly taken from the jury and dismissed where the evidence, conceding all the inferences which the jury can justifiably draw from it, is insufficient to warrant a verdict. Gill v. Waterhouse, 245 F. 75, 157 C. C. A. 371. And where only one finding is possible under the evidence, the matter should be decided by the court, although, if opposite inferences can be drawn, question is one for jury. Postal Telegraph-Cable Co. v. Darrow (C. C. A.) 250 F. 581.

Where there is evidence in support of cause of action, it is properly submitted to the jury. Stark Electric R. Co. v. McGinty Contracting Co., 238 F. 657, 151 C. C. A. 507. And where plaintiff's case is supported by substantial evidence, verdict should not be directed for defendant, though the trial judge might conceive it his duty to set aside any verdict for plaintiff, and award a new trial at least once, and a verdict cannot be directed for defendant, unless plaintiff's evidence is such that no reasonable man might deem it fit to induce conviction; but, in determining whether verdict is against the weight of the evidence, the court merely applies its own judgment. Richards v. H. K. Mulford Co., 236 F. 677, 150 C. C. A. 9.

An issue as to which the evidence is conflicting is for the jury. Creal v. Gallup, 231 F. 96, 145 C. C. A. 284. But it is the duty of the court to direct a verdict, even on conflicting evidence, where it is so conclusive in favor of one party that a verdict for the other party would be set aside. Ewert v. Beck, 235 F. 513, 149 C. C. A. 59.

The weight of the testimony is for the jury. Gold Hunter Mining & Smelting Co. v. Johnson, 233 F. 849, 147 C. C. A. 523; Chambers v. Farnham, 236 F. 886, 150 C. C. A. 148. As well as the credibility of the witnesses. Gold Hunter Mining & Smelting Co. v. Johnson, 233 F. 849, 147 C. C. A. 523; Midland Valley R. Co. v. Bell, 242 F. 803, 155 C. C. A. 391, certiorari denied 38 S. Ct. 12, 245 U. S. 653, 62

L. Ed. 532; Dickinson v. Scruggs, 242 F. 900, 155 C. C. A. 488; Harris v. U. S., 249 F. 41, 161 C. C. A. 101, certiorari denied 38 S. Ct. 425, 246 U. S. 675, 62 L. Ed. 933. But whether a discredited witness, on whom the prosecution relied, is sufficiently corroborated to take the case to the jury, is a question of law. U. S. v. Murphy (D. C.) 253 F. 404.

Where plaintiff's evidence warranted a presumption which entitled it to recover, evidence by defendant contradicting the presumption does not entitle defendant to a directed verdict, but merely raises an issue for the jury; and an averment in the answer denying the presumed facts does not justify taking the case from the jury. Standard Trust Co. of New York v. Commercial Nat. Bank, 240 F. 303, 153 C. C. A. 229.

In suit by a purported resident of New York, removed to the federal court for diversity of citizenship, whether plaintiff was a resident of New York and entitled to sue in its courts, so that the state court had jurisdiction, held for the jury. Philadelphia & R. Ry. Co. v. Sherman, 230 F. 814, 145 C. C. A. 124.

The admissibility of expert testimony, depending on the qualification of a witness, is to be determined by the trial judge. U. S. v. Fischer (D. C.) 245 F. 477.

2. Right to jury trial and questions for jury in particular proceedings.—Under Rev. Code Prac. La. art. 329, providing that, when the defendant in his answer alleges on his part new facts, they shall be considered denied, and neither replication nor rejoinder shall be admitted, where an answer was filed, and a cause fixed for trial on the merits, and on the day set for the trial defendant filed a further answer or plea of estoppel, the court, in overruling exceptions to such plea, erred in dismissing the case, as, a jury not having been waived by the parties, the questions of fact involved were for a jury. Block v. St. Louis, I. M. & S. Ry. Co. (C. C. A.) 230 F. 113.

Ownership of property, see Claiborne v. Brophy, 236 F. 190, 149 C. C. A. 380.

3¼. —— **Making of contract.**—See Lauderdale County v. Kittel, 229 F. 593, 143 C. C. A. 615; Swift & Co. v. Detroit Rock Salt Co., 233 F. 231, 147 C. C. A. 237.

3½. —— **Validity of contract.**—See Moody v. Kell, 235 F. 86, 148 C. C. A. 580.

3¾. —— **Construction of contract.**—See New York & Philadelphia Coal & Coke Co. v. Meyersdale Coal Co., 236 F. 536, 149 C. C. A. 588; P. J. Carlin Const. Co. v. Guerini Stone Co., 241 F. 545, 154 C. C. A. 321, certiorari granted Guerini Stone Co. v. P. J. Carlin Const. Co., 38 S. Ct. 9, 245 U. S. 643, 62 L. Ed. 528.

4. —— **Performance or breach of contract.**—See Lauderdale County v. Kittel, 229 F. 593, 143 C. C. A. 615; Colorado Yule Marble Co. v. Collins, 230 F. 78, 144 C. C. A. 376; American Music Stores v. Kussel, 232 F. 306, 146 C. C. A. 354; Ransom & Randolph Co. v. Pinches, 234 F. 847, 148 C. C. A. 445; Chicago & E. I. R. Co. v. Collins Produce Co., 235 F. 857, 149 C. C. A. 169; Claiborne v. Brophy, 236 F. 190, 149 C. C. A. 380; Chambers v. Farnham, 236 F. 886, 150 C. C. A. 148; City of Port Washington v. Thacher, 245 F. 94, 157 C. C. A. 390; Maynard v. Reynolds (C. C. A.) 251 F. 784.

4½. —— **Insurance.**—See Pacific Mut. Life Ins. Co. of California v. Vogel, 232 F. 337, 146 C. C. A. 385; Parrish v. Order of United Commercial Travelers of America, 232 F. 425, 146 C. C. A. 419; American Temperance Life Ins. Ass'n of City of New York v. Solomon, 233 F. 213, 147 C. C. A. 219; Spring Garden Ins. Co. of Philadelphia, Pa., v. Wood, 233 F. 223, 147 C. C. A. 229; Royal Exch. Assur. of London v. Thrower, 246 F. 768, 159 C. C. A. 70, affirming judgment (D. C.) 240 F. 1024, which affirmed on rehearing (D. C.) 240 F. 811; Metropolitan Casualty Ins. Co. of New York v. Johnston, 247 F. 65, 159 C. C. A. 283.

6¼. —— **Corporations.**—See Smithson v. Roneo (D. C.) 231 F. 349; Cohansey Glass Mfg. Co. v. First Nat. Bank of Philadelphia (C. C. A.) 251 F. 177.

6½. —— **Criminal prosecutions.**—See U. S. v. Knoell (D. C.) 230 F. 509; U. S. v. Fischer (D. C.) 245 F. 477; Dean v. U. S., 246 F. 568, 158 C. C. A. 538; Hamburg-American Steam Packet Co. v. U. S. (C. C. A.) 250 F. 747; Shea v. U. S. (C. C. A.) 251 F. 440; U. S. v. Murphy (D. C.) 253 F. 404.

6¾. —— **Damages and amount of recovery.**—See Roller v. George H. Leonard & Co., 229 F. 607, 143 C. C. A. 629; McNeil Higgins Co. v. Old Dominion S. S. Co., 235 F. 854, 149 C. C. A. 166; United States Cast Iron Pipe & Foundry Co. v. Eastham, 237 F. 185, 150 C. C. A. 331; Hart-Parr Co. v. Barth Mfg. Co., 249 F. 629, 161 C. C. A. 539.

7½. —— **Execution of written instruments.**—See Southern Ry. Co. v. Clark, 233 F. 900, 147 C. C. A. 574; Preston v. Western Union Telegraph Co. (D. C.) 250 F. 480.

7¾. —— **Fraud.**—See Muller v. Globe & Rutgers Fire Ins. Co. of City of New York, 246 F. 759, 159 C. C. A. 61; In re Pierce, Butler & Pierce Mfg. Co., 246 F. 814, 159 C. C. A. 116, reversing order (D. C.) 231 F. 312; Vulcan Metals Co. v. Simmons Mfg. Co., 248 F. 853, 161 C. C. A. 7, cer-

tiorari denied 38 S. Ct. 427, 247 U. S. 507, 62 L. Ed. 1241.

8½. —— **Libel and slander.**—See Grand Union Tea Co. v. Lord, 231 F. 390, 145 C. C. A. 384.

9. —— **Malicious prosecution and false imprisonment.**—See Remington Typewriter Co. v. Nolan (C. C. A.) 250 F. 685; Western Union Telegraph Co. v. Thomasson (C. C. A.) 251 F. 833; Reichman v. Harris (C. C. A.) 252 F. 371.

10¼. —— **Negligence in general.**—See Richards v. H. K. Mulford Co., 236 F. 677, 150 C. C. A. 9; New York & Porto Rico S. S. Co. v. Guanica Centrale, 231 F. 820, 145 C. C. A. 640; Allen v. Roydhouse (D. C.) 232 F. 1010; McNeil Higgins Co. v. Old Dominion S. S. Co., 235 F. 854, 149 C. C. A. 166; Alabama & V. Ry. Co. v. American Cotton Oil Co., 249 F. 308, 161 C. C. A. 316.

10½. —— **Payment.**—See Lillie v. Dennert, 232 F. 104, 146 C. C. A. 296; Colorado Title & Trust Co. v. Childers, 241 F. 631, 154 C. C. A. 389.

11. —— **Penal actions.**—See U. S. v. Forty Barrels and Twenty Kegs of Coca Cola, 36 S. Ct. 573, 241 U. S. 265, 60 L. Ed. 995, reversing judgment 215 F. 535, 132 C. C. A. 47; Chicago & N. W. Ry. Co. v. U. S., 234 F. 268, 148 C. C. A. 170.

12. —— **Personal injury actions in general.**—Negligence of employer, causing injury to employé, see Siegesmund v. Chicago, M. & St. P. Ry. Co., 229 F. 956, 144 C. C. A. 238; Virginian Ry. Co. v. Linkous, 230 F. 88, 144 C. C. A. 386, judgment affirmed on rehearing 235 F. 49; Burras v. Cudahy Packing Co. (C. C. A.) 230 F. 596; Sustock v. Shenandoah Abattoir Co. (D. C.) 232 F. 900; Erie R. Co. v. Krysienski, 238 F. 142, 151 C. C. A. 218; Flickwir & Bush v. Walkonen, 238 F. 307, 151 C. C. A. 323; Flickwir & Bush v. Pontynen, 238 F. 310, 151 C. C. A. 326; Big Vein Pocahontas Co. v. Repass, 238 F. 332, 151 C. C. A. 348; George Brown & Co. v. O'Connor, 238 F. 552, 151 C. C. A. 488; Overstreet v. Norfolk & W. Ry. Co., 238 F. 565, 151 C. C. A. 501; Porter v. Titusville Fruit & Farm Lands Co., 238 F. 759, 151 C. C. A. 609; Carolina, C. & O. Ry. Co. v. Stroup, 239 F. 75, 152 C. C. A. 125; Schunnemunk Const. Co. v. Sbaratta, 239 F. 716, 152 C. C. A. 550; Southern Ry. Co. v. Derr, 240 F. 73, 153 C. C. A. 109; Republic Iron & Steel Co. v. Hines, 240 F. 77, 153 C. C. A. 113; Leahy v. Detroit, M. & T. Short Line Ry., 240 F. 82, 153 C. C. A. 118; Rjasko v. Pennsylvania Coal & Coke Corporation, 241 F. 248, 154 C. C. A. 168; Midland Valley R. Co. v. Bell, 242 F. 803, 155 C. C. A. 391, certiorari denied 38 S. Ct. 12, 245 U. S. 653, 62 L. Ed. 532; Heskett v. Pennsylvania Co., 245 F. 326, 157 C. C. A. 518; Marland v. Philadelphia & R. Ry. Co., 246 F. 91, 158 C. C. A. 317, certiorari denied Philadelphia & R. R. Co. v. Marland, 38 S. Ct. 191, 245 U. S. 671, 62 L. Ed. 540; McClintic-Marshall Const. Co. v. Forgy, 246 F. 193, 158 C. C. A. 353, certiorari denied 38 S. Ct. 332, 246 U. S. 662, 62 L. Ed. 927; Washington & Berkeley Bridge Co. v. Pennsylvania Steel Co. (C. C. A.) 252 F. 487; E. I. Du Pont de Nemours & Co. v. Smith (C. C. A.) 252 F. 491; E. I. Du Pont de Nemours & Co. v. Kelly (C. C. A.) 252 F. 523; Southern Ry. Co. v. O'Dell (C. C. A.) 252 F. 540.

Carrier's liability for injuries to passengers, see New York, N. H. & H. Ry. Co. v. Kilby, 233 F. 252, 147 C. C. A. 258; Compagnie Générale Transatlantique v. Bump, 234 F. 52, 148 C. C. A. 68; Chicago, M. & St. P. Ry. Co. v. Irving, 234 F. 562, 148 C. C. A. 328; Spiesberger v. Michigan Cent. R. Co., 235 F. 864, 149 C. C. A. 176; Chicago, B. & Q. R. Co. v. Schrimpf, 236 F. 200, 149 C. C. A. 390; Boston Elevated Ry. Co. v. Teele, 248 F. 424, 160 C. C. A. 434; Omaha & C. B. St. Ry. Co. v. McKeeman (C. C. A.) 250 F. 386.

Res ipsa loquitur. Chicago Rys. Co. v. Kramer, 234 F. 245, 148 C. C. A. 147; Smith v. Pennsylvania R. Co., 239 F. 103, 151 C. C. A. 277.

Performing abortion. Hobbs v. Kizer, 236 F. 681, 150 C. C. A. 13.

Injuries on railroad track. Oregon-Washington R. & Nav. Co. v. Penso, 239 F. 684, 152 C. C. A. 518; McCarthy v. New York, N. H. & H. R. Co., 240 F. 602, 153 C. C. A. 406.

Balanced probability that actionable negligence existed, see Southern Ry. Co. v. Derr, 240 F. 73, 153 C. C. A. 109.

Negligence in use of street, see Jacob v. Ivins (C. C. A.) 250 F. 431. Violation of speed ordinance. Puget Sound Electric Ry. v. Benson (C. C. A.) 253 F. 710. Defects in street. City of Superior v. Olt, 239 F. 100, 152 C. C. A. 150.

Injuries at railroad crossing, see Hartwell v. Delaware, L. & W. R. Co. (D. C.) 234 F. 112; Tacoma Ry. & Power Co. v. Cothary, 235 F. 872, 149 C. C. A. 184; Patterson Transfer Co. v. Schlugleit (C. C. A.) 252 F. 359; Zimmerman v. Pennsylvania Co. (C. C. A.) 252 F. 571.

12a. —— **Contributory negligence.**—Of passenger, see New York, N. H. & H. Ry. Co. v. Kilby, 233 F. 252, 147 C. C. A. 258; Compagnie Générale Transatlantique v. Bump, 234 F. 52, 148 C. C. A. 68; Spiesberger v. Michigan Cent. R. Co., 235 F. 864, 149 C. C. A. 176; St. Louis Merchants' Bridge Terminal Ry. Co. v. Munger, 246 F. 938, 159 C. C. A. 210; of person going to railroad depot, Pennsylvania R. Co. v. Rogers, 244 F. 76, 156 C. C. A. 504; of person struck by automobile, Patterson Transfer Co. v. Schlugleit (C. C. A.)

252 F. 359; of person injured at railroad crossing, Lehigh Valley R. Co. v. Kilmer, 231 F. 628, 145 C. C. A. 514; Lehigh Valley R. Co. v. Emens, 231 F. 636, 145 C. C. A. 522; Hartwell v. Delaware, L. & W. R. Co. (D. C.) 234 F. 112; Tacoma Ry. & Power Co. v. Cothary, 235 F. 872, 149 C. C. A. 184; Delaware, L. & W. R. Co. v. James, 241 F. 344, 154 C. C. A. 224; Zimmerman v. Pennsylvania Co. (C. C. A.) 252 F. 571; of person struck by a railroad motorcar while crossing a railroad bridge, Oregon-Washington R. & Nav. Co. v. Penso, 239 F. 684, 152 C. C. A. 518; of person whose team took fright from object on a railroad right of way, see Great Northern Ry. Co. v. Ennis, 236 F. 17, 149 C. C. A. 227; of employé injured, George Brown & Co. v. O'Connor, 238 F. 552, 151 C. C. A. 488; The Ansonia v. Sullivan, 239 P. 296, 152 C. C. A. 284; Fentress Coal & Coke Co. v. Elmore, 240 F. 328, 153 C. C. A. 254; William Cramp & Sons Ship & Engine Bldg. Co. v. Waczak, 242 F. 842, 155 C. C. A. 430; Pocahontas Consol. Collieries Co. v. Johnson, 244 F. 368, 156 C. C. A. 654, certiorari denied 38 S. Ct. 14, 245 U. S. 658, 62 L. Ed. 535; Heskett v. Pennsylvania Co., 245 F. 326, 157 C. C. A. 518; St. Louis-San Francisco Ry. Co. v. Maynord, 246 F. 115, 158 C. C. A. 341; E. I. Du Pont de Nemours & Co. v. Smith (C. C. A.) 252 F. 491; Peters v. Delaware & H. Co. (C. C. A.) 252 F. 562.

12b. —— Assumption of risk.—By servant injured, see Siegesmund v. Chicago, M. & St. P. Ry. Co., 229 F. 956, 144 C. C. A. 238; Sunday Creek Co. v. Gray, 238 F. 325, 151 C. C. A. 341; New York Cent. & H. R. R. Co. v. Salkaukus, 238 F. 778, 151 C. C. A. 628; Philadelphia & R. Ry. Co. v. Marland, 239 F. 1, 152 C. C. A. 51; Southern Ry. Co. v. Mays, 239 F. 41, 152 C. C. A. 91; Gold Hunter Mining & Smelting Co. v. Bowden (C. C. A.) 252 F. 388; Southern Ry. Co. v. O'Dell (C. C. A.) 252 F. 540.

12c. —— Proximate cause.—See Southern Pac. Co. v. Stewart, 233 F. 956, 147 C. C. A. 630; Lee Line Steamers v. Page, 237 F. 57, 150 C. C. A. 259; Chicago, B. & Q. R. Co. v. Gelvin, 238 F. 14, 151 C. C. A. 90, L. R. A. 1917C, 983; Muller v. Globe & Rutgers Fire Ins. Co. of City of New York, 246 F. 759, 159 C. C. A. 61; Bjornquist v. Boston & A. R. Co. (C. C. A.) 250 F. 929.

12d. —— Respondeat superior.—See Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712; Bjornquist v. Boston & A. R. Co. (C. C. A.) 250 F. 929.

12e. —— Ratification of act of agent.—See Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712; Bailey v. Mississippi Home Telephone Co. (C. C. A.) 252 F. 581.

16. —— Title to real estate.—See Creal v. Gallup, 231 F. 96, 145 C. C. A. 284.

18. Questions for court in general.—See Continental Public Works Co. v. Stein, 232 F. 559, 146 C. C. A. 517; Chambers v. Farnham, 236 F. 886, 150 C. C. A. 148; Swiss Bankverein v. Zimmermann, 240 F. 87, 153 C. C. A. 123; Metropolitan Casualty Ins. Co. of New York v. Johnston, 247 F. 65, 159 C. C. A. 283; Globe & Rutgers Ins. Co. of City of New York v. Prairie Oil & Gas Co., 248 F. 452, 160 C. C. A. 462.

19. Equity suits.—See Union Pac. R. Co. v. Syas, 246 F. 561, 158 C. C. A. 531.

As Acts Ky. 1898, c. 49 (Ky. St. § 4679c), does not, in view of sections 4 and 6, contemplate jury trial on questions of necessity, a jury trial on that issue is not warranted where proceeding to condemn easement for telegraph lines over railroad right of way is brought in the federal court, because it is for some purposes deemed an action at law within this section. Louisville & N. R. Co. v. Western Union Telegraph Co., 249 F. 385, 161 C. C. A. 359.

20. Bankruptcy proceedings.—See Wm. Edwards Co. v. La Dow (C. C. A.) 230 F. 378; Marshall v. Nevins, 242 F. 476, 155 C. C. A. 252.

25. Waiver of jury trial.—Where a defendant who did not assent to a reference, expressly objected on the hearing before the master to the consideration of the cause by the master, and insisted upon its right to have the cause tried by a jury, and on the hearing on exceptions to the master's report appeared only to protest the jurisdiction of the court, it did not waive its right to a jury trial by failing to take formal exceptions to the order of reference. Wm. Edwards Co. v. La Dow (C. C. A.) 230 F. 378.

26. Instructions.—Sufficiency of instructions in particular actions, see notes under appropriate section of statute dealing with action in question.

As to comments by the judge, expressions of opinion, and other forms of the charge invading the province of the jury, it has been held that in the federal courts the trial judge may express his opinions on facts, and advise jury regarding its conclusions thereon, provided it is given to unequivocally understand that it is not bound thereby; his comments to be judicial and dispassionate, and leave jurors free to exercise their independent judgment, and that part of charge as to turf exchange being a sham, considered with its context and the entire charge, did not go beyond such rule. Shea v. U. S. (C. C. A.) 251 F. 440. And in a prosecution for violation of the White Slave Act (Comp. St. 1916, §§ 8812–8819), the expression of the court's opinion as to the evidence was permissible; the ju-

ry being further charged that they were not bound by the court's opinion. Beyer v. U. S. (C. C. A.) 251 F. 39. A statement by a judge to the jury that an instruction was given by request is not error, and especially where he added that he thought the instruction a fair statement of the law. Colorado Yule Marble Co. v. Collins, 230 F. 78, 144 C. C. A. 376.

Where every one connected with trial knew when the charge was given that written instrument did not contain complete contract, held that court committed no error in so telling the jury. Missouri Dist. Telegraph Co. v. Morris & Co., 243 F. 481, 156 C. C. A. 179, appeal dismissed 38 S. Ct. 11, 245 U. S. 651, 62 L. Ed. 531.

Charge in prosecution for misapplication of funds of national bank in violation of Rev. St. § 5209 (Comp. St. 1916, § 9772), which minimized defendant's testimony as to his intent, held erroneous as improperly minimizing testimony of accused as to his intent. McCallum v. U. S., 247 F. 27, 159 C. C. A. 245.

In prosecution in federal court, trial judge has right to express opinion as to weight of evidence, provided question of fact is ultimately submitted to jury. Parish v. U. S., 247 F. 40, 159 C. C. A. 258.

An instruction approved that, while a juror should not lightly surrender an opinion which he conscientiously holds, when he finds himself in minority he should stop and consider whether he is more likely to be surely right than the majority upon a question about which there can be no absolute certainty. Boston & M. R. R. v. Stewart (C. C. A.) 254 F. 14.

In personal injury action, where plaintiff's testimony concerning cause of injury was somewhat improbable, denial of requested charge that, if some of his statements were contrary to physical laws, verdict must be rendered for defendant, held proper; all questions of probability being left to jury. Delaware. L. & W. Ry. Co. v. Tuovinen, 240 F. 678, 153 C. C. A. 476.

The charge of a court is not subject to exception because it does not instruct the jury on a point in issue, where such instruction was not requested by either party. Stephenson v. Atlantic Terra Cotta Co., 230 F. 14, 144 C. C. A. 312; Hughes v. U. S., 231 F. 50, 145 C. C. A. 238; Pennsylvania Co. v. Fanger, 231 F. 851, 146 C. C. A. 47; Keystone Coal & Coke Co. v. Fekete, 232 F. 72, 146 C. C. A. 264; Alverson v. Oregon-Washington R. & Nav. Co., 236 F. 331, 149 C. C. A. 463; Boston & M. R. R. v. Baker, 236 F. 896, 150 C. C. A. 158; Arnold v. Horrigan, 238 F. 39, 151 C. C. A. 115; Republic Iron & Steel Co. v. Hines, 240 F. 77, 153 C. C. A. 113; Ford Motor Co. v. Farrington, 245 F. 850, 158 C. C. A. 190. And the failure to give an instruction limiting the purpose for which particular evidence may be considered is not error, where such instruction is not specially requested. Hallowell v. U. S. (C. C. A.) 253 F. 865. It is also held that, where the judge has delivered his charge, he is entitled to have his attention called either to errors or omissions in same, and cannot be required to look through a large number of lengthy requests, and determine whether they were all covered by charge given. Hamburg-American Steam Packet Co. v. U. S. (C. C. A.) 250 F. 747. It is of course improper to refuse appropriate requested instructions, where they are not covered by the charge as given. Chesapeake & O. Ry. Co. v. Needham, 244 F. 146, 156 C. C. A. 574; Kansas City, C. & S. Ry. Co. v. Shoemaker, 245 F. 117, 157 C. C. A. 413. But refusal of requested instructions, which so far as they were correct and material were embraced in the general charge, is not error. Missouri Valley Bridge & Iron Co. v. Blake, 231 F. 417, 145 C. C. A. 411; Glass v. U. S., 231 F. 65, 145 C. C. A. 253; New York & Porto Rico S. S. Co. v. Guanica Centrale, 231 F. 820, 145 C. C. A. 640; International Lumber Co. v. U. S., 231 F. 873, 146 C. C. A. 69; Manchester Mill & Elevator Co. v. Strong, 231 F. 876, 146 C. C. A. 72; Owl Creek Coal Co. v. Goleb, 232 F. 445, 146 C. C. A. 439; Atlas Portland Cement Co. v. Hagen, 233 F. 24, 147 C. C. A. 94; Holsman v. U. S., 248 F. 193, 160 C. C. A. 271; Parish v. U. S., 247 F. 40, 159 C. C. A. 258; Dosset v. U. S., 248 F. 902, 161 C. C. A. 20; Shea v. U. S. (C. C. A.) 251 F. 440; E. I. Du Pont de Nemours & Co. v. Kelly (C. C. A.) 252 F. 523; Le More v. U. S. (C. C. A.) 253 F. 887; Dr. J. H. McLean Medicine Co. v. U. S. (C. C. A.) 253 F. 694; O'Hare v. U. S. (C. C. A.) 253 F. 538; Bradley v. U. S. (C. C. A.) 254 F. 289.

Requests to charge must be timely, and it is within the province of the District Court to request counsel to present their requests at or before close of the evidence, and before argument, and to announce that he will not entertain requests not made in apt time. In the Southern district of New York it is the custom not to refuse requests after the charge has been delivered, but requests at that time cannot receive the careful attention they would receive if presented at the close of the evidence, and the trial judge should not be held to the same degree of accountability for erroneously refusing a request then presented as he must be one presented at a more appropriate time. Linn v. U. S. (C. C. A.) 251 F. 476. And where trial court, after giving charge fairly presenting controversy, stated that counsel might call his attention to any points they would like

to have specifically answered, defendant, having been cast below, cannot raise in appellate court matter not then called to trial court's attention. Pennsylvania R. Co. v. Minds, 244 F. 53, 156 C. C. A. 481, affirming judgment Minds v. Pennsylvania R. Co. (D. C.) 237 F. 267.

In giving instructions requested, the court is not required to use the precise language of counsel. O'Hare v. U. S. (C. C. A.) 253 F. 538. And the mode of instructing a jury by partly written and party oral instructions is within the discretion of the court. Warren Bros. Co. v. Wright, 239 F. 71, 152 C. C. A. 121.

As to giving undue emphasis to particular matters, it has been held that, where the instructions given presented the issues, the refusal of other instructions emphasizing such facts is proper. Spring Garden Ins. Co. of Philadelphia, Pa., v. Wood, 233 F. 223, 147 C. C. A. 229. And denial of requests that fraud is not presumed and could not be inferred from particular items of evidence was not error. Arnold v. Horrigan, 238 F. 39, 151 C. C. A. 115. A charge on reasonable doubt, which singled out and emphasized a particular matter, though it was not vital to case, was properly refused. Dosset v. U. S., 248 F. 902, 161 C. C. A. 20.

While it is error to refuse an instruction on an issue fairly presented by the evidence, Pennsylvania R. Co. v. Glas, 239 F. 256, 152 C. C. A. 244; a request to charge may properly be refused, where it has no relation to any issue which has arisen in case, Hamburg-American Steam Packet Co. v. U. S. (C. C. A.) 250 F. 747; Himrod v. Ft. Pitt Min. & Mill. Co., 238 F. 746, 151 C. C. A. 596; Memphis St. Ry. Co. v. Illinois Cent. R. Co., 242 F. 617, 155 C. C. A. 307; Cavoretto v. Alaska Gastineau Mining Co., 245 F. 853, 158 C. C. A. 193; Ivins v. Jacob (D. C.) 245 F. 892; Hamburg-American Steam Packet Co. v. U. S. (C. C. A.) 250 F. 747; U. S. v. Stilson (D. C.) 254 F. 120; or where there was no evidence of facts hypothesized, May Department Stores Co. v. Runge, 241 F. 575, 154 C. C. A. 351; and a requested instruction, directing a verdict for defendant, which was predicated on unproven facts and ignored facts bearing on the vital issue of the case, was properly refused. Manchester Mill & Elevator Co. v. Strong, 231 F. 876, 146 C. C. A. 72; but it was held that, in an action for the death of a brakeman, a portion of the charge was not misleading, as indicating that the action might be based in part on the presumption of negligence which applied to an action between the carrier and a passenger, Pennsylvania R. Co. v. Glas, 239 F. 256, 152 C. C. A. 244.

A charge is to be considered as a whole, and not tested by the standard of absolute verbal accuracy in every isolated phrase. Allen v. Roydhouse (D. C.) 232 F. 1010; Russo-Chinese Bank v. National Bank of Commerce of Seattle, Wash., 36 S. Ct. 652, 241 U. S. 403, 60 L. Ed. 1065, affirming judgment 206 F. 646, 124 C. C. A. 434; Stephenson v. Atlantic Terra Cotta Co., 230 F. 14, 144 C. C. A. 312; Grand Union Tea Co. v. Lord, 231 F. 390, 145 C. C. A. 384; Erie R. Co. v. Krysienski, 238 F. 142, 151 C. C. A. 218; Pennsylvania R. Co. v, Glas, 239 F. 256, 152 C. C. A. 244; Republic Iron & Steel Co. v. Hines, 240 F. 77, 153 C. C. A. 113; Memphis St. Ry. Co. v. Illinois Cent. R. Co., 242 F. 617, 155 C. C. A. 307; Southern Trust Co. v. Lucas, 245 F. 286, 157 C. C. A. 478; Shea v. U. S. (C. C. A.) 251 F. 433; Le More v. U. S. (C. C. A.) 253 F. 887. However, though a portion of the charge stated the correct rule, error in another portion was not cured, where the jury were left free to follow the erroneous charge, and there was no attempt to correct it. Dr. J. H. McLean Medicine Co. v. U. S. (C. C. A.) 253 F. 694.

Charge in criminal prosecution on proof of conspiracy, see Daeche v. U. S. (C. C. A.) 250 F. 566; on alibi, see Shea v. U. S. (C. C. A.) 251 F. 433; on the testimony of character witnesses, see Linn v. U. S. (C. C. A.) 251 F. 476; on reasonable doubt, see Linn v. U. S. (C. C. A.) 251 F. 476; Oppenheim v. U. S. (C. C. A.) 241 F. 625, reversing judgment U. S. v. Oppenheim (D. C.) 228 F. 220; Shea v. U. S. (C. C. A.) 251 F. 433; on acts of coconspirators, see Shea v. U. S. (C. C. A.) 251 F. 440; on uncorroborated testimony of an accomplice, see Bosselman v. U. S., 239 F. 82, 152 C. C. A. 132; on evidence of good character, see Hughes v. U. S., 231 F. 50, 145 C. C. A. 238; on admissibility of evidence against some of the defendants, but not against others, see Hendrey v. U. S., 233 F. 5, 147 C. C. A. 75.

26½. **Demurrer to evidence.**—A demurrer to plaintiff's evidence was waived by the introduction of evidence on the part of defendant. Fisher Mach. Works Co. v. Dougherty, 231 F. 910, 146 C. C. A. 106. Especially where defendant did not renew motion or request directed verdict. Lohman v. Stockyards Loan Co., 243 F. 517, 156 C. C. A. 215, certiorari denied 38 S. Ct. 134, 245 U. S. 668, 62 L. Ed. 539.

27. **Direction of verdict.**—In a proper case, the trial judge, in the exercise of a sound discretion, may direct a verdict, and if in such case a motion is made for directed verdict, it is error to refuse it. McCarthy v. New York, N. H. & H. R. Co., 240 F. 602, 153 C. C. A. 406. But, where defendant made no motion for directed verdict, the submission of the case to the jury was proper. Kreuzer v. U. S. (C. C. A.) 254 F. 34; Victor American Fuel Co. v. Toml-

janovich, 232 F. 662, 146 C. C. A. 588, affirming orders Tomljanovich v. Victor American Fuel Co. (D. C.) 227 F. 951 and 230 F. 467. And, on the other hand, plaintiff may not dismiss without prejudice after motion for directed verdict has been made and submitted. Spies v. Union Pac. R. Co. (C. C. A.) 250 F. 434.

It is the duty of the court, in considering a motion to direct a verdict, to take that view of the evidence most favorable to the party against whom it is desired that the verdict should be directed, and determine the matter from that evidence and reasonable and justifiable inferences therefrom. U. S. v. De Bolt (D. C.) 253 F. 78; Southern Ry. Co. v. Clark, 233 F. 900, 147 C. C. A. 574; Hobbs v. Kizer, 236 F. 681, 150 C. C. A. 13; Flickwir & Bush v. Walkonen, 238 F. 307, 151 C. C. A. 323; Carolina, C. & O. Ry. Co. v. Stroup, 239 F. 75, 152 C. C. A. 125; Leahy v. Detroit, M. & T. Short Line Ry., 240 F. 82, 153 C. C. A. 118; Dickinson v. Scruggs, 242 F. 900, 155 C. C. A. 488; Huttig v. John Paul Lumber Co., 243 F. 539, 156 C. C. A. 237; Davis v. Carnegie Steel Co., 244 F. 931, 157 C. C. A. 281; Vascacillas v. Southern Pac. Co., 247 F. 8, 159 C. C. A. 226; Pennsylvania Co. v. Avran, 249 F. 474, 161 C. C. A. 432; Patterson Transfer Co. v. Schlugleit (C. C. A.) 252 F. 359.

The granting of a nonsuit and dismissal of a complaint in an action at law is but a nonsuit, and if upon all the evidence the plaintiff has not established a cause of action, the proper disposition is to direct a verdict for defendant. Quereau v. Lehigh Valley R. Co., (D. C.) 251 F. 986.

The introduction of evidence by defendant after the court overruled its motion for a directed verdict at the close of plaintiff's testimony waives any error in the ruling of the motion. International Lumber Co. v. U. S., 231 F. 873, 146 C. C. A. 69.

Where both parties moved for direction of verdict, direction of verdict for plaintiff is finding that defendant's contract was breached, so that it is immaterial whether the breach was actual or anticipatory. Tri-Bullion Smelting & Development Co. v. Jacobsen, 233 F. 646, 147 C. C. A. 454.

28. Nonsuit.—Where the complaint was dismissed at the close of plaintiff's case, plaintiff's evidence must be accepted as true. Gleason v. Thaw, 234 F. 570, 148 C. C. A. 336.

Plaintiff was not as matter of right entitled to voluntary nonsuit after court had decided to direct verdict for defendant. Barrett v. Virginian Ry. Co., 244 F. 397, 157 C. C. A. 23, certiorari granted 38 S. Ct. 61, 245 U. S. 659, 62 L. Ed. 535.

28½. Conduct and deliberations of jury.—The jury in criminal case may properly take cognizance of facts which are matters of general information. U. S. v. Schafer (D. C.) 254 F. 135.

29. Rendition and form of verdict.—A compromise verdict in action on quantum meruit held one resulting from improper compromise of vital principles, and not from justifiable concession of views. Goelet v. Matt J. Ward Co., 242 F. 65, 155 C. C. A. 9.

Directed verdict, signed by juror designated by court, held sufficient without all the jurors' signing it or selecting their own foreman to sign it. Bryan v. Louisville & N. R. Co., 244 F. 650, 157 C. C. A. 98, writ of error dismissed and certiorari denied 38 S. Ct. 334, 246 U. S. 651, 62 L. Ed. 921.

Where verdict for plaintiff was on defendant's motion set aside, it is improper for trial court to enter judgment, in absence of any verdict by jury, notwithstanding court might have entered judgment upon verdict directed by it at trial. Pellerin v. International Cotton Mills, 248 F. 242, 160 C. C. A. 320.

A "general verdict" is one by which the jury pronounces at the same time on the fact and the law, either in favor of the plaintiff or the defendant. Schofield v. Baker (D. C.) 242 F. 657.

30. Special verdicts.—The submission of special questions or findings of fact to the jury in a personal injury action is discretionary on the part of the trial court. Fisher Mach. Works Co. v. Dougherty, 231 F. 910, 146 C. C. A. 106.

In action for injuries to mine motorman, special findings by jury that they did not know how plank which caused injury had become loose, or how long it had been loose, are not inconsistent with, or insufficient to sustain, a general verdict for plaintiff. Daly Judge Mining Co. v. Towey, 240 F. 658, 153 C. C. A. 456.

30½. Correction of verdict.—A federal court cannot look to the testimony for the purpose of correcting a faulty verdict, even though there is no dispute over the facts. Original Sixteen to One Mine v. Twenty-One Mining Co. (D. C.) 254 F. 630.

31. Appointment of auditor.—In an action at law to recover for goods sold and delivered, which involves the examination of long accounts, many items of which are in dispute, a federal court may properly appoint an auditor to make a preliminary examination, hear the evidence, and report his findings, with a view to simplifying the issues for the jury. Peterson v. Davison (D. C.) 254 F 625.

33. Review of findings of fact.—See notes under Const. Amend. 7, post.

Verdict, finding bankrupt guilty of conspiracy to conceal assets, cannot be disturbed, when supported by submissible evidence. Gretsch v. U. S., 242

F. 897, 155 C. C. A. 485, certiorari denied 38 S. Ct. 12, 245 U. S. 654, 62 L. Ed. 532.

There being direct and positive testimony connecting defendant with the charge, the verdict of guilty is not reviewable. Banks v. U. S. (C. C. A.) 251 F. 889.

Cited without definite application, Ex parte Mason (C. C. A.) 244 F. 154; Louisville & N. R. Co. v. Western Union Tel. Co. (C. C. A.) 249 F. 385.

§ 1584. (R. S. § 648.) Trial of issues of fact by jury.

Repeal.—Neither section 1584, nor section 1587, providing for jury trial of fact issues in the Circuit Courts was repealed by Judicial Code, and they, as well as section 1668, providing for review, are made applicable to District Courts by section 1268. Lillie v. Dennert, 232 F. 104, 146 C. C. A. 296.

Purpose and effect of statute.—Under Comp. St. 1916, §§ 1584, 1587, 1668, where jury was orally waived, held, that questions decided at the trial could not be reviewed on writ of error. Illinois Surety Co. v. U. S., 229 F. 527, 143 C. C. A. 595; Id., 229 F. 533, 143 C. C. A. 601. See, also, notes under Const. Amend. 7, post.

§ 1585. (Act Feb. 16, 1875, c. 77, § 1.) Trial of issues of fact in admiralty causes.

10. Effect of findings of fact.—See The Leonard J. Busby, 241 F. 855, 154 C. C. A. 557.

A finding on a question of fact by an admiralty court, which heard the witnesses, will be accepted by the appellate court, unless the evidence greatly preponderates against it. The Hardy, 229 F. 985, 144 C. C. A. 267; Erie & M. Ry. & Nav. Co. v. Dunseith, 239 F. 814, 152 C. C. A. 600; Great Lakes Towing Co. v. American Shipbuilding Co., 243 F. 849, 156 C. C. A. 361; Norfolk Southern Ry. Co. v. Foreman, 244 F. 353, 156 C. C. A. 639; Globe S. S. Co. v. Moss, 245 F. 54, 157 C. C. A. 350, certiorari denied 38 S. Ct. 61, 245 U. S. 663, 62 L. Ed. 537; Lake Drummond Canal & Water Co. v. John L. Roper Lumber Co. (C. C. A.) 252 F. 796.

While findings by an admiralty court on questions of fact are reviewable on appeal, when made on conflicting evidence they are entitled to and are given great weight, and will not be reversed, except for plain error. The Baron Napier, 249 F. 126, 161 C. C. A. 178. Where based upon testimony taken in open court, the findings should be accepted by the appellate court, unless the evidence clearly preponderates against it. Erie & M. Ry. & Nav. Co. v. Dunseith, 239 F. 814, 152 C. C. A. 600. And a decree based on sharply conflicting evidence will not be disturbed, trial judge having heard testimony. Sorenson v. Alaska S. S. Co., 247 F. 294, 159 C. C. A. 388, affirming decree (D. C.) 243 F. 280; The W. H. Flannery, 249 F. 349, 161 C. C. A. 357; The Mason, 249 F. 718, 161 C. C. A. 628; Eastern Transp. Co. v. U. S. (C. C. A.) 253 F. 42; The Beaver (C. C. A.) 253 F. 312.

Where the question of responsibility for a collision is a doubtful question of fact, and the finding of the trial court is supported by substantial evidence, it will not be disturbed on appeal. The Rockaway, 246 F. 682, 158 C. C. A. 638, affirming decree (D. C.) 240 F. 844.

Decree in admiralty, based on sharply conflicting evidence, will not be disturbed; trial judge having heard testimony. Sorenson v. Alaska S. S. Co., 247 F. 294, 159 C. C. A. 388, affirming decree (D. C.) 243 F. 280.

Where a narrow issue of fact is presented, upon which the evidence is conflicting, the decision of an experienced trier of facts, who heard the witnesses, is not to be set aside, unless certainty of error can be asserted. The F. B. Squire, 248 F. 469, 160 C. C. A. 479.

Findings of the District Court, which heard the witnesses, on a question of fact as to fault of a passing steamer for the sinking of a barge moored near the channel, held not reviewable by the appellate court. The Eleanore, 248 F. 472, 160 C. C. A. 482.

Where testimony showing a pro tanto satisfaction of libelant's claim was received, it must be assumed on appeal that the lower court gave proper effect thereto in fixing amount. The Emilia S. De Perez, 248 F. 480, 160 C. C. A. 490.

While findings by an admiralty court on questions of fact are reviewable on appeal, when made on conflicting evidence they are entitled to and are given great weight, and will not be reversed, except for plain error. The Baron Napier, 249 F. 126, 161 C. C. A. 178.

Appellate court is reluctant to disturb finding of fact in admiralty case by trial judge, who had advantage of seeing and hearing witnesses. The W. H. Flannery, 249 F. 349, 161 C. C. A. 357.

Conditions considered under which evidence on an issue of fact in an admiralty suit is subject to review on appeal without reference to the finding of the trial court. The Mason, 249 F. 718, 161 C. C. A. 628.

Awards of salvage almost always depend on such a nice adjustment of differing estimates of danger and value

that appeals therefrom, to merit consideration, must show a yielding to erroneous principle or plain misapprehension of facts. The Joseph F. Clinton (C. C. A.) 250 F. 977.

A finding of the trial court as to the size and age of a seaman, who testified at the hearing on a libel in personam for personal injuries, will be deferred to on appeal. Goode v. Oceanic Steam Nav. Co. (C. C. A.) 251 F. 556.

In a steamship passenger's libel in admiralty for personal injury from a fall in the bathroom, a finding that there was no faulty construction and that a handhold was then and there would be taken as conclusive, where there was but one deposition on the issue, and that was made by appellant. The Great Northern (C. C. A.) 251 F. 826.

Where it was undisputed that claimant's steamship did not keep a proper lookout, and was exceeding the speed permitted by the harbor regulations, at the time of collision, and the evidence was conflicting as to fault of the tug towing libelant's barge, the trial judge's finding for libelant against claimant will be affirmed. The Gaston (C. C. A.) 251 F. 887.

The trial court, in making an award for salvage services, has much the duty of a jury, and the amount fixed by it will not be disturbed, if within those limits which define the maximum and minimum which reasonably should be awarded. The No. 92 (C. C. A.) 252 F. 117.

While since Act March 3, 1891, as before Act Feb. 16, 1875 (Comp. St. 1916, §§ 1585, 1586), appellate jurisdiction in admiralty is not limited to matters of law, finding of fact as to allowance for salvage should not be disturbed for mere doubt, or inclination to differ, but only for clear and certain conviction. The Kia Ora (C. C. A.) 252 F. 507.

A verdict of the jury, assessing damages for the death of a married woman, should not be disturbed, when there is any evidence on which it can be supported; and the same rule should be applied when the damages are assessed by a commissioner in a shipowner's proceeding to limit liability. The O'Brien Brothers (D. C.) 253 F. 855.

11. Remand.—Where the trial court found against a libelant, seeking to recover on account of collision on the ground that the respondent was not a person responsible, but did not determine the question of negligence, the appellate court, on reversing the decree, will not, regardless of its authority to consider the record, determine the question of negligence, but will remand the case to enable the trial court to determine such question. Clinchfield Fuel Co. v. Henderson Iron Works Co. (C. C. A.) 254 F. 411.

§ 1587. (R. S. § 649.) Trial of issues of fact by the court.

½. Repeal.—Neither section 1584, nor section 1587, providing for jury trial of fact issues in the Circuit Courts, was repealed by Judicial Code, and, they as well as section 1668, providing for review, are made applicable to District Courts by section 1268. Lillie v. Dennert, 232 F. 104, 146 C. C. A. 296.

1. Trial without jury.—A prayer by each party for binding instructions in his favor is equivalent to a joint request for a finding of fact by the court, and does not amount to a submission without the intervention of a jury within Rev. St. §§ 649, 700 (Comp. St. 1916, §§ 1587, 1668); hence the direction of a verdict by the court is conclusive. Williams v. Vreeland, 244 F. 346, 156 C. C. A. 632.

In action at law, where the parties are entitled to a jury trial, the court may not itself pronounce verdict for either party, except on consent, even though it may instruct the jury that the evidence establishes a fact involved and direct a finding to that effect. Quereau v. Lehigh Valley R. Co. (D. C.) 251 F. 986.

2. Waiver of jury.—Notwithstanding this section, parties are presumed to have waived a jury, even in the absence of a written stipulation, when they were present at the trial in person or by counsel and made no demand for a jury, as the section was designed to enable the parties to make agreements in vacation, and to prevent either party demanding a jury unexpectedly at the trial. Defendants, who attended proceedings under a reference, both before the master and before the District Court on exceptions to the master's report, without objection or protest, waived their right to a jury trial, especially where another defendant protested, and insisted upon its right to a jury trial, but the defendants in question remained silent and did not join in such protest. Wm. Edwards Co. v. La Dow (C. C. A.) 230 F. 378.

A stipulation on first trial, waiving jury trial, does not affect right of either party to demand trial by jury after judgment on first trial has been reversed and cause remanded. F. M. Davies & Co. v. Porter, 248 F. 397, 160 C. C. A. 407.

Failure to object to the hearing by the court of a motion to dismiss for want of jurisdiction, although it raises an issue of fact, held a waiver of the right to a jury trial. Parkerson v. Borst (C. C. A.) 251 F. 242.

3. —— Authority for review.—In view of Comp. St. 1916, §§ 1584, 1587, 1668, where a case was tried without

a jury on an oral waiver of a jury trial and without any written stipulation waiving such a trial, the questions decided at the trial could not be reexamined on writ of error, and no questions were open to review except those arising upon the process pleadings, or judgment. Illinois Surety Co. v. U. S. (C. C. A.) 229 F. 527.

5¼. **Agreed statement of facts.**—It is not permissible to import into an agreed statement of facts, by inference, deduction, or otherwise, anything not expressly stated as a fact. Blair v. U. S., 241 F. 217, 154 C. C. A. 137, reversing judgment U. S. v. Blair-Murdock Co. (D. C.) 228 F. 77.

5½. **View by court.**—In action tried to the court, facts ascertained by view of locus in quo may be considered as evidence; but, where the matter is one for experts, the court will not consider impressions obtained on view, as against their opinions. Wall v. U. S. Mining Co. (C. C. A.) 232 F. 613.

6. **Findings of court.**—Findings that a bank had accepted a deposit unconditionally and intended to honor a check by the depositor held findings of ultimate facts, which the court had power to make. Security Nat. Bank of Sioux City, Iowa, v. Old Nat. Bank of Battle Creek, Mich., 241 F. 1, 154 C. C. A. 1.

Where defendant rested on the evidence introduced by plaintiff, she cannot complain that the court found the facts in accordance with plaintiff's evidence. Winslow v. Staab (D. C.) 233 F. 305.

7. **General or special findings.**—Where a case is submitted to the court under this section, and a general finding is made on which judgment is entered, a party cannot thereafter demand as of right that special findings be made. Calaf v. Fernandez, 239 F. 795, 152 C. C. A. 581.

Under this section the court, where an action is tried without jury, has discretion to find the facts either generally or specially. Virginia & West Virginia Coal Co. v. Charles (D. C.) 251 F. 83.

8. **Form and sufficiency of findings.**—A memorandum opinion by the trial judge, who, sitting without a jury, found generally for defendant, does not amount to a special finding of facts. Smith & Co. v. Kingfalfa Mills, 237 F. 82, 150 C. C. A. 284.

An opinion will not take the place of findings, as regards the record, preserving right to review depending on findings. First Nat. Bank v. Weitzel, 239 F. 497, 152 C. C. A. 375.

9. **Agreed statement of facts as finding.**—Where stipulated facts were the ultimate facts, it is unnecessary that they be repeated by the court in the form of special findings in order that their sufficiency to support the judgment may be challenged. U. S. v. Chicago & A. R. Co. (C. C. A.) 250 F. 101.

9½. **Construction of findings.**—Findings by the trial court held to show that the bonds of a bankrupt corporation had been delivered as collateral to secure an antecedent debt represented by a note indorsed by directors, not that they had been delivered as consideration for making an individual note in payment of the corporation's note. Lyon v. Bleeg, 240 F. 405, 153 C. C. A. 331.

10. **Findings equivalent to verdict.**—Both under the decisions and this section, finding of fact by trial court, whether general or special, has effect of a verdict. First Nat. Bank of Bayonne v. Anglo-South American Bank, 230 F. 817, 145 C. C. A. 127; Turner v. Schaeffer, 249 F. 654, 161 C. C. A. 564.

In a proceeding under the pure food act of Congress to condemn case of lithia water as misbranded, the finding of the court on jury trial being waived must be accepted as the verdict of a jury. Goode v. U. S., 44 App. D. C. 162.

11. **Review.**—Where an action is tried to the court without a jury by stipulation under this section the judgment is not subject to revision, if supported by the findings and there is material evidence in support of such findings. —Schoenwald v. Bishop, 244 F. 715, 157 C. C. A. 163. See, also, notes under § 1668, post.

12. —— **Questions reviewable.**—Under this section where transcript of record did not show that jury was waived by stipulation in writing, judgment, though valid, because judge is regarded as sitting as arbitrator, cannot be reviewed by writ of error, except for error appearing on face of pleadings or of judgment itself. Bowers v. Henry Steers, Inc., 241 F. 377, 154 C. C. A. 257.

13. —— **Findings.**—Under Comp. St. 1916, §§ 1587, 1668, findings in actions tried to the court may be general or special, and where general only rulings during trial can be reviewed, but if special sufficiency to support judgment may be determined. Good Pine Lumber Co. v. Duke, 229 F. 714, 144 C. C. A. 124; Maryland Casualty Co. of Baltimore, Md., v. Orchard Land & Timber Co., 240 F. 364, 153 C. C. A. 290; Good Pine Lumber Co. v. Duke, 240 F. 695, 153 C. C. A. 493; Société Nouvelle d'Armement v. Barnaby, 246 F. 68, 158 C. C. A. 294.

Where an action at law is by stipulation tried to the court, under the provisions of Rev. St. §§ 649, 700 (Comp. St. 1916, §§ 1587, 1668), the findings of fact by the court are not reviewable by an appellate court, if there is any competent evidence on which they could have been made. Chautauqua Institu-

tion v. Zimmerman, 233 F. 371, 147 C. C. A. 307.

Whether the trial court's findings are supported by the agreed facts and the additional evidence is a question of fact on the weight of the evidence, which, in a trial of an action at law by the court, the national courts are forbidden to review by Const. Amend. 7, and Rev. St. §§ 649, 700 (Comp. St. 1916, §§ 1587, 1668). Security Nat. Bank of Sioux City, Iowa, v. Old Nat. Bank of Battle Creek, Mich., 241 F. 1, 154 C. C. A. 1.

15. **Reference—Power to refer.**—See, also, notes under § 1668, post.

17. —— **Review.**—Under Rev. St. §§ 649, 700 (Comp. St. 1916, §§ 1587, 1668), where parties waived jury trial by attending proceeding under reference without objection, or written stipulation held, that the only question reviewable was whether the facts found sustained the judgment. Wm. Edwards Co. v. La Dow, 230 F. 378, 144 C. C. A. 520, modifying judgment In re Miller (D. C.) 221 F. 471.

Cited without definite application, McCoach v. Continental Passenger Ry. Co. of Philadelphia (C. C. A.) 233 F. 976; Prudential Ins. Co. of America v. Herold (D. C.) 247 F. 681.

§ 1590. (R. S. § 953, as amended, Act June 5, 1900, c. 717, § 1.) Bill of exceptions.

Decisions based on rules of Circuit Court of Appeals, see notes under § 1114, ante.

Notes of Decisions

I. OBJECT, FORM AND CONTENTS OF BILL OF EXCEPTIONS

1. **Necessity and sufficiency of objections and exceptions at trial to preserve questions for review in general.**—In trial of issue of fact by court without a jury, see notes under § 1668.

On writ of error to review jurisdiction in action against bank commissioner and his surety, whether surety is liable need not be decided, where the judgment of the District Court was not defensively invoked upon such question. Johnson v. Lankford, 38 S. Ct. 203, 245 U. S. 541, 62 L. Ed. 460.

In suit to restrain municipality from enforcing water rate ordinance, held, that point not having been raised below, it was not open to municipality to urge on appeal that, as complainant could be excluded from streets, its property should be computed at its junk value. City and County of Denver v. Denver Union Water Co., 38 S. Ct. 278, 246 U. S. 178, 62 L. Ed. 649.

Where no question of misjoinder was raised by the pleading, it cannot be raised on appeal. Historical Pub. Co. v. Jones Bros. Pub. Co., 231 F. 638, 145 C. C. A. 524, motion for reargument dismissed 231 F. 784, 145 C. C. A. 655.

An appellate court on a writ of error can only consider errors which have been properly excepted to at the trial. International Lumber Co. v. U. S., 231 F. 873, 146 C. C. A. 69; Continental Public Works Co. v. Stein, 232 F. 559, 146 C. C. A. 517; Kleman v. Anheuser-Busch Brewing Ass'n, 237 F. 903, 150 C. C. A. 643.

Where the rulings given were prima facie correct, appellant, if desirous of anything further, should bring the rulings to the attention of the court. Victor American Fuel Co. v. Tomljanovich, 232 F. 662, 146 C. C. A. 588, affirming orders Tomljanovich v. Victor American Fuel Co. (D. C.) 227 F. 951, and 230 F. 467.

In action against master for conscious suffering and death of servant brought under Massachusetts Employers' Liability and Workmen's Compensation Acts, contention that master was entitled to rely under its general denial upon contractual assumption of risk by servant, as opposed to voluntary assumption of risk, not having been urged below, cannot be urged on appeal. Boston & M. R. R. v. Baker, 236 F. 896, 150 C. C. A. 158.

Difficult questions, while possibly involved in a proceeding to cancel a contract, as to the legality of legislation, cannot be disposed of, when not raised by precise pleadings, and not decided below. Garzot v. O'Neill, 237 F. 73, 150 C. C. A. 275.

In action to recover taxes paid, on theory that they were assessed in violation of Pol. Code Porto Rico, § 290, exempting certain property, contention that property assessed was not of kind exempted, cannot for first time be raised in the appellate court by assignment of errors. Richardson v. Fajardo Sugar Co., 237 F. 195, 150 C. C. A. 341.

In view of failure to object at trial, held, that the limited scope of evidence and the limited bar of the action on the ground of election of remedies could not be raised on appeal. Arnold v. Horrigan, 238 F. 39, 151 C. C. A. 115.

A contention not urged in trial court cannot be considered on appeal. Towle v. Pullen, 238 F. 107, 151 C. C. A. 183.

A ruling directing the jury to allow interest upon whatever verdict they should render could not be reviewed, where no exception was taken. Goelet v. Matt J. Ward Co., 242 F. 65, 155 C. C. A. 9.

Objection that contract sued on is contrary to good morals and champertous, and not enforceable in equity, may be considered by appellate court, though not raised below. Jones v. Pettingill, 245 F. 269, 157 C. C. A. 461, certiorari denied Pettingill v. Jones, 38 S. Ct. 61, 245 U. S. 663, 62 L. Ed. 536.

Appeal from decree directing distribution in creditors' suit held to present nothing for review, and should be dismissed, because no exceptions were taken to auditor's report, on which it was based. Evans v. Crown Gasoline & Oil Co., 245 F. 933, 158 C. C. A. 221.

The defense that plaintiff has no title to the asserted right of action is always open and may be raised in the appellate court, although not asserted in the court below. Sterrett v. Second Nat. Bank of Cincinnati, Ohio, 246 F. 753, 159 C. C. A. 55, certiorari granted 38 S. Ct. 345, 246 U. S. 668, 62 L. Ed. 930.

Objection that suit was prematurely brought is waived, where without presenting objection in any way to court below, defendants answered to merits. Lumbermen's Trust Co. v. Title Ins. & Inv. Co. of Tacoma, 248 F. 212, 160 C. C. A. 290.

Defense that contract upon which suit is based was invalid, because made after creation of relation of attorney and client, there being no evidence that contract was just and equitable, cannot be presented for the first time on appeal, since it involves the trial of two issues of fact. Maynard v. Reynolds (C. C. A.) 251 F. 784.

1a. —— Coparties.—On the trial jointly of defendants, indicted jointly, but represented on the trial by separate counsel, objections would sometimes be made and exceptions taken by counsel for one defendant, and sometimes by counsel for the other. Held, that a request by counsel for one of the defendants for an instruction, and an exception taken by him to its refusal, could be invoked in behalf of the other defendant, as the real object of making objections and taking exceptions is to call the trial court's attention especially to some point of law, and this object was accomplished when one counsel called the court's attention thereto. Gardner v. U. S. (C. C. A.) 230 F. 575.

1b. —— Objections to jurisdiction.—On writ of error to review jurisdiction of District Court, whether petition or case is defective need not be decided, where the judgment of the District Court was not defensively invoked on such question. Johnson v. Lankford, 38 S. Ct. 203, 245 U. S. 541, 62 L. Ed. 460.

Where contention that plaintiff had fraudulently magnified damages so as to give federal court jurisdiction was not raised below, contention that court was without jurisdiction cannot be sustained on error, unless fraud affirmatively appears. Mullins Lumber Co. v. Williamson & Brown Land & Lumber Co., 246 F. 232, 158 C. C. A. 392.

On appeal from a decree of the District Court, it is the duty of the Circuit Court of Appeals to see that the statutory jurisdiction of the District Court was not exceeded, irrespective of any question raised by the parties with respect to the matter. Devost v. Twin State Gas & Electric Co. (C. C. A.) 250 F. 349.

Under Rev. Laws Mass. 1902, c. 173, §§ 18, 19, questions of jurisdiction must be raised by plea or answer in abatement; however, evidence relating to the question of jurisdiction having been admitted at the trial, a case on appeal will be treated as though a plea in abatement had been filed. Bjornquist v. Boston & A. R. Co. (C. C. A.) 250 F. 929.

On every writ of error or appeal in the federal courts, the first and fundamental question is that of jurisdiction, of which the court itself must take notice, as well the jurisdiction of the court below as its own. Chicago, R. I. & P. Ry. Co. v. State of Nebraska (C. C. A.) 251 F. 279.

1c. —— Pleadings.—Though objection might have been made to mode of amendment of complaint, no objections having been made below, matter cannot be reviewed on appeal. Victor American Fuel Co. v. Tomljanovich, 232 F. 662, 146 C. C. A. 588, affirming orders Tomljanovich v. Victor American Fuel Co. (D. C.) 227 F. 951, and 230 F. 467.

Though complaint as amended might have been subject to special demurrer as duplicitous, no demurrers having been made below, matter cannot be reviewed on appeal. Id.

An exception is not necessary to open a question of law arising in the sustaining of a demurrer to a complaint. Snowden v. Ft. Lyon Canal Co., 238 F. 495, 151 C. C. A. 431.

Where defendant claimed as bona fide purchaser, held, that failure of its answer to set aside mineral patents to allege that consideration was bona fide and truly paid cannot be raised for first time on appeal, answer not having been attacked below, and evidence showing such payment having been received without objection.—U. S. v. Grand Canyon Cattle Co., 247 F. 446, 159 C. C. A. 500.

1d. —— Defects in indictment.—Where accused by plea in abatement to indictment attacked mode of selecting grand jury, and overruling of that plea is shown by record proper, question is sufficiently reserved for review; exceptions being unnecessary. Dunn v. U. S., 238 F. 508, 151 C. C. A. 444.

Though indictment, charging that de-

fendant deposited in mails letter and circular giving information as to obtaining of contra-conceptives, was attacked for lack of reasonable certainty, objection that circular was not set out in extenso was not raised, so as to justify review, since, if that was the basis of objection, it should have been stated more definitely. Pilson v. U. S., 249 F. 328, 161 C. C. A. 336.

The objection that the language of the indictment is indefinite, uncertain, and ambiguous is not available on writ of error, where no such objection was made in the court below, since it does not then appear that accused was prejudiced. Sugar v. U. S. (C. C. A.) 252 F. 79.

1a. —— Conduct of trial in general.—Remarks made by the court in the presence of the jury are not subject to review by an appellate court, where no objection was made nor exception taken at the time. Lane v. Leiter, 237 F. 149, 150 C. C. A. 295.

Where there was no objection to a statement by the court in admitting evidence, and no exception was reserved at the time, the matter cannot be reviewed. Wolf v. Edmunson, 240 F. 53, 153 C. C. A. 89.

2. —— Rulings on evidence and sufficiency of evidence.—An appeal will not be dismissed, on the ground that there was no proof of complainant's ownership of the cause of action sued on, where the point was not made before the trial court. Davis v. Virginia Ry. & Power Co., 229 F. 633, 144 C. C. A. 43, certiorari denied Virginia Ry. & Power Co. v. Davis, 36 S. Ct. 723, 241 U. S. 672, 60 L. Ed. 1231.

Plaintiff had been purchasing millwood from defendant, and had become largely indebted to defendant. He conveyed all of the millwood then owned by him to defendant on June 17, 1911, and took in return a written agreement giving him an option to purchase it at $1.25 a load. He sued defendant, alleging a subsequent oral contract by which he was to sell the millwood for defendant and receive for his services and expenses the proceeds above $20,000. Defendant denied the oral agreement, and alleged that when the sale of the wood to it was made plaintiff was indebted to other persons, and that in consideration of the bill of sale it promised to pay his other debts. Plaintiff denied that defendant agreed to settle or pay any such debts. On redirect examination he testified, over the objection that it was improper and no part of the case, that other creditors were not provided for in the bill of sale. Held, that the objection that the evidence was improper was under the circumstances too general and uncertain upon which to found a fatal error, as it could not have been clear to the court what the basis of the objection was. Itasca Lumber Co. v. Martin (C. C. A.) 230 F. 584.

The admission of M.'s testimony was not error, even though it was irrelevant and immaterial, where plaintiff's testimony regarding the conversation was introduced without objection, and no objection or motion to strike out for irrelevancy or immateriality was ever made during the trial. Id.

Appellate courts need not consider the question whether there was substantial evidence to sustain a conviction, in the absence of a request for an instructed verdict and an exception to its denial. Glass v. U. S., 231 F. 65, 145 C. C. A. 253.

In trespass to try title, objection to defendant's answer in a prior suit in equity offered as evidence by plaintiffs held sufficient to call the court's attention to the fact that it was unsigned and unsworn to by defendant or his counsel. Creal v. Gallup, 231 F. 96, 145 C. C. A. 284.

An objection to testimony given in another case, because it could not bind defendants, waived the objection that it deprived defendants of right to cross-examination. Grandison v. Robertson, 231 F. 785, 145 C. C. A. 605, modifying decree (D. C.) 220 F. 985.

General objections to evidence are sufficient, where the ground therefor is manifest; but, where it is not manifest, the objection must state the specific ground on which it is based. Id.

Under a general objection to the authentication of a transcript of judicial proceedings, objection on appeal that clerk's name was typewritten, where not specifically urged below, cannot be relied on. Louisville & N. R. Co. v. Western Union Telegraph Co., 233 F. 82, 147 C. C. A. 152.

Where testimony is inadmissible, and could not under any state of facts be rendered admissible, a general objection is sufficient to present for review the question of the admission of such evidence. Safford v. U. S., 233 F. 495, 147 C. C. A. 381.

Plaintiff held not entitled to complain of introduction of evidence that defendant was incompetent to contract, though such defense was not pleaded, where no claim of surprise or motion to postpone was made. Arkansas Grand Prairie Oil & Gas Co. v. Davidson, 233 F. 641, 147 C. C. A. 449.

In an action for injuries to a shipment of cattle, the carrier held not entitled to complain that damages were assessed on the basis of the value of the animals at destination; no objection being made to evidence thereof. Southern Pac. Co. v. Stewart, 233 F. 956, 147 C. C. A. 630.

In the federal courts it is not sufficient to state that objection is made to the admission of evidence without at the same time stating specifically the ground of the objection. Gilman v.

Lamson Co., 234 F. 507, 148 C. C. A. 273.

In action for wrongful death, it cannot be urged on appeal for the first time that there was no proof of heirship of those parties for whose benefit the action was brought. Miller & Lux v. Petrocelli, 236 F. 846, 150 C. C. A. 108.

Where only a general objection was made to the admission of evidence offered, a specific objection will not be considered by the appellate court unless of such a character that it could not have been obviated in the trial court. Examiner Printing Co. v. Aston, 238 F. 459, 151 C. C. A. 395, affirming judgment Aston v. Examiner Printing Co. (D. C.) 226 F. 496.

Where there was no request to direct a verdict, the charge is not in the record, and no exceptions were taken, nor error assigned to the ruling on a motion for new trial, defendant cannot urge the insufficiency of the evidence to support the verdict. Kalloch v. Hoagland, 239 F. 252, 152 C. C. A. 240.

Objection to introduction of exemplified copy of letters testamentary of foreign executor, who was suing as plaintiff, cannot be considered on appeal, where not called to attention of trial court. Cordingly v. Kennedy, 239 F. 645, 152 C. C. A. 479.

Where it did not appear that objection to testimony was made before witness answered question, receipt thereof cannot be complained of on appeal. Klein v. Darnell, 239 F. 844, 152 C. C. A. 630.

Where no objection was made below that an answer to a question was not responsive, but was only an estimate, and there was no request to strike same, matter cannot be complained of on appeal. Wolf v. Edmunson, 240 F. 53, 153 C. C. A. 89.

An objection to a question is properly overruled when no ground is specified, or when the ground is so general as to be insufficient to direct attention to the particular defect or the objectionable feature relied upon. Greer v. U. S., 240 F. 320, 153 C. C. A. 246.

The question of the sufficiency of the evidence to support the charge made by the indictment is not presented for review, where no exception was reserved to a ruling of the court thereon. Benson v. U. S., 240 F. 413, 153 C. C. A. 339.

Assignments of error to the admission of evidence cannot be considered on appeal, where the objections were general, and did not point out the specific grounds for the rejection of such evidence. R. D. Cole Mfg. Co. v. Mendenhall, 240 F. 641, 153 C. C. A. 439.

An objection to evidence in general terms as irrelevant, immaterial, and incompetent is too general to be considered on error if in any possible circumstances it could be deemed, or could be made, relevant, material, or competent. Rose v. U. S., 240 F. 685, 153 C. C. A. 483.

In action against railroad company for violating Hours of Service Act, admission of evidence of other accidents claimed to show a negligent habit on part of company could not be questioned for first time on appeal, on ground they were not similar to principal accident offered in justification of retention of employés on duty longer than 16 hours. Atchison, T. & S. F. Ry. Co. v. U. S., 243 F. 114, 155 C. C. A. 644.

Objection that use of mails in execution of scheme to defraud was in response to decoy letters held not available, where objection on that ground was not made to the admission of the letters. Freeman v. U. S., 243 F. 353, 156 C. C. A. 133.

Admission of mortgage and certified copy thereof held not reviewable, where objections were not made or else exceptions were not taken. Lohman v. Stockyards Loan Co., 243 F. 517, 156 C. C. A. 215, certiorari denied 38 S. Ct. 134, 245 U. S. 668, 62 L. Ed. 539.

Rulings in admitting and refusing to strike evidence cannot be reviewed; exceptions not having been taken thereto. Clark v. U. S., 245 F. 112, 157 C. C. A. 408.

Accused held not entitled to complain that reference by witness for identification purposes to another prosecution against him implied that accused was guilty of other charge, where his objection did not present that theory. Dean v. U. S., 246 F. 568, 158 C. C. A. 538.

An objection that the introduction in evidence of certified copies of certain statutes made unnecessary costs could not be urged on appeal, when not made when the exhibits were offered in evidence. Smith v. Smith, 247 F. 461, 159 C. C. A. 515.

Defendant is not entitled to have objections to admission of evidence considered on error, when they were not raised in court below, particularly where objections could have been obviated, if raised. Griffin v. U. S., 248 F. 6, 160 C. C. A. 146.

In prosecution for depositing in mails nonmailable matter, defendant, if not satisfied, that post cards and letter involved contained nonmailable communications when received, should have stated that as ground for their rejection, or raised it by motion for directed verdict, and cannot for first time raise it on writ of error. Id.

Assignment of error complaining of admission of evidence on ground of objection not urged in court below is not well taken. Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712.

The propriety of a hypothetical question, objected to on the ground that it assumed the existence of conditions not shown by the evidence, cannot be reviewed, where the objection did not

point out any matter which was not pertinent to the case. Sharples Separator Co. v. Skinner (C. C. A.) 251 F. 25.

The objection that certain pamphlets offered in evidence by plaintiff were not the identical ones handed him is not available in the appellate court, where not raised below. Id.

A mere "I object" to questions, without stating ground of objection, did not necessarily suggest impropriety of cross-examination as to indictments or arrests, as distinguished from convictions, so as to allow review. Shea v. U. S. (C. C. A.) 251 F. 433.

For review of admission of evidence, exception must have been taken. Spann v. U. S. (C. C. A.) 252 F. 517.

Objection of admission of ledger sheets, without accounting for the original memoranda, is not available in appellate court; the objection below having been merely irrelevancy and immateriality. Id.

It is within the sound discretion of the Circuit Court of Appeals to notice the claim of counsel for a convicted defendant that there was no evidence to sustain the verdict, although the question was not raised in the trial court. Doe v. U. S. (C. C. A.) 253 F. 903.

3. — **Conduct of counsel.**—A conviction will not be reversed for permitting United States attorney to read extracts from the testimony given by the witness he was cross-examining before the grand jury, which could have been read to the witness to refresh her recollection, where no exception was taken to reading those extracts. Bosselman v. U. S., 239 F. 82, 152 C. C. A. 132.

Where no exception was taken relating exclusively to language of summing up of defendant's counsel, complaint on appeal cannot be predicated thereon. Akalitis v. Philadelphia & Reading Coal & Iron Co., 239 F. 299, 152 C. C. A. 287.

3½. — **Conduct and deliberations of jury.**—In absence of objection or request for ruling, anything said or done concerning an object left where the jury could see it, and examined by one of them without being in evidence, held not reviewable. York v. U. S., 241 F. 656, 154 C. C. A. 414.

Permitting jury to take depositions to jury room cannot be reviewed, where objection was not made or else exception was not taken. Lohman v. Stockyards Loan Co., 243 F. 517, 156 C. C. A. 215, certiorari denied 38 S. Ct. 134, 245 U. S. 668, 62 L. Ed. 539.

4. — **Submission of issues of fact to jury, and verdict.**—Where there was no request to direct a verdict, the charge is not in the record, and no exceptions were taken, nor error assigned to the ruling on a motion for new trial, defendant cannot urge the insufficiency of the evidence to support the verdict. Kalloch v. Hoagland, 239 F. 252, 152 C. C. A. 240.

A claim that the verdict was a compromise verdict need not be considered, where it rests upon no exception taken at the trial. Goelet v. Matt J. Ward Co., 242 F. 65, 155 C. C. A. 9.

5. — **Instructions.**—Where petition generally alleged damages submitted, defendant's objection to charge on damages as specifying items not included in petition presents nothing for review, where defendant was requested by the court to make its objection specific. Atlas Portland Cement Co. v. Hagen, 233 F. 24, 147 C. C. A. 94.

In action to recover compensation for procuring an agency, held, that exception to charge did not present question whether expenses should be deducted from the agreed commission, and so such question cannot be raised on error. Ransom & Randolph Co. v. Pinches, 234 F. 847, 148 C. C. A. 445.

The construction placed upon a contract by a trial court in its instructions cannot be reviewed, where no different instructions on the point were requested, and no exceptions taken to those given. Alverson v. Oregon-Washington R. & Nav. Co., 236 F. 331, 149 C. C. A. 463.

In the federal courts, exceptions to instructions given, or to the refusal to give instructions requested, to be considered by an appellate court, must be taken at the trial and while the jury is at the bar, and such fact must affirmatively appear. Alverson v. Oregon-Washington R. & Nav. Co.. 236 F. 331, 149 C. C. A. 463; Miller & Lux v. Petrocelli, 236 F. 846, 150 C. C. A. 108. See, also, notes under § 1114, ante.

It is sufficient exception for review that, at proper time, the direction of verdict was so brought to attention of court and defendant that both understood the purpose of plaintiffs to make it the basis of a writ of error. Long v. Atlantic Coast Line R. Co., 238 F. 919, 151 C. C. A. 653.

Alleged errors in the charge of the court cannot be considered, in the absence of exceptions. American Locomotive Co. v. Harris, 239 F. 234, 152 C. C. A. 222; Cincinnati, N. O. & T. P. Ry. Co. v. Hall, 243 F. 76, 155 C. C. A. 606; Fronsoe v. Bushnell (C. C. A.) 251 F. 850; Kreuzer v. U. S. (C. C. A.) 254 F. 34.

The omission in the charge to withdraw immaterial testimony from the consideration of the jury will not be considered on writ of error, where the charge was not excepted to for that reason, and no error was assigned. Co-operative Raw Fur Co. v. American Credit Indemnity Co., 240 F. 67, 153 C. C. A. 103.

The omission in the charge to withdraw immaterial testimony from the consideration of the jury will not be

considered on writ of error, where the charge was not excepted to for that reason, and no error was assigned. Cooperative Raw Fur Co. v. American Credit Indemnity Co., 240 F. 67, 153 C. C. A. 103.

Defendant cannot object on appeal to the court's omission to instruct the jury that failure to warn, to be actionable, must have been the proximate cause of the injury, where he did not except to the charge for failure to contain it. Republic Iron & Steel Co. v. Hines, 240 F. 77, 153 C. C. A. 113.

Error in charge hypothesizing facts not shown by evidence held to have been squarely called to the court's attention by the exception. May Department Stores Co. v. Runge, 241 F. 575, 154 C. C. A. 351.

Objection that use of mails in execution of scheme to defraud was in response to decoy letters held not available, where exception was not taken to instructions that this was immaterial. Freeman v. U. S., 243 F. 353, 156 C. C. A. 133.

Overruling of motion for new trial based on alleged errors in instructions is not alone sufficient to reverse judgment, where no exceptions were taken to any of instructions given. Daly Judge Mining Co. v. Towey, 240 F. 658, 153 C. C. A. 456.

Exceptions to instructions must be sufficiently specific to direct the attention of the court to the particular errors complained of. Hammond v. U. S., 246 F. 40, 158 C. C. A. 266, reversing judgment U. S. v. Hammond (D. C.) 226 F. 849.

Exceptions to instructions on measure of damages for cutting timber from public land held distinctly based on contention that court erred in authorizing any other measure of damages than value of stumpage, and in authorizing the jury to add interest. Id.

Defendant's exception to that part of the charge alleged to contain a request of plaintiff cannot be sustained on writ of error, where it appeared from the charge that it was not given as instruction, but only as a statement of plaintiff's contention. Boston Elevated Ry. Co. v. Teele, 248 F. 424, 160 C. C. A. 434.

Where raised by motion for an instructed verdict for defendant when the case was finally rested, the question whether negligence asserted was that of defendant master may be reviewed on writ of error, though no exceptions were reserved to instructions presenting such issue. Consolidated Interstate-Callahan Mining Co. v. Witkouski (C. C. A.) 249 F. 833.

Where defendant excepted to a charge that there is a presumption that the testimony of a witness having peculiar knowledge, which was withheld, would not support the contention of the party withholding it, on the ground that the charge applied to one of its agents, but it appeared that the designated agent took the stand and fully testified, neither the propriety of the charge as a general statement, nor whether it was prejudicial to defendant as referring to another agent who did not in fact testify, need be reviewed. Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712.

Exception to the charge submitting the theory that if plaintiff was a mere middleman, without any agency duties, he might recover commissions of the buyer, even if the sellers did not know of his compensation agreement with the buyer, being apparently intended only to challenge the rule of law announced, does not authorize review of the charge as unauthorized by the evidence. Eaton v. Clabaugh (C. C. A.) 251 F. 575.

5¼. —— **New trial.**—On writ of error, a judgment cannot be reversed on account of alleged newly discovered evidence, never called to the attention of the trial court. Turner v. Schaeffer, 249 F. 654, 161 C. C. A. 564.

5½. —— **Dismissal.** Where no exception was taken to the dismissal of the complaint, an appellate court need not consider the matter on plaintiff's writ of error. Farley v. Carey Show Print Co., 249 F. 476, 161 C. C. A. 434.

5¾. —— **Judgment.**—Where separate suits by a shipper against two railway companies to enforce an order of the Interstate Commerce Commission were heard together, error in awarding a joint judgment against both defendants for attorney's fees does not require a reversal, where the only objection made below was that the amount was excessive. Chicago, M. & St. P. Ry. Co. v. George A. Hormel & Co., 240 F. 386, 153 C. C. A. 312.

6. **Necessity or object of bill of exceptions.**—A bill of exceptions is necessary to review the rulings of the District Court on motions relating to the pleadings, the evidence, or requests for instructions; and where grounds of the written motion for directed verdict, the written motion itself, the ruling thereon, and the exception thereto were not preserved by the bill of exceptions, they were not a part of the record, and the ruling was not reviewable. Chicago Great Western R. Co. v. Le Valley, 233 F. 384, 147 C. C. A. 320, denying rehearing 227 F. 1016, 141 C. C. A. 664.

There being in the record an agreed statement of facts which the court used as a basis of its judgment, a bill of exceptions to support an assignment to the rendering of judgment for a certain amount is not required. Mound Coal Co. v. Jeffrey Mfg. Co., 240 F. 129, 153 C. C. A. 165, granting rehearing 233 F. 913, 147 C. C. A. 587.

A writ of error which is accompanied by neither the judgment roll nor a bill of exceptions, presents no matter which

can be reviewed by the appellate court. Fraad Talking Mach. Co. v. Empire Mfg. Co. (C. C. A.) 250 F. 618.

Where not saved in bill of exceptions, bill of particulars is no part of record. Central Commercial Co. v. Jones-Dusenbury Co. (C. C. A.) 251 F. 13.

A "bill of exceptions" is a written statement of objections to the decision of a court upon a point of law, made by a party to the cause, and properly certified; and a stenographic transcript of the entire proceedings of a criminal trial, including the colloquies of counsel, etc., is not a bill of exceptions, and should not be allowed as such. Linn v. U. S. (C. C. A.) 251 F. 476.

Where there was no bill of exceptions, and no error appeared in the record, judgment must be affirmed on writ of error. Leitner v. U. S. (C. C. A.) 254 F. 304.

8. Cases tried by court.—See notes under § 1668, post.

14. Matters apparent on record reviewable without bill of exceptions—Verdict.—Whether verdict supports judgment is question of law which appears on face of record, without bill of exceptions, and may be assigned as ground of reversal, though no exception is taken. East St. Louis Cotton Oil Co. v. Skinner Bros. Mfg. Co. (C. C. A.) 249 F. 439.

19. Subject and contents.—An assignment of error relating to remarks of the trial court, which remarks do not appear in the bill of exceptions, cannot be considered. Fisher Mach. Works Co. v. Dougherty, 231 F. 910, 146 C. C. A. 106.

20. Incorporating evidence—Necessity.—Refusal to withdraw one of plaintiff's claims from the jury as without supporting evidence held not shown to be erroneous, where bill of exceptions did not purport to set out all the evidence or its substance. Pacific Mail S. S. Co. v. Balderach, 229 F. 562, 144 C. C. A. 22.

Where record fails to disclose that bill of exceptions contains all of the evidence produced in case, verdict cannot be reviewed on writ of error. Central Commercial Co. v. Jones-Dusenbury Co. (C. C. A.) 251 F. 13.

27. Conclusiveness of bill.—Though the opinion of the Circuit Court of Appeals shows that counsel for plaintiff in that court stated that the quantum meruit claim had been disregarded, and that the trial proceeded solely on ground of breach of special contract, the bill of exceptions failing to bear this out, the trial court cannot, on the theory that such was the fact, be put in error in admission of evidence. Guerini Stone Co. v. P. J. Carlin Const. Co., 39 S. Ct. 102, 63 L. Ed. —.

Where evidence was made part of the exceptions, held, that recital in the bill of exceptions could add nothing to what the evidence itself showed. Boultbee v. International Paper Co., 229 F. 951, 144 C. C. A. 233.

II. ALLOWANCE AND SIGNING OF BILL OF EXCEPTIONS

30. Time for allowance of bill.—The right to a bill of exceptions expires with the adjournment of the term at which the case was tried, unless there is an order, agreement of counsel, or ruling of the court granting time within which to file bills, save in extraordinary circumstances. U. S. v. Thibodeaux, 232 F. 91, 146 C. C. A. 283; Proctor Coal Co. v. United States Fidelity & Guaranty Co., 236 F. 910, 150 C. C. A. 172; Susquehanna Coal Co. v. Casualty Co. of America (D. C.) 247 F. 137.

Mere misunderstanding of rule does not warrant settlement of bill of exceptions after term. Susquehanna Coal Co. v. Casualty Co. of America (D. C.) 247 F. 137.

Where defendant's counsel, who prepared bill of exceptions, took it to court at chambers after plaintiff's counsel had made objection to insertion of typewritten copy of insurance policy involved, and court in presence of opposing counsel observed necessity of inserting photographic copy, bill, in view of informality of such proceedings, must be deemed to have been presented at that time. Defendant's counsel, having presented bill of exceptions during term, held, under circumstances, not to have been guilty of neglect, though bill of exceptions, as changed, was not presented during term, because of intervening summer recess and inability of defendant's counsel to serve same on counsel for plaintiff. In re Federal Life Ins. Co., 248 F. 908, 161 C. C. A. 26.

A bill of exceptions may be allowed by consent after the time fixed by order or rule of the District Court and after the expiration of the term at which the case was decided. E. I. Du Pont de Nemours & Co. v. Smith, 249 F. 403, 161 C. C. A. 377.

Where after reversal of judgment against them as executors trial court set aside stipulation dismissing as to defendants individually, refusal of court to sign and allow a bill of exceptions setting forth proceedings on motion to vacate stipulation, cannot be reviewed, as, after trial on the merits, defendants who brought error made no effort to have proceedings on motion incorporated in bill of exceptions of proceedings of trial which was duly signed. Griggs v. Nadeau (C. C. A.) 250 F. 781.

30½. Allowance of informal bill.—A paper, though informal, held sufficient as a proposed bill of exceptions to warrant the judge in his discretion receiving it and putting it in shape for settlement. Long v. Atlantic Coast Line R. Co., 238 F. 919, 151 C. C. A. 653.

31. Authentication.—The clerk of the court cannot make exceptions a part of

the record, and reviewable, by writing them into the journal of the proceedings of the trial court, without the approving certificate or signature of the trial judge. Chicago Great Western R. Co. v. Le Valley, 233 F. 384, 147 C. C. A. 320, denying rehearing 227 F. 1016, 141 C. C. A. 664.

38. **Amendment.**—Where there was no bill of exceptions, a writ of error will not be remanded to compel the trial court to settle and include therein a condensed statement in narrative form of the evidence. Mound Coal Co. v. Jeffrey Mfg. Co., 233 F. 913, 147 C. C. A. 587, affirming judgment Jeffrey Mfg. Co. v. Mound Coal Co. (D. C.) 215 F. 222, rehearing granted Mound Coal Co. v. Jeffrey Mfg. Co. (C. C. A.) 240 F. 129, and judgment affirmed on rehearing 240 F. 412.

§ 1591. (R. S. § 954.) Defects of form; amendments.

I. CONSTRUCTION AND APPLICATION OF STATUTE

4. **Suits in equity.**—Where a District Court erroneously held on demurrer to a bill that a certain person was not a necessary party, on reversal of the final decree in the case complainant is entitled to amend the bill by making such person a party. Brown v. Fletcher, 231 F. 92, 145 C. C. A. 280. See, also, notes under § 1536.

II. DEFECTS CURED BY STATUTE

4½. **Jurisdictional defects.**—This section applies to all proceedings, regardless of state statutes, but cannot give jurisdiction. In re Griggs, 233 F. 243, 147 C. C. A. 249, denying rehearing 227 F. 795, 142 C. C. A. 319.

7. **Pleadings—Variance.**—Though the evidence was sufficient prima facie to make out a cause of action on a quantum meruit, the complaint in an action for commissions was properly dismissed, where the cause of action on a quantum meruit was not pleaded, and plaintiff did not ask leave to amend his complaint, so as to set it up, nor call the court's attention to any such claim. Matt J. Ward Co. v. Goelet (C. C. A.) 230 F. 979.

III. DEMURRER AS MODE OF RAISING OBJECTIONS

15. **Waiver of demurrer.**—When the declaration fails to state a cause of action, and clearly shows that upon the case as stated the plaintiff cannot recover, the defendant, upon his demurrer being overruled, may answer upon leave and go to trial without losing the right of having his demurrer heard on appeal. Teal v. Walker, 4 S. Ct. 420, 111 U. S. 242, 28 L. Ed. 415, reversing judgment Walker v. Teal (C. C.) 5 F. 317.

Answering over after a demurrer is overruled waives the point raised by the demurrer, where there is not an entire failure to state a cause of action. Board of Com'rs of Hamilton County v. Sherwood, 64 F. 103, 11 C. C. A. 507.

IV. AMENDMENTS

17. **Effect of conformity act and state practice.**—Where cause begun in state court is removed to federal court, question as to amendments of pleadings pursuant to this section is one solely for decision of federal tribunal. Salyer v. Consolidation Coal Co., 246 F. 794, 159 C. C. A. 96, certiorari denied Consolidation Coal Co. v. Salyer, 38 S. Ct. 345, 246 U. S. 669, 62 L. Ed. 931.

18. **Discretion of court.**—The allowance of amendments to pleadings is in the discretion of the court. Thomsen v. Cayser, 37 S. Ct. 353, 243 U. S. 66, 61 L. Ed. 597, Ann. Cas. 1917D, 322, reversing judgment Union Castle Mail S. S. Co. v. Thomsen, 190 F. 536, 111 C. C. A. 368, and 190 F. 1022, 111 C. C. A. 674; Highland Park Mfg. Co. v. Steele, 232 F. 10, 146 C. C. A. 202, affirming decree Steele v. Highland Park Mfg. Co. (D. C.) 212 F. 972, and decree modified on rehearing Highland Park Mfg. Co. v. Steele (C. C. A.) 235 F. 465; Ames v. Sullivan, 235 F. 880, 149 C. C. A. 192; Western Coal & Mining Co. v. McCallum (C. C. A.) 237 F. 1003; In re Frank, 239 F. 709, 152 C. C. A. 543, affirming order (D. C.) 234 F. 665; Gooch v. Presbyterian Home Hospital, 239 F. 828, 152 C. C. A. 614; Clinton v. Smith & Terry, 249 F. 119, 161 C. C. A. 171, modifying judgment The Benefactor (D. C.) 242 F. 582.

19. **Time for amendment.**—After the proof had been closed, and the argument was in progress, the court allowed the declaration to be amended so as to enlarge the averments in relation to the damages sustained by the plaintiff. Held reversible error. Brewer v. Jacobs (C. C.) 22 F. 217.

Where the proof shows that the county court had power to issue the bonds under any law, a variance between the allegations and the proof, as to the particular law under which the bonds were issued, is immaterial; it being the duty of the court to allow the pleadings to be amended to conform to the proof. Huey v. Macon County (C. C.) 35 F. 481.

After commencement of trial, where jurisdictional question as to citizenship of parties is developed in the proof, see Imperial Refining Co. v. Wyman (C. C.) 38 F. 574, 3 L. R. A. 503.

A verdict will not be set aside, if it is apparently just under the law and evidence, though the pleadings allege only negligence, and the proof shows such acts as amount to willful injury in

law, as, if the pleadings are too narrow, they can be amended even after verdict. Shumacher v. St. Louis & S. F. R. Co. (C. C.) 39 F. 174.

In an action against several defendants upon a contract signed by one of them for the benefit of all, a joint answer admitted the execution of the contract. Six years after the making of such answer, and after the evidence had all been taken, and some of the witnesses had died, one of the defendants asked leave to file an amended answer denying the authority of his codefendant to execute the contract for him. Held, that the application came too late. Rice v. Ege (C. C.) 42 F. 658.

A defendant, whose absence from the country had prevented the commencement of an action against him for libel until after the expiration of the period of limitation, appeared after the expiration of such period, but failed to plead the statute because it was supposed that his absence would prevent its running. A decision of the state court of last resort having given a different interpretation to the statute, defendant applied for leave to amend his answer by setting it up. Held, that the application should be denied, in the exercise of discretion, as inequitable. Salisbury v. Bennett (C. C.) 72 F. 743.

After repeated postponements because defendant was not ready for trial, he will not be permitted to amend by setting up a counterclaim, which can be determined in an independent suit, when this would necessitate another continuance because of the absence of plaintiff's witnesses. Jacobus v. U. S. (C. C.) 86 F. 84.

Three years after the commencement of an action, the plaintiff, by leave of court, filed an amended petition, in which he placed his right to recover on a different ground from that stated in his original petition. The case was thereafter tried three times, a judgment for plaintiff after the third trial being reversed by the supreme court on the ground that the amended petition stated a new cause of action, which was at the time barred by limitation. Held, that the court would not, in the exercise of its discretion, after the cause had been remanded and nine years after such amended petition was filed, permit plaintiff to again amend by restating the original cause of action, which he had abandoned. Wyler v. Union Pacific Ry. Co. (C. C.) 89 F. 41.

When justice requires it, the court will permit the filing of special pleas setting up defenses on the merits, when offered in good faith, even after the jury has heard all the evidence and the court has ruled upon prayers for instructions; especially will it do so in cases involving less than $5,000 in value, and which are consequently not subject to review by the supreme court. Cronin v. Patrick County (C. C.) 89 F. 79.

Leave to file an amended complaint will not be granted after a case has been long at issue and testimony has been taken, where it is clear that the proposed amendments present matter which is immaterial, and cannot aid the plaintiff. Municipal Inv. Co. v. Industrial & General Trust Co. (C. C.) 89 F. 254.

It is not error to permit amendments of the declaration on a trial to conform pleadings to proof on matters introducing no new cause of action. Mack v. Porter, 72 F. 236, 18 C. C. A. 527.

The action of a trial court in denying a motion for judgment on the ground of a variance, and in permitting the amendment of the declaration, after the conclusion of plaintiff's evidence, to conform to the proof, is not an abuse of discretion, where it is not claimed that defendant was misled by the variance to his prejudice. Southern Exp. Co. v. Platten, 93 F. 936, 36 C. C. A. 46.

Denial of a motion to amend an intervening petition after a delay of four years held not error, where intervening rights would be affected by the amendment. Davis v. Virginia Ry. & Power Co., 229 F. 633, 144 C. C. A. 43, certiorari denied Virginia Ry. & Power Co. v. Davis, 36 S. Ct. 723, 241 U. S. 672, 60 L. Ed. 1231.

Allowance of trial amendment, not adding new cause of action, after close of evidence, together with denial of continuance to defendant, held not an abuse of discretion. Western Coal & Mining Co. v. McCallum (C. C. A.) 237 F. 1003.

Under this section a court can permit the complaint by plaintiff, suing as agent, to be amended to show delivery, notice, presentation, etc., of the note to or by plaintiff in his capacity as agent. Fleitman v. McKinnon, 238 F. 98, 151 C. C. A. 174.

In a suit for libel defendant may serve an amended answer setting up a justification of the alleged libel, which was not pleaded in the original answer, notwithstanding the lapse of more than seven months between the filing of the original answer and the application to amend. Hollander v. Baiz (D. C.) 43 F. 35.

21. Process amendable.—In view of Rev. St. § 716 (Comp. St. 1916, § 1239), authorizing the issuance of scire facias out of the United States court, and this section a scire facias issued out of the federal District Court for Tennessee to recover on a bail bond may be amended to show the missing jurisdictional fact that the court admitted the offender to bail. Ewing v. U. S. (C. C. A.) 240 F. 241.

That a notice on the back of plaintiff's statement of claim was not signed by counsel is a defect which may be

corrected. Watson v. Pennsylvania R. Co. (D. C.) 232 F. 906.

Court, in quashing service on foreign corporation, may authorize the issuance of process, in order that service may be made on managing agent within state. Knapp v. Bullock Tractor Co. (D. C.) 242 F. 543.

25. **Complaint or petition.**—Although two special demurrers to the plaintiff's declaration for matters of form have been sustained, the court will permit the plaintiff to amend upon terms, it appearing that the case is important and difficult, and that, if the amendment was not allowed, a part of the plaintiff's remedy would be cut off by an exercise of the discretion from which there is no appeal. Wilbur v. Abbot (C. C.) 6 F. 817.

An amendment setting up that the original complainant was, at the time of executing the papers sought to be set aside and canceled, insolvent and largely indebted, and that therefore the conveyances executed by him were void as against his creditors, who are now represented by the administrator, who has been substituted in lieu of the original complainant, should be allowed. Lyster v. Stickney (C. C.) 12 F. 609.

Land was conveyed as part of a bonus to aid the construction of a cable road. A bond was executed conditioned for the construction of the road. The road was not built, and, in an action on the bond, the answer set up a parol agreement that the deed was not to take effect if the road was not built because of failure to secure additional bonus. The court sustained a demurrer thereto, and allowed plaintiff to amend his complaint by alleging that the sole consideration for the conveyance was the bond, and the sole consideration for the bond was the conveyance. Held, that this amendment was within the court's discretion, not being variant from the recitals of the bond, or prejudicial to defendant. Blewett v. Front St. Cable Ry. Co., 51 F. 625, 2 C. C. A. 415; Front St. Cable Ry. Co. v. Blewett, Id. Affirming judgment (C. C.) 49 F. 126.

In liability insurer's action against attorneys for neglecting to defend action against policy holder, refusal to permit amendment by striking out allegation as to amount for which settlement could have been made held not error. Maryland Casualty Co. v. Price, 231 F. 397, 145 C. C. A. 391, affirming judgment Same v. Price, Smith, Spilman & Clay (D. C.) 224 F. 271.

In a coal miner's action, where he could rely either on the statute or the common law, the granting of an amendment to conform the complaint to the exact words of the statute was not error. Victor American Fuel Co. v. Tomljanovich, 232 F. 662, 146 C. C. A. 588, affirming orders Tomljanovich v. Victor American Fuel Co. (D. C.) 227 F. 951, and 230 F. 467.

26. —— **Citizenship of parties.**—Plaintiff may amend his declaration, to show that he was an alien when the action was brought, instead of a citizen, as alleged. Conolly v. Taylor (1829) 2 Pet. 556, 7 L. Ed. 518, followed. Betzoldt v. American Ins. Co. (C. C.) 47 F. 705.

28. —— **Change of parties or their capacity.**—Leave to amend by striking out an admission of partnership between plaintiffs, and inserting that defendant has no information on which to form a belief on that point, will not be granted where defendant has been required to answer under terms. Stewart v. Townsend (C. C.) 41 F. 121.

29. —— **Change of form of action.**—Amendments will be allowed to correct errors in pleading when the opposite party is not misled and substantial justice so requires. It is not the policy of modern procedure to defeat a party who has a meritorious cause of action because he has not declared in the right form. Coghlan v. Stetson (C. C.) 19 F. 727.

30. —— **New cause of action.**—See Walker v. Iowa Cent. Ry. Co. (D. C.) 241 F. 395.

An amendment stating that plaintiff, at the time of the injury, was traveling on defendant's road on a second-class ticket, instead of first-class, as stated in the original complaint, does not change the cause of action. Atlantic & P. Ry. Co. v. Laird, 17 S. Ct. 120, 164 U. S. 393, 41 L. Ed. 485, affirming judgment 58 F. 760, 7 C. C. A. 489.

Where the original complaint in an action against a railroad company for injuries alleges that defendant was incorporated under the laws of a certain state, an amendment stating that it was incorporated under act of congress does not change the cause of action. Id.

Where the original declaration in an action of trespass sought to recover damages for injury to plaintiff's realty and its use and occupation by reason of the deposit thereon of refuse and washings from defendant's ore washes, an amended declaration, which counts on the same injuries, merely stating the facts in more amplified form, is one a recovery upon which would have been barred by a recovery on the original declaration, which would be supported by the same evidence, is governed by the same rules as to damages and subject to the same plea, and hence does not state a new cause of action. Painter v. New River Mineral Co. (C. C.) 98 F. 544.

The amendment of a complaint by a change in the averment of the statute violated does not set out a new cause of action where both statutes were sub-

stantially identical, and the last mentioned was passed as substitute for the one first pleaded. Rosenbach v. Dreyfuss (D. C.) 1 F. 391.

30½. **Bill of particulars.**—Under its general power to allow amendment of pleadings, a trial court may, in its discretion, permit the amendment of a bill of particulars attached to the declaration. Laflin v. Shackleford, 98 F. 372, 39 C. C. A. 102.

31. **Plea or answer.**—Where no sufficient reason is shown for amending an answer which a general replication treats as a denial of the existence of the agreement set up in the complaint, the motion to amend will be denied. Gardner v. Crossman (C. C.) 11 F. 851.

A plea of nul tiel record should conclude with a "verification," and not "to the country"; but such an error is one of form, and is therefore, under the present practice, amendable. Wittemore v. Malcomson (C. C.) 28 F. 605.

It is in the discretion of the court to refuse to permit an amendment during the course of the trial which would interpose an entirely new defense, not suggested by the original answer, though it must have been well known to defendant when the original answer was filed. Jefferson v. Burhans, 85 F. 924, 29 C. C. A. 487.

32. —— **Equity.**—Leave to amend an answer, in a suit to foreclose a mortgage, by the insertion of an additional fact, refused, where such fact was known to the defendant at the time the answer was filed. Cross v. Morgan (C. C.) 6 F. 241.

32½. **Replication or reply.**—The objection that plaintiff in his replication failed to plead rescission of the contract would, if demurred to, be curable by amendment, and could not, in a court of error, operate to invalidate the trial below. Ankeny v. Clark, 13 S. Ct. 617, 148 U. S. 345, 37 L. Ed. 475.

In replevin in a federal court defendant pleaded in justification that he was a sheriff, and took the goods under an attachment issued by a state court. At the close of plaintiffs' evidence, defendant moved the court to direct a verdict for him. This was denied, and plaintiffs thereupon obtained leave to amend their replication so as to allege that the suit in which the attachment issued was determined, the judgment satisfied, and the property disposed of long prior to the commencement of the present suit; and proofs were thereafter given by both parties. Held, that the amendment did not set up a new cause of action, but was merely an additional replication to the new matter pleaded in the answer, and its allowance was within the court's discretion. Wise v. Jefferis, 51 F. 641, 2 C. C. A. 432.

The refusal of the trial court to permit a city during the trial to amend its reply, so as to allege that its engineer was corruptly hired not to give notice of defects in the paving, held not error. City of Hutchinson v. Kansas Bitulithic Co., 239 F. 659, 152 C. C. A. 493.

34. **Pleadings in admiralty.**—See The Holthe (D. C.) 249 F. 783.

37. **Conditions on granting amendment—Costs.**—When it does not appear that plaintiff has been prejudiced by defendant's delay in interposing a particular defense,—unless in making proof of his case, which he might not have done had the defense been interposed originally,—a motion to amend the answer will be granted, on payment of taxable costs to the time of amendment. Arnold v. Chesebrough (C. C.) 33 F. 571.

44. **Judgment and record.**—Where the failure of the clerk to enter judgment in the first place in accordance with the court's direction was a mere omission, it may be corrected by the entry of judgment nunc pro tunc. U. S. v. Chicago & A. R. Co. (C. C. A.) 250 F. 101.

46. **Causes of appellate jurisdiction.**—To prevent reversal for an unimportant and nonprejudicial variance, complaint may be treated on appeal as amended. Guerini Stone Co. v. P. J. Carlin Const. Co., 39 S. Ct. 102, 63 L. Ed. —.

Where instructions allowed finding for plaintiff on count of indebitatus assumpsit, though such recovery was not warranted by evidence, held, that plaintiff should not be allowed on appeal to file an amended declaration in special assumpsit, and have affirmance of judgment on theory that verdict was based on count in quantum meruit. American Locomotive Co. v. Harris, 239 F. 234, 152 C. C. A. 222.

48. —— **Change of parties.**—The Circuit Court of Appeals may permit a party which has been omitted from an appeal, and not summoned and severed to be brought in by amendment, where it appears and waives citation. The Mary B. Curtis, 250 F. 9, 162 C. C. A. 181; The Seguranca, 250 F. 19, 162 C. C. A. 191.

V. DEFECTS OR ERRORS REGARDED HARMLESS ON REVIEW

49. **Prejudice from error.**—A decree enjoining enforcement of intrastate rates fixed by state for interstate carrier as confiscatory will not be disturbed for errors not affecting result. Rowland v. Boyle, 37 S. Ct. 577, 244 U. S. 106, 61 L. Ed. 1022, affirming de-

cree Boyle v. St. Louis & S. F. R. Co. (D. C.) 222 F. 539.

Though suit by defendants, attacking validity of mortgage which plaintiffs sought to foreclose, was pending, refusal of court to stay foreclosure proceedings until determination of first suit was harmless as to defendants; mortgage being upheld in first suit. Ibanez v. Hongkong & Shanghai Banking Corporation, 38 S. Ct. 413, 246 U. S. 627, 62 L. Ed. 907.

Errors in the conduct of a trial, which are inconsequential, do not warrant a reversal. Compagnie Générale Transatlantique v. Bump, 234 F. 52, 148 C. C. A. 68.

Refusal to incorporate in the record an epitomized statement of the testimony held harmless, consideration of it being precluded by rule of court requiring it to be brought to the appellate court by bill of exceptions. Mound Coal Co. v. Jeffrey Mfg. Co., 240 F. 129, 153 C. C. A. 165, granting rehearing 233 F. 913, 147 C. C. A. 587.

Where judgment must have gone against plaintiffs on one defense, alleged errors in rulings with reference to other defenses need not be considered. Hornblower v. City of Pierre, 241 F. 450, 154 C. C. A. 282, affirming judgment (D. C.) 231 F. 496.

In an action under Sherman Act begun in district for Pennsylvania, held, that failure of court to apply shorter limitation act of Louisiana (Civ. Code La. arts. 3536, 3537), place where cause of action arose, in accordance with Act Pa. June 26, 1895 (P. L. 375), was harmless to plaintiff. Bluefields S. S. Co. v. United Fruit Co., 243 F. 1, 155 C. C. A. 531.

Any error in requiring plaintiff to elect between paragraphs held harmless, where practically all evidence was admitted, and no error was claimed in the instructions bearing on the excluded paragraph. Robbins v. Pennsylvania Co., 245 P. 435, 157 C. C. A. 597.

Where plaintiff was in no event entitled to relief, denial of its motion to transfer cause to equity docket and trial with jury was not prejudicial error. Southern Ry. Co. v. Board of Com'rs of Public Works of City of Union, S. C., 246 F. 383, 158 C. C. A. 447. And where bill to cancel contract of sale, on which buyer had already sued, at least stated equitable defense, it was immaterial that bill was not transferred from equity side, for, had it been transferred and treated as answer to action at law, it would have been disposed of by court sitting as chancellor before trial of action at law to jury. Fay v. Hill, 249 F. 415, 161 C. C. A. 389.

An error in procedure cannot be treated as harmless, on the theory that the judgment was just, where the error was such that trial was not according to due process of law. Union Pac. R. Co. v. Syas, 246 F. 561, 158 C. C. A. 531.

If error could make no difference in the judgment, it may be disregarded. Austro-American S. S. Co. v. Thomas, 248 F. 231, 160 C. C. A. 309, L. R. A. 1918D, 873.

To render error harmless, it must appear beyond doubt that it did not and could not prejudice the rights of the complaining party. Id.

Where, under evidence, defendant's cross-demand would have been denied, had it been considered, refusal of trial court to consider same is not prejudicial, if erroneous. Sun Co. v. Vinton Petroleum Co., 248 F. 623, 160 C. C. A. 523, certiorari denied 38 S. Ct. 580, 247 U. S. 514, 62 L. Ed. 1244.

Where, in action by purchaser for damages on account of vendor's inability to convey title as agreed, there was error in favor of purchaser in assessment of damages, such error will not be considered; it appearing that it was more than counterbalanced by reason of vendor's forfeiture of improvements placed on premises by purchaser. Crocker v. Ingersoll Engineering & Constructing Co., 249 F. 31, 161 C. C. A. 91.

50. Errors favorable to party complaining.—Instruction for defendant railroad as to sufficiency of handhold or grab iron within Safety Appliance Act March 2, 1893, § 4, and Act March 2, 1903 (Comp. St. 1916, § 8608), held more favorable to defendant than the law authorized. St. Joseph & G. I. Ry. Co. v. Moore, 37 S. Ct. 278, 243 U. S. 311, 61 L. Ed. 741, affirming judgment Moore v. St. Joseph & G. I. Ry. Co., 186 S. W. 1035, 268 Mo. 31.

Plaintiff may not complain of instruction allowing it to recover for injury from unsuccessful as well as successful attempt to monopolize. Buckeye Powder Co. v. E. I. Dupont de Nemours Powder Co., 39 S. Ct. 38, 63 L. Ed. —.

In contractor's action for county's breach of contract, county not being entitled to instruction as to conclusiveness of engineer's report, instruction on that subject held favorable to it. Lauderdale County v. Kittel, 229 F. 593, 143 C. C. A. 615.

Where shareholder did not establish his right to enjoin the sale of corporate property and dissolution, he cannot complain that the court ordered the depositing of a sum of money for his protection in lieu of a preliminary injunction against such proceedings. Venner v. Pennsylvania Steel Co. of New Jersey, 233 F. 407, 147 C. C. A. 343.

Where, for the destruction of his pasture by fire, plaintiff was allowed to recover the rental value for the season, or part of the season, when the destruction took place, but the time for reseeding was limited to one season, defendant cannot complain. Chicago, B.

& Q. R. Co. v. Gelvin, 238 F. 14, 151 C. C. A. 90, L. R. A. 1917C, 983.

The admission at the trial on an amended declaration of part of the opening statement of plaintiffs' counsel at the trial on the original declaration held favorable, and not prejudicial, to plaintiff. Co-operative Raw Fur Co. v. American Credit Indemnity Co., 240 F. 67, 153 C. C. A. 103.

In action for damages under Sherman Act, erroneous admission of findings in previous case, on theory that they were conclusive, held not prejudicial to plaintiff, relieving it of duty of proving certain facts. Bluefields S. S. Co. v. United Fruit Co., 243 F. 1, 155 C. C. A. 531.

The erroneous submission of issues to the jury is harmless, where the verdict is in favor of the plaintiff in error. United Press Ass'ns v. National Newspapers Ass'n (C. C. A.) 254 F. 284.

Appeal from decree by plaintiff alone brings up for review only what was decided adversely to him, and not whether decree, so far as favorable to him, was erroneous. Santa Marina Co. v. Canadian Bank of Commerce (C. C. A.) 254 F. 391.

In view of proviso in Employers' Liability Act April 22, 1908, § 3 (Comp. St. 1916, § 8659), as to contributory negligence, where carrier violates statute, instructions as to contributory negligence held favorable to defendant, and submission of that question harmless. Clark v. Erie R. Co. (D. C.) 230 F. 478.

51. **Pleadings.**—Parties held not injured by rulings on pleadings, where they were permitted to give in evidence all matters of offense, defense, and reply. Lauderdale County v. Kittel, 229 F. 593, 143 C. C. A. 615.

In assumpsit on express contract, where court allowed plaintiff, having amended so as to rely on a quantum meruit, to withdraw its amendment and thereafter to show value of goods delivered defendant, held, that error was harmless, defendant sharply contesting issue and introducing evidence applicable thereto. American Lumber & Mfg. Co. v. Berthold & Jennings Lumber Co., 233 F. 971, 147 C. C. A. 645.

When point was not argued, denials upon information and belief, though in respect of matters within pleader's knowledge, held to be assumed good. Stave & Timber Corporation in Norfolk, Va., v. A. H. Andrews Co., 242 F. 230, 155 C. C. A. 70.

In action on judgment on note given in settlement of an action, refusal to permit amendment, to allege that note sued on in the original action had not been returned, held harmless. Westwater v. Murray, 245 F. 427, 157 C. C. A. 589.

Where defendant was refused leave to file preliminary motions before filing its pleas in accordance with stipulation made when its default was set aside, but withdrawal of certain counts of declaration gave defendant every advantage the motions would have given it, denial of leave was harmless if erroneous. Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712.

51½. **Conduct of trial in general.**—A remark by the trial judge in the presence of the panel as to plaintiff's physical condition held not prejudicial, in view of the charge leaving the nature and extent of the injuries to the jury. Pennsylvania Co. v. Fanger, 231 F. 851, 146 C. C. A. 47.

Where defendant's mental incapacity was not contradicted, and there was no conflict in medical testimony, remark by trial judge in his charge that an alienist called by defendant was one of the ablest in the locality held no ground for reversal. Arkansas Grand Prairie Oil & Gas Co. v. Davidson, 233 F. 641, 147 C. C. A. 449.

Error in permitting counsel to read from the testimony of one of defendant's witnesses given at a former trial is harmless, where the extract tended in no way to contradict his testimony given at the second trial. Tacoma Ry. & Power Co. v. Cothary, 235 F. 872, 149 C. C. A. 184.

That communication from jury was presented to judge, and answered in writing, when the judge was not in open court, and the parties and their counsel were not present, held not ground for reversal, where no harm resulted. Fillipon v. Albion Vein Slate Co., 242 F. 258, 155 C. C. A. 98, certiorari granted Fhillipon v. Same, 38 S. Ct. 12, 245 U. S. 648, 62 L. Ed. 530.

Though plaintiff's counsel was guilty of misconduct in telling defendant's witness that he would have him punished for perjury, if he testified, as he had on a previous trial, yet, where the witness did not change his testimony, and the jury disregarded its finding for plaintiff, the verdict need not be set aside because of the improper conduct of plaintiff's counsel. Puget Sound Electric Ry. v. Matson (C. C. A.) 253 F. 33.

52. **Rulings on evidence.**—In an action against a railroad company to recover the value of cotton destroyed by fire while on a platform adjoining defendant's track, where direct evidence was introduced tending to prove that the cotton was discovered to be on fire shortly after three locomotives had passed, one or more of which was emitting large cinders in unusual quantities, and that there was no means for the fire being set other than by such locomotives, it was error to admit evidence that a few days afterwards an entirely different locomotive, in no way responsible for the injury complained of, emitted large cinders as it was passing such platform, which fell on cotton and scorched it; and the admission of such evidence was prejudicial, as further inquiry should have been limited to the construction, condition,

and operation of the locomotives shown to be the only ones by which the fire might have been caused. Texas & P. Ry. Co. v. Hartford Fire Ins. Co. (C. C. A.) 230 F. 801, 145 C. C. A. 111, reversing judgment on rehearing 218 F. 990, 133 C. C. A. 673.

Every theoretical error in the admission of evidence is not ground for reversal, and mistakes which do not involve injustice should ordinarily be disregarded. Missouri Valley Bridge & Iron Co. v. Blake, 231 F. 417, 145 C. C. A. 411.

In an action by one struck by an electric car while attempting to pass from the right of way through a turnstile, erroneous admission of evidence as to its condition held harmless; the negligence relied on being that of the operatives of the car. Tacoma Ry. & Power Co. v. Cothary, 235 F. 872, 149 C. C. A. 184.

Where evidence of inconsistent statements made by witness out of court was hearsay, error in refusal of court to permit defendant, transcript of witness' testimony at former trial being read on account of his absence from state, to withdraw statement that questions as to witness' inconsistent statements were not for impeachment, was harmless. Great Northern Ry. Co. v. Ennis, 236 F. 17, 149 C. C. A. 227.

In action against attorney of bankrupt for his participation in conversion by bankrupt of money of his estate, admission of evidence that in one case the bankrupt, who was seeking to obtain currency, was persuaded to take a draft, held harmless. Arnold v. Horrigan, 238 F. 39, 151 C. C. A. 115.

In action for death of plaintiff's husband, a servant, erroneous admission of evidence as to ages and occupation of plaintiff's children was harmless. Akalitis v. Philadelphia & Reading Coal & Iron Co., 239 F. 299, 152 C. C. A. 287.

The range of cross-examination is committed in large measure to the discretion of the trial judge, and error in the exercise thereof must be plain and harmful before an appellate court will reverse. N. P. Sloan Co. v. Uncasville Mfg. Co., 240 F. 680, 153 C. C. A. 478.

In action on note which defendants denied signing, admission of financial statement purporting to be signed by them held not prejudicial error, though they denied signing the statement. Vandeventer v. Traders' Nat. Bank of Kansas City, Mo., 241 F. 584, 154 C. C. A. 360.

One not appearing to be purchaser in good faith of preferential payment held not prejudiced because decree was based in part on testimony received in another case tried with the suit against her. Watson v. Adams, 242 F. 441, 155 C. C. A. 217.

Admission of evidence as to reason for omitting signals as railway engine approached bridge where decedent was struck held harmless, where evidence showed contributory negligence. Robbins v. Pennsylvania Co., 245 F. 435, 157 C. C. A. 597.

The erroneous admission of evidence, where harmless, is no ground for reversal. Société Nouvelle d'Armement v. Barnaby, 246 F. 68, 158 C. C. A. 294.

In action by purchaser on account of alleged worthlessness of part of land, admission of evidence as to reclamation warrants for work after purchase and purchaser's suit to quiet title was not reversible error, though remote. Garwood v. Scheiber, 246 F. 74, 158 C. C. A. 300.

Failure to directly and clearly withdraw evidence bearing only on issues withdrawn cannot be complained of, where its retention was not likely to prejudice the jury in the determination of the simple questions remaining. Michigan Cent. R. Co. v. U. S., 246 F. 353, 158 C. C. A. 417, certiorari denied 38 S. Ct. 333, 246 U. S. 663, 62 L. Ed. 928.

In action for death of a servant, where master's superintendent was competent to testify, not only as to his orders to deceased servant, but circumstances surrounding fatal accident, withdrawal of testimony by superintendent as to his orders was harmless as to defendant master. Central Iron & Coal Co. v. Hamacher, 248 F. 50, 160 C. C. A. 190.

In action against steamship company for threatening objection and asserting worthlessness of check, admission of section of Italian statute held cured by requiring reduction of verdict. Austro-American S. S. Co. v. Thomas, 248 F. 231, 160 C. C. A. 309, L. R. A. 1918D, 873.

Refusal of a federal court for Texas to suppress depositions taken in Germany, on ground that they had not been transmitted to court as provided by Texas statutes was not reversible error, though such depositions, because of war between Germany and other countries, had been transmitted to State Department at Washington and thence mailed to court. Birge-Forbes Co. v. Heye, 248 F. 636, 160 C. C. A. 536, certiorari granted 38 S. Ct. 426, 246 U. S. 676, 62 L. Ed. 933.

Plaintiff in error cannot complain of the overruling of an objection to a question, where the witness answered in the negative. Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712.

In action on life policy, where defense was suicide, and witness at trial gave testimony tending to support defense, erroneous admission of transcript of his testimony, given before coroner and offered to impeach his testimony at trial, must be deemed prejudicial, where jury, after considerable deliberation, returned and asked that transcript of witness' testimony at inquest be again read to them, which was

done. New York Life Ins. Co. v. Neasham (C. C. A.) 250 F. 787.

Where the answer was not unfavorable to it, defendant cannot complain in the appellate court of the allowance of a hypothetical question. Sharples Separator Co. v. Skinner (C. C. A.) 251 F. 25.

In an action for malicious prosecution, based on arrest of plaintiff on a charge of embezzlement, admission in evidence of newspaper clippings giving an accurate account of the arrest was not harmful to defendant. Western Union Telegraph Co. v. Thomasson (C. C. A.) 251 F. 833.

In ejectment, by heir at law of devisee by will authorizing executrix to sell realty only if personalty was insufficient to pay legacies, against defendant claiming under executrix's bargain and sale deed, admission of evidence of will of executrix, giving her own estate, subject to debts and charges, to her daughter for life, etc., held harmless to plaintiff. Fronsoe v. Bushnell (C. C. A.) 251 F. 850.

Admission in evidence of certified copy of restored transcript of appearance docket of probate court, so far as relating to sale of certain other real estate of testator, held harmless to plaintiff. Id.

New trial cannot be granted defendant, because some evidence allowed in rebuttal was repetition, where it is not evident that defendant was prejudiced. Harper v. Harper (C. C. A.) 252 F. 39.

In a servant's action for injury while oiling a loose pulley, any error in the admission of testimony on a long cross-examination that screens, subsequently placed around the pulleys to exclude dust and particles of cotton, would also operate to protect employés, was not so harmful as to require a reversal. E. I. Du Pont de Nemours & Co. v. Smith (C. C. A.) 252 F. 491.

53. — **Facts otherwise established.** —An objection to the admission of a letter in evidence on the ground that it was a copy was cured by the subsequent introduction of the original. Lauderdale County v. Kittel, 229 F. 593, 143 C. C. A. 615.

Admission of exhibit over objection held not reversible error, where no exception was reserved to oral testimony covering substantially the main facts contained in the exhibit. Good Pine Lumber Co. v. Duke, 229 F. 714, 144 C. C. A. 124.

Admission of opinion of witness as to incompetency of defendant's engineer held not reversible error, where he stated facts from which such incompetency might have been found. Missouri Valley Bridge & Iron Co. v. Blake, 231 F. 417, 145 C. C. A. 411.

In view of uncontradicted testimony as to plaintiff's injuries, held, any error in not striking out a physician's opinion as speculative was harmless. Chicago Rys. Co. v. Kramer, 234 F. 245, 148 C. C. A. 147.

The erroneous admission of evidence is harmless, where similar evidence of more forcible character is admitted without objection. Waters v. Guile, 234 F. 532, 148 C. C. A. 298.

A nonresponsive answer of a witness is not prejudicial, where merely cumulative of other testimony to the same general effect received without objection. Id.

In ejectment for a mining claim, where defendant contended plaintiff's rights were lost by failure to do assessment work, but admitted he had driven off one sent to do such work, improper admission of letter written by such person to plaintiff's predecessor in title, reciting such facts, was not prejudicial, though its statement of the threats was slightly different from defendant's. Ames v. Sullivan, 235 F. 880, 149 C. C. A. 192.

Ruling that map of commissioners appointed under Webster-Ashburton treaty of 1842, relative to Canadian boundary, was conclusive, held harmless, if erroneous, though the treaty and commissioners' report was not introduced, for the court took judicial notice thereof. Daigle v. U. S., 237 F. 159, 150 C. C. A. 305.

The admission of evidence as to a fact not alleged in the declaration is harmless, where similar evidence had been more than once introduced without objection, and defendant admitted that he knew the condition existed. Kalloch v. Hoagland, 239 F. 252, 152 C. C. A. 240.

Erroneous admission of hearsay testimony, corroborating only witness testifying to fact found by jury, held not necessarily harmless, on theory that it did not affect jury. Klein v. Darnell, 239 F. 844, 152 C. C. A. 630.

Testimony by witness that he had conversation with one of defendant's witnesses is harmless, where such witness had substantially admitted facts referred to in conversation, as is testimony that such witness had a conversation with another of defendant's witnesses, without stating its purport. Woo Vey v. U. S., 242 F. 838, 155 C. C. A. 426, certiorari denied 38 S. Ct. 60, 245 U. S. 660, 62 L. Ed. 535.

Admission of written statements, signed by plaintiff after injury, held not error, where they contained nothing materially different from his testimony. O'Brien v. Las Vegas & T. R. Co., 242 F. 850, 155 C. C. A. 438.

Admission of hypothetical question not justified by evidence was harmless, where evidence at later stage warranted question. Erie R. Co. v. Linnekogel, 248 F. 389, 160 C. C. A. 399.

Plaintiff in error cannot complain of mode of proving fact which it specifi-

cally admitted. Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712.

The admission of testimony is harmless, if erroneous, where the fact elicited was established by other competent evidence. Sharples Separator Co. v. Skinner (C. C. A.) 251 F. 25.

In action for criminal conversation and alienation, although suspicions of wife's daughters as to improper relations of their mother and defendant were incompetent, the error of admitting them was immaterial; suspicions being inevitable, if their testimony was true. Harper v. Harper (C. C. A.) 252 F. 39.

54. —— **Error cured by withdrawal or instructions.**—Plaintiff, who had formerly been a station agent in defendant's employ in British Columbia, was arrested in Buffalo on a charge based on an alleged shortage in his accounts and held for extradition. Upon promises by defendant's special agent, he waived extradition and voluntarily crossed the border into Canada, when, contrary to such promises, he was placed under close arrest and transported 2,400 miles in a public railroad coach, and subjected during such transportation to humiliation and unnecessary brutality. On a trial for false arrest and malicious prosecution, the undisputed facts showed that there was no probable cause. A witness testified that defendant's auditor, who instigated the prosecution, said that he was not sure that the alleged shortage was anything more than an error in bookkeeping, but that plaintiff had been snippy to him, and that he was going to make it as hard for him as he could. The court subsequently struck out this testimony and told the jury to disregard it. Held that, as this testimony could have left no possible impression on the jury's mind, except on the questions of probable cause and the amount of damages, its subsequent withdrawal cured the effect of its admission, since it was of no importance on the question of damages, in view of the more important matters bearing on that question. Canadian Pac. Ry. Co. v. Black (C. C. A.) 230 F. 798, 145 C. C. A. 108, affirming judgment Black v. Canadian Pac. Ry. (D. C.) 218 F. 239.

Error in admitting, in an action for breach of warranty of power, evidence of breakdowns of machinery, held not prejudicial, in view of the instructions and the verdict. B. F. Sturtevant Co. v. Champion Fibre Co., 232 F. 1, 146 C. C. A. 193.

In a jury trial, the admission of incompetent evidence will be regarded as harmless error, if the jury are instructed to disregard it, unless the evidence was so impressive that it probably affected the verdict. Oates v. U. S., 233 F. 201, 147 C. C. A. 207.

In personal injury action by switchman, erroneous admission of evidence of negligence not pleaded held harmless, where the court restricted the jury to a consideration of the negligence alleged. St. Louis Merchants' Bridge Terminal Ry. Co. v. Schuerman, 237 F. 1, 150 C. C. A. 203.

Error in improperly admitting evidence as to damages from a fire escaping from a railroad right of way and burning part of plaintiff's pasture, in which he was feeding cattle, held prejudicial, despite an instruction that the jury could not consider certain injuries to cattle for which defendant was not liable. Chicago, B. & Q. R. Co. v. Gelvin, 238 F. 14, 151 C. C. A. 90, L. R. A. 1917C, 983.

Various rulings of the trial court on the admission of evidence in an action for libel considered, and held not erroneous when taken in connection with the instructions to which no objection was made. Examiner Printing Co. v. Aston, 238 F. 459, 151 C. C. A. 395, affirming judgment Aston v. Examiner Printing Co. (D. C.) 226 F. 496.

The admission of defendant's evidence and the exclusion of plaintiffs' evidence on an issue which the court in his charge assumed in plaintiffs' favor was not prejudicial to plaintiff. Co-operative Raw Fur Co. v. American Credit Indemnity Co., 240 F. 67, 153 C. C. A. 103.

The admission of irrelevant and incompetent evidence in an action for unlawful combination and discrimination held prejudicial to plaintiff, notwithstanding the court's charge correctly defining the issues and instructing the jury to disregard other questions presented by the evidence. Frey & Son v. Welch Grape Juice Co., 240 F. 114, 153 C. C. A. 150.

Plaintiff in error cannot complain of admission of evidence subsequently withdrawn from the jury. Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712.

56. **Exclusion of evidence.**—In action for injuries to servant, where he testified that he did not examine roof where he worked, exclusion of cross-examination as to his examination of place was without prejudice. Owl Creek Coal Co. v. Goleb, 232 F. 445, 146 C. C. A. 439.

In proceeding to forfeit potatoes and vehicles bringing them into United States from an island in St. John river separating same from Canada, held that, as claimant had been notified that produce from the island was dutiable, he could not complain of exclusion of evidence as to monuments offered to show that he in good faith believed island a part of United States. Daigle v. U. S., 237 F. 159, 150 C. C. A. 305.

In action brought in state court and then removed to the federal court, held, that the exclusion of evidence showing the applicability of the federal Employers' Liability Act was prejudicial. At-

lantic Coast Line R. Co. v. Woods, 238 F. 917, 151 C. C. A. 651.

The exclusion of plaintiff's evidence on an issue which the court in his charge assumed in plaintiff's favor was not prejudicial to plaintiff. Co-operative Raw Fur Co. v. American Credit Indemnity Co., 240 F. 67, 153 C. C. A. 103.

Exclusion of evidence that defendant was operating lighter, which capsized, only as agent, held harmless, where its vice president's act rendered it liable, even though only an agent. Chiarello Bros. Co. v. Pedersen, 242 F. 482, 155 C. C. A. 258.

Act of court in rejecting some of findings in previous suit, which it had, prior to trial, determined were admissible, held harmless to plaintiffs; findings not being admissible as res judicata. Bluefields S. S. Co. v. United Fruit Co., 243 F. 1, 155 C. C. A. 531.

Exclusion of witness' statement that if he had looked he could have seen the cars was harmless, as such testimony could have little, if any, weight in face of positive statement of another, with him at the time, that he looked and did not see them. Pocahontas Consol. Collieries Co. v. Johnson, 244 F. 368, 156 C. C. A. 654, certiorari denied 38 S. Ct. 14, 245 U. S. 658, 62 L. Ed. 535.

Exclusion of evidence that place on railroad right of way where decedent was struck was part of a highway held immaterial, in view of the evidence, where court ruled that rights and obligations were the same as on a highway. Robbins v. Pennsylvania Co., 245 F. 435, 157 C. C. A. 597.

In an action for injuries to plaintiff's cows, on which a milking machine purchased from defendant had been used, the exclusion of evidence as to the results of the use of milking machines in other dairies, etc., held not reversible error. Sharples Separator Co. v. Skinner (C. C. A.) 251 F. 25.

Exclusion of evidence in an action tried to a jury held not prejudicial error. Cohansey Glass Mfg. Co. v. First Nat. Bank of Philadelphia (C. C. A.) 251 F. 177.

57. —— **Facts proved by other evidence.**—Where witness had already testified to the same fact which party sought to prove by him, refusal to permit him to reiterate his statement held not prejudicial. Lauderdale County v. Kittel, 229 F. 593, 143 C. C. A. 615.

Where plaintiff admitted as true all that would have appeared from reports, the exclusion of such reports themselves was not reversible error. Spring Garden Ins. Co. of Philadelphia, Pa., v. Wood, 233 F. 223, 147 C. C. A. 229.

Error in limiting the cross-examination of plaintiff's witness is not prejudicial to defendant, where defendant was permitted in the course of his own case to introduce the same evidence he sought to bring out from plaintiff's witness. N. P. Sloan Co. v. Uncasville Mfg. Co., 240 F. 680, 153 C. C. A. 478.

Exclusion of question calling for opinion of witness as to whether plaintiff's injuries were real or simulated held harmless, where her testimony showed her opinion that plaintiff's sickness was a sham. Delaware, L. & W. R. Co. v. Lanterman, 245 F. 548, 157 C. C. A. 660.

Where the court found that a fact was established by other evidence, the rejection of evidence offered to show such fact was harmless, if erroneous. Virginia & West Virginia Coal Co. v. Charles (D. C.) 251 F. 83.

58. **Direction of verdict.**—Directing verdict for certain defendants was harmless; no acts aimed at plaintiff having been done by them, and the jury having exonerated the other defendant with whom they were alleged to have conspired. Buckeye Powder Co. v. E. I. Dupont de Nemours Powder Co., 39 S. Ct. 38, 63 L. Ed. ——.

Where directed verdict was signed by one juror designated by the court, held that plaintiff was not prejudiced because all the jurors did not sign it or select their own foreman to sign it. Bryan v. Louisville & N. R. Co., 244 F. 650, 157 C. C. A. 98, writ of error dismissed and certiorari denied 38 S. Ct. 334, 246 U. S. 651, 664, 62 L. Ed. 921.

59. **Submission of issues.**—In action for false arrest and malicious prosecution, submission of question of probable cause held harmless to defendant; it appearing as a matter of law that there was no probable cause. Canadian Pac. Ry. Co. v. Black, 230 F. 798, 145 C. C. A. 108, affirming judgment Black v. Canadian Pac. Ry. (D. C.) 218 F. 239.

The erroneous submission of a question of law to the jury is harmless, where the jury correctly decided the question. Continental Public Works Co. v. Stein, 232 F. 559, 146 C. C. A. 517.

Measure of damages on all the counts for personal injury being the same, refusal to take one from the jury was harmless, where a verdict could be directed for plaintiff on another. Chicago Rys. Co. v. Kramer, 234 F. 245, 148 C. C. A. 147.

Where it is impossible to determine whether a verdict was based on a ground of liability improperly submitted, the submission of such ground of liability is prejudicial error. Murray v. Third Nat. Bank of St. Louis, 234 F. 481, 148 C. C. A. 247.

Where jury by their special finding showed that they correctly interpreted written correspondence passing between parties, erroneous submission of matter was harmless. Philadelphia Casualty Co. v. Thacher, 236 F. 869, 150 C. C. A. 131.

In a servant's action, the refusal of

instructions taking from the jury a question of negligence not raised by the evidence, as well as an issue of damages not raised, held prejudicial. United States Cast Iron Pipe & Foundry Co. v. Eastham, 237 F. 185, 150 C. C. A. 331.

Though court might have told jury that transmission of fire alarms was consideration for contract, held that submission of this question could not be complained of where the jury found the contract as the court would have charged. Missouri Dist. Telegraph Co. v. Morris & Co., 243 F. 481, 156 C. C. A. 179, appeal dismissed 38 S. Ct. 11, 245 U. S. 651, 62 L. Ed. 531.

In action for personal injuries, where plaintiff attacked, as having been procured by fraud, release set up by defendant, submission to jury, trying action for damages, of question of fraud for advisory verdict, held prejudicial error. Union Pac. R. Co. v. Syas, 246 F. 561, 158 C. C. A. 531.

Where it would have been duty of court to have directed verdict on an issue in condemnation proceeding, refusal of court to submit that issue to jury was harmless, though erroneous. Louisville & N. R. Co. v. Western Union Telegraph Co., 249 F. 385, 161 C. C. A. 359.

Where in slander suit one of two counts should not have been submitted, and verdict was general and no apportionment was possible, judgment for plaintiff must be reversed and new trial granted. Buckeye Cotton Oil Co. v. Sloan (C. C. A.) 250 F. 712.

Where the court rendered judgment for defendant, the refusal to sustain defendant's demurrer to the evidence, if erroneous, was harmless. Virginia & West Virginia Coal Co. v. Charles (D. C.) 251 F. 83.

60. Instructions.—In action for slandering one by saying his cash and stock were short, error in instructions taking from jury questions as to whether language used was only a charge of irregularity or negligence, held prejudicial. Grand Union Tea Co. v. Lord, 231 F. 390, 145 C. C. A. 384.

Error in instructions on materiality of representations in application for life policy relating to insured's age and use of intoxicants do not warrant reversal, where answers, if false, were not such as to avoid policy. American Temperance Life Ins. Ass'n of City of New York v. Solomon, 233 F. 213, 147 C. C. A. 219.

In a tort action for damages, where the facts were such that it could not be certain that the jury would have allowed interest as part of the damages, no demand before suit being shown, an instruction that interest should be allowed is prejudicial error. Arnold v. Horrigan, 238 F. 39, 151 C. C. A. 115.

61. —— Applicability.—In assumpsit by a sales agent, submitted on the common counts, held, that an instruction allowing recovery of the commissions provided amounted to reversible error; the sales agent not having consummated the sale. American Locomotive Co. v. Harris, 239 F. 234, 152 C. C. A. 222.

Where there was no evidence tending to show that deceased changed his mind and decided to accept renewal certificate of accident policy after expiration of policy in force when it was tendered, that part of instruction on renewal of policy which requires insured to accept same before expiration of old policy was harmless, if erroneous. Brawner v. Royal Indemnity Co., 246 F. 637, 158 C. C. A. 593.

62. —— Refusal to charge.—Master has no valid cause for complaint because requested instruction was modified to exclude assumption of risk of extraordinary danger created by customary methods, and ignored question of knowledge of such methods, unless customary method was one that reasonably careful employer would have adopted. Chesapeake & O. Ry. Co. v. Proffitt, 36 S. Ct. 620, 241 U. S. 462, 60 L. Ed. 1102, affirming judgment 218 F. 23, 134 C. C. A. 37.

Any error in failing to charge in action for threefold damages brought under Anti-Trust Act, § 7 (Comp. St. 1916, § 8829), by shippers against ocean carriers, that burden was on plaintiffs to show that rates were excessive, does not require remand where the court carefully instructed as to the estimate by the jury of all the elements of the judgment. Thomsen v. Cayser, 37 S. Ct. 353, 243 U. S. 66, 61 L. Ed. 597, reversing judgment Union Castle Mail S. S. Co. v. Thomsen, 190 F. 536, 111 C. C. A. 368, and Id. 190 F. 1022, 111 C. C. A. 674.

Where the facts from which the jury were instructed to infer waiver of the requirement of notice were uncontroverted, plaintiff cannot complain of the refusal of a charge that the order had waived the requirement. Parrish v. Order of United Commercial Travelers of America, 232 F. 425, 146 C. C. A. 419.

In an action to recover a payment by bankrupt corporation discharging a loan made by defendant to one of its officers, refusal of a charge raising question whether defendant had reason to believe officer was using funds of corporation held not prejudicial to plaintiff in view of other charges given. Smith v. Robins, 236 F. 114, 149 C. C. A. 324.

In an action for breach of contract to make monthly deliveries of coal, where damages awarded were less than those which defendant admitted if contract was made, and court failed to charge on damages in view of an agreement to spread deliveries over entire month, held, that failure was prejudicial. New York & Philadelphia Coal & Coke Co.

v. Meyersdale Coal Co., 236 F. 536, 149 C. C. A. 588.

Refusal of instruction as to contributory negligence of deceased, killed by car in mine, if he did not look, held harmless, there being insufficient evidence to overcome presumption that he looked and failed to see the car. Pocahontas Consol. Collieries Co. v. Johnson, 244 F. 368, 156 C. C. A. 654, certiorari denied 38 S. Ct. 14, 245 U. S. 658, 62 L. Ed. 535.

63. — **Error cured by verdict.**—Where plaintiff was entitled to judgment and verdict in its favor under undisputed evidence, errors in instructions are not prejudicial. Hamilton Iron & Steel Co. v. Groveland Mining Co., 233 F. 388, 147 C. C. A. 324.

In action on construction contract, held that any error in instructions as to effect of action of engineer was cured by deduction from verdict of amount sufficient to complete contract according to finding of engineer. Stark Electric R. Co. v. McGinty Contracting Co., 238 F. 657, 151 C. C. A. 507.

In an action against owner of delivery automobile by plaintiff, who was struck by same while on sidewalk, instruction presenting doctrine of res ipsa loquitur while improper, plaintiff having called driver of the car, who testified as to defects in steering apparatus causing accident, was harmless as to defendant, where evidence justified verdict in favor of plaintiff. Jacob v. Ivins (C. C. A.) 250 F. 431.

Where jury found that brakeman was guilty of no contributory negligence, error of court in failing to charge, action being governed by federal Employers' Liability Act, that his contributory negligence would diminish recovery, was harmless. Harris v. St. Louis & S. F. R. Co. (Mo. App.) 200 S. W. 111.

64. **Judgment or decree.**—Failure to allow for supposed increase of travel in reduction of rates does not require reversal of decree enjoining enforcement of state regulation of rates for intrastate traffic on an interstate carrier as confiscatory. Rowland v. Boyle, 37 S. Ct. 577, 244 U. S. 106, 61 L. Ed. 1022, affirming decree Boyle v. St. Louis & S. F. R. Co. (D. C.) 222 F. 539.

In a suit to enjoin officers of labor unions, the error, if any, in enjoining them only in their individual capacities and not in their official capacities could not be complained of by them. Hitchman Coal & Coke Co. v. Mitchell, 38 Sup. Ct. 65, 245 U. S. 229, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, reversing decree Mitchell v. Hitchman Coal & Coke Co., 214 F. 685, 131 C. C. A. 425, which reversed decree Hitchman Coal & Coke Co. v. Mitchell (D. C.) 202 F. 512. Mandate stayed 38 S. Ct. 190.

The failure of the court to make special findings of fact before judgment, or to make its subsequent findings as of the day of the trial, is not prejudicial to plaintiff in error. Panama R. Co. v. Beckford, 231 F. 436, 145 C. C. A. 430.

Where under Code Civ. Proc. S. D. § 321, and Laws S. D. 1903, c. 117, judgment of federal District Court of South Dakota could be made a lien by filing copy with the clerk of the state circuit court, error of district court in declaring its judgment a lien is harmless. Cooper v. Jewett, 233 F. 618, 147 C. C. A. 426.

In suit by surety for reimbursement for sums paid to satisfy judgment against himself and principal, principal cannot complain that court improperly allowed surety to recover costs expended in such suit, where surety was denied larger sums to which he was entitled. Id.

Where, in an action tried to court without a jury, interest on amount due plaintiff was wrongfully withheld, and such interest exceeded an item asserted to have been erroneously allowed, judgment may be affirmed by reviewing court. Hughitt v. Wayne County Securities Co. (C. C. A.) 251 F. 57.

Legal effect of extension of railroad receivership to income of property covered by mortgage on part of system being to impound earnings, etc., for benefit of bondholders under that mortgage, there was no prejudicial error in court's refusal to make more specific order for impounding income. Bankers' Trust Co. v. Missouri, K. & T. Ry. Co. (C. C. A.) 251 F. 789.

Judgment of foreclosure against Oklahoma property is not open to objection on the ground that by Rev. Laws Okl. 1910, § 5162, no order of sale could issue until the expiration of six months from its entry, where no sale had occurred, though nearly a year had elapsed. Finley v. Halliburton (C. C. A.) 251 F. 860.

65. **Reference.**—Where admiralty court had jurisdiction of res and parties, order directing commissioner to hear and determine issues, while erroneous, was not jurisdictional error; commissioner having treated reference direction as one to compute and assess damages. The Bronx, 246 F. 809, 159 C. C. A. 111.

66. **Dismissal.**—Where dismissal of suit was proper, plaintiff was not prejudiced whether court dismissed same on motion or on its own motion. Porter v. Coble, 246 F. 244, 158 C. C. A. 404.

§ 1592. (R. S. § 955.) Death of parties.

I. ABATEMENT OR SURVIVAL OF ACTION

7. Survivability determined by common law or local statute—Actions of tort.—See The Student (D. C.) 238 F. 936.

8. —— Action on federal statute.—An action to recover internal revenue taxes erroneously collected is assumpsit on an implied contract and survives against the personal representatives of the collector if he dies pending the suit. Philadelphia, H. & P. R. Co. v. Lederer (D. C.) 239 F. 184, judgment affirmed (C. C. A.) 242 F. 492.

9. —— Action on federal penal statute.—An action by the receiver of an insolvent national bank against its directors, to recover for losses sustained through their misconduct or negligence, for the benefit of creditors and stockholders, is ex contractu, and survives the death of a defendant. Bates v. Dresser (D. C.) 229 F. 772.

Where recovery for the results of a monopolistic conspiracy is sought under Sherman Act, § 7 (Comp. St. 1916, § 8829), the action will survive against the estate of a decedent in case he secured some benefit at the expense of plaintiff. United Copper Securities Co. v. Amalgamated Copper Co., 232 F. 574, 146 C. C. A. 532.

II. CONTINUANCE OR REVIVAL OF ACTION

27. Continuance of suit.—By surviving partner in action by firm on contract, see Jones v. Pettingill, 245 F. 269, 157 C. C. A. 461, certiorari denied Pettingill v. Jones, 38 S. Ct. 61, 245 U. S. 663, 62 L. Ed. 536.

Cited without definite application, Van Choate v. General Electric Co. (D. C.) 245 F. 120.

§ 1593. (R. S. § 956.) Death of one of several plaintiffs or defendants.

Survivability of actions.—In action on contract made with plaintiffs as partners, where one died, action held properly permitted to proceed in the name of the survivor, under this section. Jones v. Pettingill, 245 F. 269, 157 C. C. A. 461, certiorari denied Pettingill v. Jones, 38 S. Ct. 61, 245 U. S. 663, 62 L. Ed. 536.

§ 1594. (Act Feb. 8, 1899, c. 121.) Death, expiration of term, etc., of officer sued in official capacity, etc.

See Pullman Co. v. Knott, 37 S. Ct. 428, 243 U. S. 447, 61 L. Ed. 841.

Necessity of pendency of suit.—This section does not authorize action against collector of internal revenue to recover taxes paid his predecessor, where only pending proceeding was a claim for refund. Philadelphia, H. & P. R. Co. v. Lederer, 242 F. 492, 155 C. C. A. 268, affirming judgment (D. C.) 239 F. 184.

JUDGMENTS, COSTS, EXECUTIONS, AND MONEYS PAID INTO COURT

§ 1605. (R. S. § 966.) Interest on judgments.

Period during which interest is computed.—Decree on appeal increasing allowance for salvage will draw interest from date of District Court decree. The Kia Ora (C. C. A.) 252 F. 507.

Where, in a suit covered by a bond to indemnify against costs from litigation, in the United States District Court, costs had been taxed several years after the judgment therein for costs and damages, the obligee may recover, in addition to such costs, interest thereon from the date of judgment, under this section and Comp. Laws Mich. 1897, §§ 4865, 10308. City of Owosso v. Barber Asphalt Paving Co. (Mich.) 158 N. W. 230.

§ 1606. (Act Aug. 1, 1888, c. 729, § 1.) Judgments of United States courts to be liens on property, etc.

13. Persons entitled to lien.—Under this section, Laws N. C. 1889, c. 439, and Pell's Revisal N. C. § 574, held that judgments in favor of United States against surety on distillers' bonds became liens on his property. U. S. v. Minor, 235 F. 101, 148 C. C. A. 595.

18. Priority of lien.—As a term of court in West Virginia may last a number of days or weeks, judgments rendered at various times during the term are presumed, as regards priority between themselves, to relate back to the first day of the term, and as liens they are equal, although the lien to be preserved, etc., must be docketed in accordance with Code W. Va. 1913, c. 139, § 6 (sec. 5098). In re McGraw (D. C.) 254 F. 442.

§ 1607. (Act Aug. 1, 1888, c. 729, § 2.) Indices of judgment records to be kept by clerks.

Records open to inspection.—The contents of a public record office are always at the service of a person desiring to examine the same, on due application to the official in charge. Miller v. Moise (C. C.) 168 F. 940.

§ 1608. (R. S. § 967.) When judgments of United States courts cease to be liens.

Operation as to judgments in favor of United States.—Notwithstanding this section, judgments in favor of the United States held not barred by limitations (Pell's Revisal N. C. § 391). U. S. v. Minor, 235 F. 101, 148 C. C. A. 595.

Suit to subject property to judgment in favor of government.—Since this section, as to duration of lien, does not apply to the government, held, that suit would not lie to subject property to judgments, as government had complete and adequate remedy by issuance of fi. fa. or execution. U. S. v. Minor (D. C.) 243 F. 953.

§ 1609. (R. S. § 968.) Plaintiff or petitioner recovering less than certain amounts to recover no costs.

Recovery on part of several counts.—Where plaintiff prevailed on first count of its declaration, though unsuccessful on second, it was, having recovered more than $500, entitled to costs under this section. West End St. Ry. Co. v. Malley, 246 F. 625, 158 C. C. A. 581, certiorari denied 38 S. Ct. 423, 246 U. S. 671, 62 L. Ed. 931.

On recovery in an action at law for infringement, the costs are taxable to defendant, although the action was based on two patents, and the issues as to one were withdrawn from the jury. Sears, Roebuck & Co. v. Pearce (C. C. A.) 253 F. 960.

Dismissal for want of jurisdiction.—Where a patent infringement suit was dismissed for want of jurisdiction, no costs could be taxed. United States Envelope Co. v. Transo Paper Co. (D. C.) 229 F. 576.

§ 1614. (R. S. § 973.) Costs not recoverable in certain suits for infringement of patent, unless disclaimer entered, etc.

Cited without definite application, Sears, Roebuck & Co. v. Pearce (C. C. A.) 253 F. 960.

§ 1615. (R. S. § 974.) When costs of prosecution to be paid by defendant.

Costs of preliminary examination.—A judgment requiring defendants to pay the costs of the cause does not require payment of the costs of the preliminary examination, if the court had discretion to make such requirement under this section. U. S. v. Smith (D. C.) 240 F. 756.

Costs to which this section declares defendant subject, when judgment is rendered against him in prosecution for fine or forfeiture, held only those of trial under indictment, and not of preliminary trial, governed by Rev. St. § 1014 (Comp. St. 1916, § 1674). U. S. v. Briebach (D. C.) 245 F. 204.

Despite the amendment of Rev. St. §§ 5399, 5406, by Criminal Code, §§ 135, 136 (Comp. St. 1916, §§ 10305, 10306), United States commissioner is not a court, and costs of preliminary hearing before him cannot, under Rev. St. §§ 974, 1014 (Comp. St. 1916, §§ 1615, 1674), be assessed against the defendant. U. S. v. Schwartz (D. C.) 249 F. 755.

Action for penalty.—An action to recover penalties under Hours of Service Act March 4, 1907, c. 2939, § 3 (Comp. St. 1916, § 8679), is a civil action, in which on recovery plaintiff is entitled to tax its costs and disbursements. U. S. v. Minneapolis, St. P. & S. S. M. Ry. Co. (D. C.) 235 F. 951.

Conviction of criminal contempt.—Under this section costs may be assessed against defendant convicted in a criminal contempt proceeding, regardless of Judicial Code, § 268 (Comp. St. 1916, § 1245), authorizing punishment by fine and imprisonment. Oates v. U. S., 233 F. 201, 147 C. C. A. 207.

Security for costs.—In view of this section, Judicial Code, § 128, and Act Feb. 6, 1889, § 6, Rev. St. § 1000 (Comp. St. 1916, §§ 1120, 1660), authorizes the taking of security for costs on writ of error in a criminal case, where the court had exercised its jurisdiction to adjudge the costs against the defendant though the writ was not a supersedeas. American Surety Co. v. U. S., 239 F. 680, 152 C. C. A. 514.

§ 1622. (R. S. § 981.) Taxation of fees of witness before a commissioner.

Cited without definite application,
Safford v. U. S. (C. C. A.) 252 F. 471.

§ 1623. (R. S. § 982.) Attorney liable for costs vexatiously increased by him.

Expense of procuring expert witnesses.—In view of this section plaintiff, who delayed dismissal until the eve of trial, cannot be taxed with expenditures by defendant to procure necessary expert witnesses, and defendant is entitled to only the usual witness fees. Bone v. Walsh Const. Co. (D. C.) 235 F. 901.

§ 1624. (R. S. § 983.) Bill of costs, how taxed.

II. TAXATION OF COSTS IN GENERAL

4. Want of jurisdiction, dismissal, and nonsuit.—In equity, see note 33, post.

Where an action was dismissed on the defendant's special plea to the jurisdiction, the court is without authority to award costs. Budris v. Consolidation Coal Co. (D. C.) 251 F. 673.

8. Order taxing costs.—On reversal of judgment "with costs," costs of first trial, resulting in a mistrial, and second trial, resulting in verdict for defendant, held taxable against defendant, in view of long established custom. Frey & Son v. Welch Grape Juice Co. (D. C.) 242 F. 1004.

11. Appeal from taxation of costs.—An order allowing attorney's fees will be reversed where there is no proof of the value of the legal services in the amount allowed or any other amount. England v. Commercial Bank of New Madrid, Mo., 242 F. 813, 155 C. C. A. 401.

III. FEES AND EXPENSES—TAXATION AS COSTS

13. In general.—Courts exercise a discretion, in the taxation of costs and disbursements, in determining what are necessary and reasonable items. U. S. v. Minneapolis, St. P. & S. S. M. Ry. Co. (D. C.) 235 F. 951.

An action to recover penalties under Hours of Service Act March 4, 1907, § 3 (Comp. St. 1916, § 8679), is a civil action, in which, on recovery, plaintiff is entitled to tax its costs and disbursements. Id.

14. Costs unnecessarily incurred.—In a creditors' suit, where complainant is successful, his counsel are entitled only to their reasonable and necessary disbursements. Central Trust Co. of New York v. United States Light & Heating Co., 233 F. 420, 147 C. C. A. 356.

15. Attorney's fees.—A contingent fee contract does not give the attorney such an interest in the case as to entitle him to appear therein after its removal to a federal court which had disbarred him. Leonard v. Toledo, St. L. & W. R. Co. (D. C.) 232 F. 281.

18. Expense of exhibits.—Where plaintiff delayed his dismissal until the eve of trial, defendant cannot be allowed as costs of disbursement for the preparation of models for various alleged anticipating structures. Bone v. Walsh Const. Co. (D. C.) 235 F. 901.

20. Expense of printing.—Under this section cost of printing record in patent infringement suit, as required by District Court rule 11, held taxable. Christensen v. General Electric Co. (D. C.) 248 F. 284.

21. Expense of copies.—Under this section, defendant, where plaintiff delayed dismissal until the eve of trial, is entitled to tax as costs disbursement for certified copies of patents and publications which would necessarily have been used. Bone v. Walsh Const. Co. (D. C.) 235 F. 901.

22. Stenographer's charges.—The fee paid to a stenographer for a copy of his minutes for convenience and use of a party on the trial is not taxable as costs under this section. Stallo v. Wagner, 245 F. 636, 158 C. C. A. 64.

IV. PERSONS ENTITLED TO, AND PERSONS LIABLE FOR, COSTS

29. "Prevailing party."—The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered. U. S. v. Minneapolis, St. P. & S. S. M. Ry. Co. (D. C.) 235 F. 951.

The United States, when the prevailing party plaintiff in an action at law, is entitled to recover costs and disbursements, usually in conformity to the state practice, when no specific provision is made therefor by a federal statute. Id.

30. —— Partial success.—A trustee in bankruptcy held not entitled to recover costs made on a supplemental bill on which he did not recover, although successful generally in the suit. Babbitt v. Read, 236 F. 42, 149 C. C. A. 252, affirming decree (D. C.) 215 F. 395.

On recovery in an action at law for infringement, the costs are taxable to defendant, although the action was based on two patents, and the issues as to one were withdrawn from the jury.

Sears, Roebuck & Co. v. Pearce (C. C. A.) 253 F. 960.

V. COSTS IN EQUITY AND ADMIRALTY

33. **Taxation.**—Where, in a creditors' suit, a fund is recovered or protected by the exertions of complainant's counsel, it is proper for the court, out of the fund, to allow fees to complainant's counsel. Central Trust Co. of New York v. United States Light & Heating Co., 233 F. 420, 147 C. C. A. 356.

Where, in suit to restrain construction of railroad, defendant asked assessment of damages to which complainant might be entitled, costs held properly imposed on defendant. Eastern Oregon Land Co. v. Deschutes R. Co., 246 F. 400, 158 C. C. A. 464, reversing deeree Same v. Des Chutes R. Co. (D. C.) 213 F. 897. Certiorari denied Deschutes R. Co. v. Eastern Oregon Land Co., 38 S. Ct. 192, 245 U. S. 672, 62 L. Ed. 540.

Where general bondholders of canal company, which was controlled by railroad company, recovered against latter and compelled it to pay sum of nearly $2,000,000 for distribution among bondholders, proceeding must be deemed adverse as to railroad company, though it held some bonds of canal company, and in allowing attorney's fees nothing should be charged against bonds held by railroad company. Brown v. Pennsylvania R. Co. (D. C.) 250 F. 513.

Award of $200,000 in favor of attorneys for holders of bonds of canal company, who recovered from railroad company, which controlled latter, nearly $2,000,000, held excessive. Id.

Where a patent infringement suit was dismissed for want of jurisdiction, no costs could be taxed. United States Envelope Co. v. Transo Paper Co. (D. C.) 229 F. 576.

Cost of internal revenue stamps affixed to deed of special master in chancery held to be taxed as part of the costs. Crawford v. New South Farm & Home Co. (D. C.) 231 F. 999.

Allowance of compensation to attorneys for bondholders not participating in reorganization scheme in suit to foreclose railroad mortgage, out of entire fund applicable to payment of such bonds, rests within discretion of the trial court. Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 236 F. 814.

On dismissal of a patent infringement suit at cost of plaintiffs on their motion, charges for transcribing five copies of depositions were not taxable. Christensen v. General Electric Co. (D. C.) 248 F. 284.

Where a court of equity, having jurisdiction over the subject-matter of a suit and the parties, dismisses the bill of complaint because the plaintiff has failed to make out a case calling for equitable relief, it has jurisdiction to award costs against the unsuccessful party. Burlingame v. Manchester, 44 App. D. C. 335.

CITED WITHOUT DEFINITE APPLICATION

The Eros (D. C.) 245 F. 814.

§ 1626. (Act July 20, 1892, c. 209, § 1, as amended, Act June 25, 1910, c. 435.) Suits, etc., by poor persons.

I. OPERATION OF STATUTE IN GENERAL

2½. **Effect as to statute relating to District of Columbia.**—Sections 175 and 176, Code of Law D. C. 1901 (31 Stat. 1219, c. 854), relating to the prosecution of actions without the payment of costs, have been repealed by this section as amended by Act June 25, 1910. Neubeck v. Holmes, 44 App. D. C. 67.

II. RIGHT TO PROSECUTE SUIT IN FORMA PAUPERIS

3. **Parties entitled.**—Under this section the privileges of action in forma pauperis are limited to citizens of the United States. The Memphian (D. C.) 245 F. 484.

In view of this section, held that, under Sundry Civil Appropriation Act July 1, 1916, foreign seamen may sue for wages without paying or making deposits for costs. Id.

An alien is not entitled to prosecute an action in the courts of the District of Columbia without the payment of costs. Neubeck v. Holmes, 44 App. D. C. 67.

9. **Criminal prosecutions.**—This section does not empower a District Court to order its reporter to furnish a transcript to defendant in a criminal case without compensation. U. S. v. Fair (D. C.) 235 F. 1015.

9½. **Bankruptcy proceedings.**—As under the statute, payment of the clerk's filing fees has priority over payment of attorney's fees, a bankrupt cannot reverse this order, and, after paying his attorney a fee, file his petition and schedules as pauper. In re Darr (D. C.) 232 F. 415.

CITED WITHOUT DEFINITE APPLICATION

In re Abdu, 38 S. Ct. 447, 247 U. S. 27, 62 L. Ed. 966.

§ 1630a. (Act July 1, 1918, c. 113, § 1.) Suits by seamen without prepayment of or bond for costs.

Courts of the United States, including appellate courts, hereafter shall be open to seamen, without furnishing bonds or prepayment of or making deposit to secure fees or costs, for the purpose of entering and prosecuting suit or suits in their own name and for their own benefit for wages or salvage and to enforce laws made for their health and safety. (40 Stat. 683.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

Notes of Decisions

Foreign seaman.—In view of section 1626, held that, under Sundry Civil Appropriation Act July 1, 1916, foreign seamen may sue for wages without paying or making deposits for costs. The Memphian (D. C.) 245 F. 484.

In circuit court of appeals.—This section does not apply to prosecution of appeals in Circuit Court of Appeals; clerk of that tribunal having stated salary, appropriation for which was made by Act March 3, 1917, § 1. The Nigretia, 249 F. 348, 161 C. C. A. 356.

Appeal from order of dismissal.—Under Appropriation Act June 12, 1917 (a prior enactment of this section), seamen, their libel to enforce payment of wages having been dismissed, are not entitled to perfect an appeal without making required deposit to secure costs. In re Abdu, 38 S. Ct. 447, 247 U. S. 27, 62 L. Ed. 966.

§ 1633. (R. S. § 987.) Executions stayed on conditions.

Stay of execution—Power to grant.—Where a defendant attempted unsuccessfully to modify a written contract by parol evidence in an action at law, the court held to have power to stay execution on the judgment to permit the filing of a bill to reform the contract. American R. Co. of Porto Rico v. Ponce & G. R. Co., 246 F. 925, 159 C. C. A. 197.

§ 1635. (R. S. § 989.) Execution not to issue against officers of revenue in cases of probable cause, etc.

1. Construction and operation of statute in general.—This section is applicable only to collector making illegal exaction, so that, where successor of such collector is sued, the successor is individually liable, if liable at all. Roberts v. Lowe (D. C.) 236 F. 604.

§ 1636. (R. S. § 990.) Imprisonment for debt.

What constitutes "imprisonment for debt."—A commitment for contempt for failure to pay a master's fee awarded by the court, made on application of the master, is not an "imprisonment for debt," but for refusal to obey the order of the court. Cutting v. Van Fleet (C. C. A.) 252 F. 100.

Cited without definite application, Safford v. U. S. (C. C. A.) 252 F. 471.

§ 1637. (R. S. § 991.) Discharge from arrest or imprisonment.

Cited without definite application,
Safford v. U. S. (C. C. A.) 252 F. 471.

§ 1644. (R. S. § 995.) Moneys paid into court, where and how deposited.

Money "accruing to the United States."—By regulation of the Treasury Department public moneys, including moneys accruing to the United States from the forfeiture, shall be deposited to the credit of the treasurer. After the entry of an order adjudging default on a criminal recognizance and directing the issuance of a scire facias, but before any hearing thereon, one of the sureties remitted the amount named in the recognizance, but without interest or costs, to the clerk, who credited the same to him and deposited the money to the credit of the court. Held, that the money did not "accrue to the United States," so as to become its absolute property, prior to final judgment of forfeiture on return of the scire facias, but until that time was money received by the clerk in a pending cause within this section, and was properly deposited by him, and subject to withdrawal on order of the judge. U. S. v. Smart (C. C. A.) 237 F. 978.

§ 1645. (R. S. § 996, as amended, Act Feb. 19, 1897, c. 265, § 3, and Act March 3, 1911, c. 224.) Moneys paid into court, how withdrawn; disposition of moneys unclaimed.

See U. S. v. Smart (C. C. A.) 237 F. 978.

Violation of § 10267.—Under this section and Rev. St. § 5153 (Comp. St. 1916, § 9691), held, that in condemnation suit, where award was held in abeyance to await determination of conflicting claims, it was not a violation of Criminal Code, § 99 (Comp. St. 1916, § 10267), for the clerk to deposit such award according to stipulation of parties in national banks not designated as public depositaries. U. S. v. Conway Lumber Co. (D. C.) 234 F. 961.

PROCEDURE ON ERROR AND APPEAL

§ 1646. (Act March 3, 1891, § 4.) Appeals, writs of error, etc.

4. Parties to appeals or writs of error—Persons entitled to appeal.—Where decree adjudged plaintiff to have interest in property on payment of specified amount, defendant's acceptance of such payment held not such acquiescence or acceptance of benefits as prevented him from appealing. Jones v. Pettingill, 245 F. 269, 157 C. C. A. 461, certiorari denied Pettingill v. Jones, 38 S. Ct. 61, 245 U. S. 663, 62 L. Ed. 536.

Unless there is a separable controversy, or unless there is some sum to which a party is entitled in any event, he may not accept the benefit of the decree and later appeal. Spencer v. Babylon R. Co. (C. C. A.) 250 F. 24.

5½. —— Necessary and proper parties.—See Veitia v. Fortuna Estates, 240 F. 256, 153 C. C. A. 182.

6. —— Necessity for all parties jointly affected by judgment or decree to join in appeal or writ of error.—Receivers appointed in foreclosure suit held not necessary parties to appeal by trustee from order enjoining it from prosecuting another suit to enforce a collateral agreement. Ex parte Equitable Trust Co. of New York, 231 F 571, 145 C. C. A. 457, reversing order Equitable Trust Co. of New York v Western Pac. Ry. Co. (D. C.) 231 F 478.

7. —— Joint or several judgments or decrees.—A judgment adjudging two persons charged and tried together guilty of contempt for violating an injunction, although by separate acts, may be reviewed as to both on a single writ of error. Tosh v. West Kentucky Coal Co. (C. C. A.) 252 F. 44.

8. —— Summons and severance or notice to join in appeal.—Where his codefendant appeared, filing a waiver, held, that writ of error sued out by plaintiff in error would not be dismissed for his failure to serve notice upon or obtain severance from his codefendant. Richards v. American Bank of Alaska, 234 F. 300, 148 C. C. A. 202.

Where two defendants asserted a limitation title to a defined parcel of the land in suit, in which no other defendant claimed an interest, they may alone bring error, without a severance from the other defendants, and without any reason being assigned for the failure of such defendants to join. Conn v. Drew (C. C. A.) 250 F. 852.

11½. —— Amicus curiæ.—Only parties to the appeal record can be recognized as parties by the appellate court, and briefs filed by one not party to appeal can be considered only as addressed to court by amicus curiæ. Veitia v. Fortuna Estates, 240 F. 256, 153 C. C. A. 182.

12. —— Objections and amendments.—As a question of defect of parties is one requiring opening up of record, that matter will not be considered on motion to dismiss appeal, where error may probably be met by amendment, but will be postponed until hearing on merits. Graham v. O'Ferral, 236 F. 717, 150 C. C. A. 49.

The Circuit Court of Appeals may permit a party, which has been omitted from an appeal and not cited and severed, to be brought in by amendment with its consent and waiver of citation. The Seguranca, 250 F. 19, 162 C. C. A. 191. See, also, The Mary B. Curtis, 250 F. 9, 162 C. C. A. 181.

13. Effect of transfer or proceedings therefor—Transfer of jurisdiction in general.—Where, after perfection of an appeal in a patent case, defendant discovered new evidence, held, that a motion to reopen the case should by appellate court be directed to District Court for consideration, so that if it should find the case should be reopened it might apply for dismissal of appeal and remand of record. Wagner v. Meccano, Limited, 235 F. 890, 149 C. C. A. 202, authorizing reopenment in District Court Meccano v. Wagner (D. C.) 234 F. 912.

14. —— Vacating order or judgment. See U. S. v. Pollak (D. C.) 230 F. 532.

§ 1647. (Act March 3, 1891, c. 517, § 11.) Appeals and writs of error to circuit courts of appeals; time for taking.

4. Proceedings to which limitation applies.—Appeal from order granting petition of one claiming, under bill of sale, brick manufactured by bankrupt's lessee, opposed by bank, which made advances to lessee under contract with

bankrupt and lessee, held to fall within Bankruptcy Act July 1, 1898, § 24a (Comp. St. 1916, § 9608), allowing appeals from controversies in bankruptcy, time for perfection of which is six months, instead of section 25a (Comp. St. 1916, § 9609). Bank of Ragland v. Hudson, 247 F. 241, 159 C. C. A. 335.

Where judgment in contempt proceedings was entered August 30, 1915, appeal taken October 16, 1916, comes too late, and must be dismissed, under this section. Shuler v. Raton Waterworks Co., 247 F. 634, 160 C. C. A. 44.

7. Computation of period.—Lodging of petition for writ of error and draft of order allowing it with the clerk held not an application to the court or judge for the allowance or issue of the writ. Camden Iron Works Co. v. City of Cincinnati, 241 F. 846, 154 C. C. A. 548.

Where petition for writ of error was presented to judge within six months, but without application for immediate allowance, and was not again called to his attention, held, that plaintiff in error was not entitled to allowance as of date of such presentation. Id.

Under this section Circuit Court of Appeals held without jurisdiction, where writ of error is not issued within six months, though allowed within that period. Collins v. Huffman, 245 F. 554, 158 C. C. A. 20.

An appeal taken within six months of rendition of decree confirming foreclosure sale held to be within time prescribed by this section. Painter v. Union Trust Co., 246 F. 240, 158 C. C. A. 400.

Under this section, a writ of error cannot, where six-months period expires on Sunday, be sued out on following Monday. Siegelschiffer v. Penn Mut. Life Ins. Co., 248 F. 226, 160 C. C. A. 304.

This section should have same construction in various circuits, and varying state rules as to computation of time should not be deferred to, under Comp. St. 1916, § 1537, conforming practice in civil cases in federal courts to state practice. Id.

10. Extension of time.—Six months limitation on suing out writ of error under this section held jurisdictional, and courts cannot extend it. Delay in settling a bill of exceptions does not operate to extend the time for taking a writ of error, as the writ can properly issue in advance of the settlement of the bill. Camden Iron Works Co. v. City of Cincinnati, 241 F. 846, 154 C. C. A. 548.

13. Effect of delay.—See In re National Telephone Mfg. Co. (C. C. A.) 230 F. 785.

The allowance of a writ of error in a criminal case did not divest the District Court of jurisdiction and transfer the case to the Circuit Court of Appeals; and where the writ itself was not issued and filed within the six months allowed by statute, the District Court had jurisdiction to vacate an order staying proceedings and an order releasing defendants on bail. U. S. v. Pollak (D. C.) 230 F. 532.

§ 1648. (Act March 3, 1891, c. 517, § 6.) Circuit courts of appeals to Supreme Court; time for taking.

As to time for allowing or entertaining writs of error, appeals, or writs of certiorari to bring up causes for review by the Supreme Court, see ante, § 1228a.

§ 1649. (R. S. § 1008.) To Supreme Court, time for taking.

See note under § 1648, ante.

§ 1649a. (Act Sept. 6, 1916, c. 448, § 4.) Dismissal; wrong remedy.

Distinction between remedy by appeal and writ of error, see notes under §§ 1120, 1213–1215.

Notes of Decisions

Construction and operation in general.—Despite Act Sept. 6, 1916, § 7 (Comp. St. 1916, § 1649a, note), held that, under this section, writ of error sued out to review judgment in contempt proceedings, rendered in 1915, cannot be dismissed on ground that judgment, being rendered in equity, was reviewable only by appeal. Shuler v. Raton Waterworks Co., 247 F. 634, 160 C. C. A. 44.

Notwithstanding proper procedure for review was by writ of error, the court on appeal could not, in view of this section, dismiss the appeal, being required by such section to disregard the procedural oversight. Equitable Trust Co. v. Denver & R. G. Ry. Co., 250 F. 327, 162 C. C. A. 397.

Under this section, reviewing court will treat a case at law, erroneously brought by appeal, as brought by writ of error, Ana Maria Sugar Co. v. Quinones (C. C. A.) 251 F. 499.

By the express terms of this section a federal appellate court having jurisdiction to review a cause may not dismiss a writ of error solely because an appeal should have been taken, but must disregard the error. Toyo Kisen Kaisha v. Hartman (C. C. A.) 253 F. 422.

Abolition of distinction between modes of review.—This section does not abolish distinction between writs of error and appeals, but only to provide for review in the appropriate way, notwithstanding a mistake in choosing the mode of review. Gauzon v. Compania General De Tobacos de Filipinas, 38 S. Ct. 46, 245 U. S. 86, 62 L. Ed. 165.

Equitable defense in action at law.—Under this section it is immaterial, method of review of actions at law, where equitable defenses are interposed pursuant to Judicial Code, § 274b, not having been prescribed by court rule as authorized, whether case be brought by appeal or writ of error. Union Pac. R. Co. v. Syas, 246 F. 561, 158 C. C. A. 531.

§ 1651. (Act March 3, 1891, c. 517, § 11.) Provisions made applicable to circuit courts of appeals.

Effect of section in general.—Appeals and writs of error are to be taken to Circuit Court of Appeals in manner practiced in Supreme Court before 1891. Rederiaktiebolaget Amie v. Universal Transp. Co., 245 F. 282, 157 C. C. A. 474.

§ 1653. (R. S. § 997.) Removal of causes by writ of error.

1. Nature of writ of error.—Writ of error operates proprio vigore to remove record, while citation gives notice to parties and brings them into court. Rederiaktiebolaget Amie v. Universal Transp. Co., 245 F. 282, 157 C. C. A. 474.

Writ of error is writ of the appellate court, addressed to judge of trial court, directing him to send record and proceedings in case to appellate court, and is not brought until it is filed in court which rendered judgment. Siegelschiffer v. Penn Mut. Life Ins. Co., 248 F. 226, 160 C. C. A. 304.

9. Transcript of record — Time of docketing or return.—On appeal to Circuit Court of Appeals, there being in the particular district no statute or rule fixing time, that tribunal may relieve appellant from effect of his laches in omitting to seasonably furnish transcript of record. Graham v. O'Ferral, 236 F. 717, 150 C. C. A. 49.

11. — Scope and contents of record.—The trial court should exercise supervision over the record certified, by excluding matters redundant and immaterial to the presentation of the question for review. Bond v. U. S. (C. C. A.) 252 F. 804.

20. Assignment of errors.—Decisions based on rules of Circuit Court of Appeals, see notes under § 1114, ante.

On appeal by charterer from a decree in favor of owner for injuries to scow where charterer asserted that recovery should have been allowed only in so far as owner was not insured, such contention was equivalent to abandonment of any point except question of insurance, and assignment of error cannot be construed to raise contention that charterer was liable only for negligence. Kennelly v. Frederick Starr Contracting Co. (C. C. A.) 250 F. 229.

In a prosecution in a federal court, the denial of a motion in arrest of judgment is not assignable as error. Beyer v. U. S. (C. C. A.) 251 F. 39.

21. — Time of filing.—Amended assignment of errors, filed several months after the writ of error had been granted, although by leave of the trial court, cannot be considered. Kreuzer v. U. S. (C. C. A.) 254 F. 34.

22. — Necessity of assignment.—A point not presented by an assignment of error cannot be considered on appeal. Feilbach Co. v. Russell, 233 F. 412, 147 C. C. A. 348; Arnold v. Horrigan, 238 F. 39, 151 C. C. A. 115; Holsman v. U. S., 248 F. 193, 160 C. C. A. 271; Wight v. Washoe County Bank (C. C. A.) 251 F. 819.

Question as to costs chargeable by clerk held not reviewable, where there was no taxation or request for taxation of costs, and no assignment of error raising the question. Williamson v. Electric Service Supplies Co., 242 F. 873, 155 C. C. A. 461, affirming decree (D. C.) 236 F. 353.

The contention that an allowance of counsel fees in a judgment sustaining a demurrer was premature will not be passed on, where error is not assigned to this feature of the judgment. Morgan's Louisiana & T. R. & S. S. Co. v. Isaac Joseph Iron Co., 243 F. 149, 156 C. C. A. 15.

A judgment will not be reversed for failure to allow nominal damages, in the absence of a specific assignment or complaint on that ground. Davis v. Carnegie Steel Co., 244 F. 931, 157 C. C. A. 281.

Question whether trial judge erred in stating that in his opinion letter made basis of prosecution for violating statute against mailing obscene matter, was solicitation for immoral purpose, mailed in contravention of act, cannot be reviewed where not assigned. Parish v. U. S., 247 F. 40, 159 C. C. A. 258.

Where the denial of a motion for new trial on the ground that defendant did not have a fair trial was not included in assignments of error, and was no part of the bill of exceptions, that question cannot be reviewed. Linn v. U. S. (C. C. A.) 251 F. 476.

Where a suit for the infringement of a patent was referred and the master

worked out a difficult apportionment, any error as to details should be pointed out in the exceptions to his report and in the assignments of error to decree, and if not so pointed out cannot be considered by reviewing court. Oehring v. Fox Typewriter Co. (C. C. A.) 251 F. 584.

27. —— **Errors considered without assignment.**—Though defendant pleaded over after the overruling of its demurrer to declaration, etc., sufficiency of declaration to state a cause of action may be reviewed as an unassigned error appearing on record. Mound Coal Co. v. Jeffrey Mfg. Co., 233 F. 913, 147 C. C. A. 587, affirming judgment Jeffrey Mfg. Co. v. Mound Coal Co. (D. C.) 215 F. 222. Rehearing granted Mound Coal Co. v. Jeffrey Mfg. Co. (C. C. A.) 240 F. 129, and judgment affirmed on rehearing, Id. 412.

Objections that the trial court was without jurisdiction need not be assigned, to be considered, but will be raised by the appellate court on its own motion. Toledo Newspaper Co. v. U. S., 237 F. 986, 150 C. C. A. 636, affirming judgment U. S. v. Toledo Newspaper Co. (D. C.) 220 F. 458; Spencer v. Patey, 243 F. 555, 156 C. C. A. 253; Supreme Council of Royal Arcanum v. Hobart, 244 F. 385, 157 C. C. A. 11.

The error of the District Court in holding that, under Personal Property Law N. Y. § 62, an unrecorded conditional sale contract was invalid against creditors, held so plain, and so closely related to an assignment of error, that it would be considered, though not specifically assigned. Mergenthaler Linotype Co. v. Hull, 239 F. 26, 152 C. C. A. 76.

Exception to charge, though not properly assigned as error, may be considered in case involving personal liberty. Bandy v. U. S., 245 F. 98, 157 C. C. A. 394.

It is competent for Circuit Court of Appeals to notice plain error, in absence of any assignment. Grafton v. Meikleham, 246 F. 737, 159 C. C. A. 39, reversing decree In re Meikleham (D. C.) 236 F. 401. Certiorari denied Meikleham v. Grafton, 38 S. Ct. 334, 246 U. S. 665, 62 L. Ed. 929.

29. —— **Rulings on evidence.**—On appeal from a judgment of the District Court affirming an order of the referee, the question of the admissibility of evidence, which was not assigned as error, and on which no finding was based, will not be reviewed. Gandia & Stubbe v. Cadierno, 233 F. 739, 147 C. C. A. 505.

30. —— **Rulings on instructions.**—The omission in the charge to withdraw immaterial testimony from the consideration of the jury will not be considered on writ of error, where the charge was not excepted to for that reason, and no error was assigned. Co-operative Raw Fur Co. v. American Credit Indemnity Co., 240 F. 67, 153 C. C. A. 103.

Requests to charge, as found in the stenographer's minutes, cannot be considered on writ of error, where not embodied in the record and the assignments of error. Linn v. U. S. (C. C. A.) 251 F. 476.

31. —— **Sufficiency of assignments.**—The following assignments have been held too broad and indefinite: That the verdict is contrary to the law, McClendon v. U. S., 229 F. 523, 143 C. C. A. 591; that the judgment was not sustained by the evidence and was against the evidence did not raise the objection that there was no finding that the bankrupt intended a preference, Wm. Edwards Co. v. La Dow (C. C. A.) 230 F. 378; that the court erred in refusing to render judgment for defendant, instead of plaintiff, Fisher Mach. Works Co. v. Dougherty, 231 F. 910, 146 C. C. A. 106; that the verdict was contrary to the evidence and contrary to the law, or that the court erred in rendering judgment against defendants and in rendering judgment for costs against them, Vandeventer v. Traders' Nat. Bank of Kansas City, Mo., 241 F. 584, 154 C. C. A. 360; that upon pleadings, evidence, and record verdict should have been for plaintiff in error, Northern Central Coal Co. v. Barrowman, 246 F. 906, 159 C. C. A. 178; that the court erred "in his instructions," no particular instructions being set forth, or that court erred in sustaining objections to "certain questions," without setting them forth or describing them, Vandeventer v. Traders' Nat. Bank of Kansas City, Mo., 241 F. 584, 154 C. C. A. 360. And a specification of error which declared that appellant would rely upon an error specified in an assignment at a named page of the record presents nothing for review, where at that page there was nothing in the record referring to the specification. Cooper v. Jewett, 233 F. 618, 147 C. C. A. 426. Assignment complaining of admission of evidence which did not set forth the evidence admitted was insufficient. Bandy v. U. S., 245 F. 98, 157 C. C. A. 394. An assignment complaining of the refusal of a request conceded to be faulty, presents nothing for review, where there was no assignment of error on the ground that the judge failed to charge correctly concerning the subject-matter of the request refused. Fall v. Bennett, 248 F. 491, 160 C. C. A. 501.

36. **Scope and extent of review as dependent on record—In general.**—On appeal from denial of petition to vacate judgment, record suggesting no question of law held to present nothing for review. Rose v. Harrison, 117 N. E. 313, 228 Mass. 261.

37. —— **Rulings on evidence.**—Where there was no request to direct a ver-

dict, the charge is not in the record, and no exceptions were taken, nor error assigned to the ruling on a motion for new trial, defendant cannot urge the insufficiency of the evidence to support the verdict. Kalloch v. Hoagland, 239 F. 252, 152 C. C. A. 240.

In action for architectural services, where plans and specifications were not in the record, or produced before the court, held, that error could not be found in the exclusion of evidence that they were for a new structure, and not for alterations. First Nat. Bank v. Hoggson Bros., 242 F. 261, 155 C. C. A. 101.

The alleged error in overruling an objection to a question as not being cross-examination cannot be reviewed, where the witness' testimony in chief is not in the record. Id.

Defendant's constitution, in evidence in action for libel based on letters of its president and secretary to one of its local lodges, giving reason for rejecting plaintiff's claim under an accident certificate, not being in the record, it cannot be said there was no evidence of the members addressed having an interest in the subject-matter, relative to it, and the occasion being privileged. Wise v. Brotherhood of Locomotive Firemen and Enginemen (C. C. A.) 252 F. 961.

Relative to claim that the occasion called for mere rejection of claim, the form of certificate not being in the record, it cannot be said the statements did not relate to defenses provided for by it. Id.

Defendant's claim, that there was no proof of authority in its president and secretary to render it liable for libel in their letters giving reason for rejecting claim under one of its accident certificates, is unavailing on error to direction of verdict for it; only part of all its constitution in evidence being in bill of exceptions, and that part giving them broad power in the premises. Id.

An assignment of error, based on an offer of proof therein set forth, presents nothing for review, where the record fails to disclose that it was excluded, or, if excluded, that an exception was taken thereto. Keefe v. Worcester Trust Co. (C. C. A.) 253 F. 536.

38. —— **Review of instructions.**—Where court charged that defendant could not be held responsible criminally for salesman's misrepresentations, unless made by his authority, and record did not show objection, or purport to contain all the evidence, the verdict must be deemed to determine that the representations were made with defendant's sanction. Weeks v. U. S., 38 S. Ct. 219, 245 U. S. 618, 62 L. Ed. 513, affirming judgment 224 F. 64, 139 C. C. A. 626.

In the federal courts, the fact of exceptions to instructions given, or to the refusal to give instructions requested, to be considered by an appellate court, must affirmatively appear. Alverson v. Oregon-Washington R. & Nav. Co., 236 F. 331, 149 C. C. A. 463. Thus a contention that the court in its charge assumed a fact cannot be reviewed where it does not appear from the record that any exception was taken to such statement. Missouri Dist. Telegraph Co. v. Morris & Co., 243 F. 481, 156 C. C. A. 179, appeal dismissed 38 S. Ct. 11, 245 U. S. 651, 62 L. Ed. 531. And the refusal of a requested charge cannot be reviewed on error, where the record did not show reservation of any exceptions. W. D. Reeves Lumber Co. v. Leavenworth, 248 F. 686, 160 C. C. A. 586.

Where no request for instruction directing verdict of not guilty appeared in transcript, and it did not appear that any exception was taken to any of instructions or to denial of requested instructions, assignment of error complaining that court erred in refusing to direct acquittal cannot be considered. Gladstone v. U. S., 248 F. 117, 160 C. C. A. 257, certiorari denied 38 S. Ct. 582, 247 U. S. 521, 62 L. Ed. 1246.

Where the instructions given by the court below were not in the record, questions of the propriety of the refusal of requested instructions cannot be reviewed. Magon v. U. S., 248 F. 201, 160 C. C. A. 279.

In prosecution under Act June 1906, § 23 (Comp. St. 1916, § 4379), for knowingly giving false testimony in naturalization proceeding, question whether it was error for court in its charge to incorporate that section of Criminal Code defining perjury cannot be reviewed on writ of error where facts developed by evidence were not shown by record. Gragorat v. U. S., 249 F. 470, 161 C. C. A. 428.

39. —— **Ruling on motions and orders.**—Where the record does not show that a motion for continuance was presented to the trial court and ruled on, plaintiff in error fails to show an abuse of discretion. Pennsylvania Co. v. Fanger, 231 F. 851, 146 C. C. A. 47.

41. —— **Review of questions of fact and findings.**—Where testimony and instructions given by court below were not in record, questions of sufficiency of evidence cannot be reviewed. Magon v. U. S., 248 F. 201, 160 C. C. A. 279.

The sufficiency of the evidence to sustain a conviction cannot be reviewed on writ of error, in the absence of exceptions and a bill of exceptions incorporating therein the evidence. Gregorat v. U. S., 249 F. 470, 161 C. C. A. 428.

The count legally charging an offense, and the evidence not being a part of the record, the judgment cannot legally be arrested. U. S. v. Joseph Fleming & Son Co. (D. C.) 251 F. 932.

§ 1654. (R. S. § 698.) Transcripts on appeals [in equity and admiralty].

3. Effect of failure to file transcript.—An appellant cannot omit a transcript of the evidence in an equity cause, or a bill of exceptions in a law case, and take advantage of favorable findings, based upon the evidence, which are inconsistent with the record upon which the appeal is based. Hight v. Richmond Park Imp. Co., 47 App. D. C. 518.

4. Contents of record or transcript.—There being no definite expression in record as to whether payments by national bank shareholders to receiver to assist in paying bank's indebtedness were to be applied on shareholders' statutory liability, the Supreme Court on appeal is required to decide which contention is more reasonable and probable considering all facts and circumstances stipulated and proved. Korbly v. Springfield Inst. for Savings, 38 S. Ct. 88, 245 U. S. 330, 62 L. Ed. 326, affirming judgment Pepper v. Same, 218 F. 814, 134 C. C. A. 502.

A master's finding of facts cannot be reviewed, in the absence from the record of a certificate or other proof that it contains all the evidence taken relating to such findings. Goldsmith Silver Co. v. Savage, 229 F. 623, 144 C. C. A. 33, affirming decree (D. C.) 211 F. 751.

Where decree in suit for infringement of patent briefly dismissed bill, held, that transcript on appeal should include all evidence tending to support grounds which would justify dismissal, even though court in its opinion showed that it based decree on particular ground. Linde Air Products Co. v. Morse Dry Dock & Repair Co., 246 F. 834, 159 C. C. A. 136, affirming decree (D. C.) 239 F. 909.

Appeals are decided on the record sent up whenever possible, and a decree will not be reversed where, from the record, the appellate court could determine nature of evidence improperly excluded, and that it would not have affected the result. In re Soltmann, 249 F. 455, 161 C. C. A. 413.

§ 1656. (Act Feb. 13, 1911, c. 47, § 1.) Printed transcript.

Omission of statement in narrative form.—Because of the anticipated bulkiness of the record in a suit in equity, the parties had the notes of the testimony transcribed directly into printed pages and bound into convenient volumes. The record as so printed conformed to Supreme Court rule 31 (Comp. St. 1916, p. 1835) and to the provisions of the statute. Held that, while the record in this shape was found satisfactorily convenient, the District Court could not approve a transcript of the record for transmission to the Supreme Court without the statement in narrative form required by equity rule 75 (Comp. St. 1916, p. 2527) unless leave to omit such statement was obtained from the Supreme Court, as it would be an evasion of the duty imposed on the District Court to apply the exception contained in the rule as to setting forth parts of the testimony in full to the whole testimony. U. S. v. Motion Picture Patents Co. (D. C.) 230 F. 541.

§ 1657. (Act Feb. 13, 1911, c. 47, § 2.) Same.

See U. S. v. Motion Picture Patents Co. (D. C.) 230 F. 541; note under § 1656.

§ 1658. (R. S. § 998.) Citation.

Citation on appeal or writ of error—Necessity.—Where appeal was allowed in open court, and was perfected during term at which appeal was rendered, there was sufficient notice of appeal, without citation. Edwards v. Bodkin, 249 F. 562, 161 C. C. A. 488.

—— Nature and effect of citation.—Writ of error operates proprio vigore to remove record, while citation gives notice to parties and brings them into court. Rederiaktiebolaget Amie v. Universal Transp. Co., 245 F. 282, 157 C. C. A. 474.

§ 1660. (R. S. § 1000.) Bond in error and on appeal.

Construction of court rules, see notes under §§ 1114, 1232.

Notes of Decisions

2½. In criminal case where writ of error is not a supersedeas.—See American Surety Co. v. U. S., 239 F. 680, 152 C. C. A. 514.

4. Necessity of bond to perfect appeal or error.—Under this section, writ of error, but for Supreme Court rule 29 (Comp. St. 1916, p. 1833), of which rule 13 for Circuit Courts of Appeals (Comp. St. 1916, p. 1292) is a copy, can be perfected and cause heard without any security at all, except for costs. Rederiaktiebolaget Amie v. Universal Transp. Co., 245 F. 282, 157 C. C. A. 474.

Where a trustee in bankruptcy desires a supersedeas, he may obtain the same upon giving a bond in compliance

with this section and section 1666, though the order allowing the appeal imposed no condition with respect to the appeal. Pacific Coast Casualty Co. v. Harvey (C. C. A.) 250 F. 952.

Bankruptcy Act, § 25c (Comp. St. 1916, § 9609), relieving a trustee in bankruptcy from giving bond on appeal or writ of error, does not relieve him of the obligation to give a supersedeas bond, as required by this section and section 1666, and if the trustee secures a supersedeas, giving bond, it is enforceable. Id.

10. Contents or conditions of bond.—A bond given by plaintiff in error in an action at law, conditioned for payment of "all costs and damages that may be awarded against it, if it shall fail to make its plea good," unless so specified in the approval, does not operate as a supersedeas. Ætna Life Ins. Co. of Hartford, Conn., v. Ryan (D. C.) 253 F. 457.

12. Time of delivery or filing.—On appeal to Circuit Court of Appeals, that tribunal may relieve appellant from effect of his laches in omitting to give security for costs; there being no rule or statute fixing time for filing in the particular situation. Graham v. O'Ferral, 236 F. 717, 150 C. C. A. 49.

14½. Effect of bond in general.—A dissolved corporation, appealing from decree against it and giving bond, cannot assert that it is incapable of maintaining and defending pending suits. Pease v. Rathbun-Jones Engineering Co., 37 S. Ct. 283, 243 U. S. 273, 61 L. Ed. 715, affirming decree 228 F. 273, 142 C. C. A. 565.

16. Bonds void or defective.—Under Supreme Court rule 29 (Comp. St. 1916, p. 1833), of which rule 13 for Circuit Courts of Appeals (Comp. St. 1916, p. 1292) is copy, held that, though no supersedeas bond was given when writ of error was taken, it is, under this section, mere irregularity, and any Circuit Judge or judge of Circuit Court of Appeals may, after expiration of 60-day period prescribed by section 1007 (section 1666), fix amount of supersedeas bond. Rederiaktiebolaget Amie v. Universal Transp. Co., 245 F. 282, 157 C. C. A. 474.

17. Effect of failure to give bond.—Where defendant in error failed to promptly move to dismiss, and entered into stipulation as to the record, writ will not be dismissed for plaintiff in error's laches in filing bond, etc., but plaintiff will be given opportunity to perfect writ by filing bond, under penalty of dismissal for failure. Fisher Hydraulic Stone & Machinery Co. v. Warner, 233 F. 527, 147 C. C. A. 413, reversing judgment (C. C.) 188 F. 465.

19. Enforcement of liability.—The writ of scire facias, to enforce liability of the surety on an appeal bond, is original only in the sense that, being obtained, the subsequent procedure is as in an action at law, entitling the defendant to answer and to jury trial. Universal Transp. Co. v. National Surety Co. (D. C.) 252 F. 293.

It is not ground of objection to issuance of scire facias against the surety on an appeal bond, to enforce its liability thereon, that it was not a party to the original action. Id.

20. Rendition of summary judgment on bond.—Jurisdiction of federal District Court to render summary judgment against sureties on appeal on affirmance without notice cannot be questioned, where thereafter sureties asked decision on question of their liability under the evidence. Pease v. Rathbun-Jones Engineering Co., 37 S. Ct. 283, 243 U. S. 273, 61 L. Ed. 715, affirming decree 228 F. 273, 142 C. C. A. 565.

21. Enforcement of judgment pending appeal.—Where, under this section and section 1666 bond superseding decree appealed from had been given, trial court is without jurisdiction to enforce obedience to decree by contempt proceedings. Smith v. Government of Canal Zone, 249 F. 273, 161 C. C. A. 281.

Where, in violation of stay or supersedeas of decree from which appeal had been previously taken, trial court attempted to enforce it by contempt proceedings, and record and parties were before appellate court, it may set aside judgment or order in contempt proceedings, as an attempt to enforce decree suspended, though such judgment or order might not be subject to review on writ of error as attempted. Id.

§ 1666. (R. S. § 1007, as amended, Act Feb. 18, 1875, c. 80, § 1.) Supersedeas.

Construction of court rules, see notes under §§ 1114, 1232.

Notes of Decisions

2. Construction and application in criminal prosecutions.—See American Surety Co. v. U. S. (C. C. A.) 239 F. 680.

Where, though writ of error was allowed, the writ was not issued and filed within the time allowed by statute, District Court held to have jurisdiction to vacate stay of proceedings and order releasing defendants on bail. U. S. v. Pollak (D. C.) 230 F. 532.

5. Power or authority to allow writ.—A single judge of the Circuit Court of Appeals is without power to grant a stay pending an appeal in a habeas corpus proceeding, where the District

Judge, who remanded the relator and allowed the appeal, refused the stay. U. S. v. Johnson (C. C. A.) 251 F. 889.

6. Writ operating as supersedeas.—Where order of Chief Justice of Court of Appeals granting writ of error from federal Supreme Court merely followed this section, petitioner's failure to subsequently comply with statute by lodging copy of writ in clerk's office for respondent's use did not affect validity of order that writ should operate as supersedeas. Ohio River Contract Co. v. Gordon, 189 S. W. 451, 172 Ky. 404.

7. Effect on further proceedings in lower court.—Where bond superseding decree appealed from had been given, trial court is without jurisdiction to enforce obedience to decree by contempt proceedings. Smith v. Government of Canal Zone, 249 F. 273, 161 C. C. A. 281.

7½. Effect as to other actions and proceedings.—A supersedeas bond, given by the defendant in an infringement suit, who was the manufacturer, on appeal from a decree granting an injunction, is not a bar to a suit against a customer of defendant, brought in another jurisdiction pending the appeal. Meccano, Limited, v. John Wanamaker, New York (D. C.) 241 F. 133.

Where plaintiff in replevin, in federal District Court for Pennsylvania, recovered judgment, and defendant sued out writ of error more than 60 days thereafter, which did not operate as a supersedeas, held, that action on replevin bond, under Pennsylvania replevin act of 1901 (P. L. 88), could not be suspended until determination of writ of error. Moore v. American Fidelity Co. of Montpelier, Vt. (D. C.) 247 F. 609.

8. Necessity of giving security.—Where a trustee in bankruptcy desires a supersedeas, he may obtain the same upon giving a bond, though the order allowing the appeal imposed no condition with respect to the appeal. Pacific Coast Casualty Co. v. Harvey (C. C. A.) 250 F. 952.

Bankruptcy Act, § 25c (Comp. St. 1916, § 9609), relieving a trustee in bankruptcy from giving bond on appeal or writ of error, does not relieve him of the obligation to give a supersedeas bond, as required by this section and section 1660, and if the trustee secures a supersedeas, giving bond, it is enforceable. Id.

9. Amount and sufficiency of bond.—Where judge signing writ of error and citation fixed amount of supersedeas bond by formal order, judge of Circuit Court of Appeals will not interfere with amount fixed in order, though citation was signed without production of bond. Rederiaktiebolaget Amie v. Universal Transp. Co., 245 F. 282, 157 C. C. A. 474.

16. Time for filing writ or bond—Extension of time by justice or judge.—Under Supreme Court rule 29 (Comp. St. 1916, p. 1833), of which rule 13 for Circuit Courts of Appeals (Comp. St. 1916, p. 1292) is copy, held that, though no supersedeas bond was given when writ of error was taken, it is, under Rev. St. § 1000 (Comp. St. 1916, § 1660), mere irregularity, and any Circuit Judge or judge of Circuit Court of Appeals may, after expiration of 60-day period prescribed by this section, fix amount of supersedeas bond. Rederiaktiebolaget Amie v. Universal Transp. Co., 245 F. 282, 157 C. C. A. 474.

18. Vacation of supersedeas.—Where Chief Justice of Court of Appeals has allowed writ of error from federal Supreme Court, Court of Appeals has no jurisdiction to vacate the order granting the writ of error and directing that it operate as a supersedeas; the jurisdiction being in the federal Supreme Court. Ohio River Contract Co. v. Gordon, 189 S. W. 451, 172 Ky. 404.

20½. Effect of bond as estoppel.—Where a supersedeas bond recited the rendition and entry of the decree, the sureties are estopped in a proceeding thereon from questioning the bond by collaterally attacking the decree. Pacific Coast Casualty Co. v. Harvey (C. C. A.) 250 F. 952.

21. Extent of liability on bond.—Where a trustee in bankruptcy appealed to the Supreme Court from a decision of the Circuit Court of Appeals reversing a judgment in his favor, giving a supersedeas bond, held that, as the decree appealed from awarded costs, etc., enforcement of the bond cannot be denied, on the ground that there was no judgment or decree on which execution could issue. Pacific Coast Casualty Co. v. Harvey (C. C. A.) 250 F. 952.

The enforcement of a supersedeas bond given on appeal to the Supreme Court from a decision of the Circuit Court of Appeals, which awarded costs in favor of the successful party, is not affected by the fact that at the time the bond was given the costs had not been taxed, for that was part of the proceedings stayed. Id.

24. Issuance and stay of execution.—When writ of error removing cause to United States Supreme Court is granted, the cause is pending therein, and execution cannot be stayed unless plaintiff in error files his writ of error within legal time after entry of judgment, for there can be no supersedeas if writ of error is invalid. Seaboard Air-Line Ry. Co. v. Horton (N. C.) 96 S. E. 954.

§ 1668. (R. S. § 700.) Review in cases tried without a jury.

1. **Construction in general.**—Sections 1584 and 1587, providing for jury trial of fact issues in the Circuit Courts, were not repealed by Judicial Code, and they, as well as section 1668, providing for review, are made applicable to District Courts by section 1268. Lillie v. Dennert, 232 F. 104, 146 C. C. A. 296.

3. **Mode of review.**—See notes under §§ 1120, 1213–1215.

4. **Stipulations waiving jury.**—Under Comp. St. 1916, §§ 1584, 1587, 1668, where a case was tried without a jury on an oral waiver of a jury trial and without any written stipulation waiving such a trial, the questions decided at the trial could not be re-examined on writ of error, and no questions were open to review except those arising upon the process, pleadings, or judgment. Illinois Surety Co. v. U. S., 229 F. 527, 143 C. C. A. 595; Id., 229 F. 533, 143 C. C. A. 601.

7. **Exceptions to rulings—Necessity.**—Where motion to enter satisfaction of judgment was tried to the court, but jury was not waived, the appellate court on writ of error will not, no objection having been made, consider whether order of court was mere award of an arbitrator, but will treat decision as one which can be reviewed. Lillie v. Dennert, 232 F. 104, 146 C. C. A. 296.

Rules 11 and 24 for Circuit Courts of Appeals (Comp. St. 1916, pp. 1290, 1326) apply to assignment of errors in Circuit Court of Appeals, and do not warrant review in action tried to court of matters not reviewable under this section, because not presented below. Maryland Casualty Co. of Baltimore, Md., v. Orchard Land & Timber Co., 240 F. 364, 153 C. C. A. 290.

8. —— **Rulings on evidence or pleading.**—Exception to judgment held insufficient to preserve for review rejection of testimony, and so assignment of error complaining of such rejection may be disregarded. Cordingly v. Kennedy, 239 F. 645, 152 C. C. A. 479.

The question whether there was any substantial evidence to sustain the findings, can be reviewed only when it was presented to and decided by the trial court, and an exception to the ruling taken and allowed. Security Nat. Bank of Sioux City, Iowa, v. Old Nat. Bank of Battle Creek, Mich., 241 F. 1, 154 C. C. A. 1.

9. —— **Form and sufficiency.**—Where, in action tried to court, there was general finding for defendants, exception to judgment on ground evidence was insufficient to justify it does not present for review on error question of sufficiency of evidence. Garwood v. Scheiber, 246 F. 74, 158 C. C. A. 300.

10. —— **Objections or exceptions to mode or form of procedure.**—Decree granting relief under Bankruptcy Act July 1, 1898, § 67e (Comp. St. 1916, § 9651), avoiding fraudulent transfers, will not be disturbed on ground that bill was framed under section 60b of that act as amended by Act Feb. 5, 1903, § 13, and Act June 25, 1910, § 11 (Comp. St. 1916, § 9644), where the objection was not raised below, and the issue of fraudulent transfer was found against appellant. Dean v. Davis, 37 S. Ct. 130, 242 U. S. 438, 61 L. Ed. 419, affirming decree 212 F. 88, 128 C. C. A. 658.

11. —— **On reference.**—An erroneous conclusion of the master in an equity suit that a reorganized company was not liable for unsecured debts of the old corporation could be reversed by the Circuit Court of Appeals on appeal upon the merits, though the exceptions to such conclusion were put upon other grounds. Kansas City Southern R. Co. v. Guardian Trust Co., 36 S. Ct. 334, 240 U. S. 166, 60 L. Ed. 579, affirming decrees Central Imp. Co. v. Cambria Steel Co., 201 F. 811, 120 C. C. A. 121, and 210 F. 696, 127 C. C. A. 184.

Order confirming master's report held in effect to overrule objections, and not to be reviewable, in the absence of an exception thereto, or to the entry of judgment. Rutan v. Johnson & Johnson, 231 F. 369, 145 C. C. A. 363.

12. **Bill of exceptions—Necessity.**—While, on error from final judgment, errors of law appearing on the face of the record proper are available, without bill of exceptions or equivalent, not so as to errors in rulings of law in the course of the trial, which require exceptions at the time, and their incorporation into the record by such means. Ana Maria Sugar Co. v. Quinones (C. C. A.) 251 F. 499. See, also, notes under § 1590.

19. **Review on submission of questions of law and fact to court.**—Where both parties moved court to instruct verdict, thereby affirming there was no disputed question of fact, and necessarily requesting court to find the facts, they are concluded by finding made by trial court, and appellate court is limited, in reviewing its action, to consideration of correctness of finding on law, and must affirm, if there is any supporting evidence. Moore v. Fain (C. C. A.) 251 F. 573; Dickinson v. Harris, 242 F. 926, 155 C. C. A. 514; La Crosse Plow Co. v. Pagenstecher (C. C. A.) 253 F. 46.

Where averment of fact in motion on which court granted it was not controverted below, it cannot be drawn in question here. Camp v. Gress, 244 F. 121, 156 C. C. A. 549, certiorari granted 38 S. Ct. 14, 245 U. S. 655, 62 L. Ed. 533.

A prayer by each party for binding instructions in his favor is equivalent to a joint request for a finding of fact by the court, and does not amount to a

submission without the intervention of a jury within Rev. St. §§ 649, 700 (Comp. St. 1916, §§ 1587, 1668); hence the direction of a verdict by the court is conclusive. Williams v. Vreeland, 244 F. 346, 156 C. C. A. 632.

As trial court heard evidence, it will be presumed that decree was right, unless it appears that there has been obvious error in application of law, or some serious mistake in consideration of evidence. U. S. v. Porter Fuel Co., 247 F. 769, 159 C. C. A. 627.

20. Review on agreed statement of facts.—A defense not regarded by trial court or included in agreed statement of facts cannot be considered on defendant's appeal. Alaska Salmon Co. v. Territory of Alaska, 236 F. 62, 149 C. C. A. 272.

When a case is submitted on an agreed statement of facts, the sufficiency of the facts so agreed on to sustain the judgment entered may be reviewed on writ of error. Blair v. U. S., 241 F. 217, 154 C. C. A. 137, reversing judgment U. S. v. Blair-Murdock Co. (D. C.) 228 F. 77.

22. Review as dependent on requests for findings or rulings.—Review of denial of motion for judgment is limited to the specific questions presented on the motion. National Surety Co. v. Lincoln County, Mont., 238 F. 705, 151 C. C. A. 555, affirming judgment Lincoln County v. Coast Bridge Co. (D. C.) 231 F. 468.

General finding made in cause submitted to court under this section is not reviewable where no request for special findings nor motion for a finding for adverse party was made during the trial. Calaf v. Fernandez, 239 F. 795, 152 C. C. A. 581.

In action tried to District Court in accordance with Rev. St. §§ 649, 700 (Comp. St. 1916, §§ 1587, 1668), made applicable to District Court by Judicial Code, §§ 289-291, held, that plaintiff in error, defendant below, who did not object to admission of evidence and requested no special findings, could not complain on appeal that evidence was insufficient to sustain judgment. Maryland Casualty Co. of Baltimore, Md., v. Orchard Land & Timber Co., 240 F. 364, 153 C. C. A. 290; Chicago, M. & St. P. Ry. Co. v. George A. Hormel & Co., 240 F. 381, 153 C. C. A. 307; H. F. Dangberg Land & Live Stock Co. v. Day, 247 F. 477, 159 C. C. A. 531.

Whether special finding is supported by evidence may be raised by special request and exception to finding, and in case of general finding by general request and exception to refusal. Société Nouvelle d'Armement v. Barnaby, 246 F. 68, 158 C. C. A. 294; Garwood v. Scheiber, 246 F. 74, 158 C. C. A. 300.

Where court, on its own motion, at close of plaintiff's case, entered judgment for defendant, dismissing complaint on merits, plaintiff may secure review of dismissal, though it had made no request for findings of fact and declaration of law in its favor. Meyer & Chapman State Bank v. First Nat. Bank of Cody, 248 F. 679, 160 C. C. A. 579.

In an action tried to the court without a jury by stipulation, where the court is not asked to rule that there is no substantial evidence to justify judgment, the findings of fact must be accepted by the appellate court, and only rulings on matters of law, duly excepted to, are reviewable. Pederson v. U. S. (C. C. A.) 253 F. 622.

23. Scope and extent of review—In general.—In reviewing the trial court's denial of motion for new trial, the fact that he had seen and heard the witnesses should be considered in support of his action. Carolina C. & O. Ry. Co. v. Stroup, 239 F. 75, 152 C. C. A. 125.

24. —— In absence of special findings of fact or where findings are general.—Under Rev. St. §§ 649 and 700 (Comp. St. 1916, §§ 1587, 1668), findings in action tried to the court may be general or special, and where general only rulings during trial can be reviewed, but if special sufficiency to support judgment may be determined. Société Nouvelle d'Armement v. Barnaby, 246 F. 68, 158 C. C. A. 294; Good Pine Lumber Co. v. Duke, 229 F. 714, 144 C. C. A. 124; Smith & Co. v. Kingfalfa Mills, 237 F. 82, 150 C. C. A. 284; City of Goldfield, Colo., v. Roger, 249 F. 39, 161 C. C. A. 99; National Surety Co. v. Lincoln County, Mont., 238 F. 705, 151 C. C. A. 555, affirming judgment Lincoln County v. Coast Bridge Co. (D. C.) 231 F. 468. And where there was no agreed statement of facts, or special finding of facts, and bills of exception were not taken in such time that they could be considered, assignments of error, complaining of sustaining of demurrer to petition and of rendition of judgment in favor of defendant, must be overruled. Proctor Coal Co. v. United States Fidelity & Guaranty Co., 236 F. 910, 150 C. C. A. 172.

25. Review of special findings of fact.—In civil cases at law, tried without a jury, where the finding is general, the review extends only to errors arising in the course of the trial; but where there is a special finding of facts, or an agreed statement, the appellate court can inquire whether the facts support the judgment. Panama R. Co. v. Beckford, 231 F. 436, 145 C. C. A. 430. But where there are specific findings the weight of the evidence cannot be reviewed. Panama R. Co. v. Beckford, 231 F. 436, 145 C. C. A. 430.

27. Review of general findings and questions of fact—Review in general.—See McCormick v. Provident Life & Trust Co. of Philadelphia, 249 F. 141, 161 C. C. A. 193.

The parties to an action tried without a jury cannot by consent authorize review of the sufficiency of the evidence to support a general finding. Sierra Land & Live Stock Co. v. Desert Power & Mill Co., 229 F. 982, 144 C. C. A. 264.

On writ of error to review a judgment rendered in an action where jury was waived, only inquiries open are, in view of Rev. St. §§ 700, 1011 (Comp. St. 1916, §§ 1668, 1672), whether evidence tends to support ultimate finding, and whether the finding in turn is sufficient to sustain the judgment. Turner v. Schaeffer, 249 F. 654, 161 C. C. A. 564.

A general finding on an issue of infringement in an action at law tried by the court without a jury held reviewable by the appellate court. Chicago & A. Ry. Co. v. Pressed Steel Car Co., 243 F. 883, 156 C. C. A. 395, certiorari denied 38 S. Ct. 11, 245 U. S. 652, 62 L. Ed. 532.

Concurrent findings of two lower courts as to matter of fact will not be disturbed unless clearly erroneous. Baker v. Schofield, 37 S. Ct. 333, 243 U. S. 114, 61 L. Ed. 626, affirming decree 221 F. 322, 136 C. C. A. 320.

Findings by trial judge, who heard evidence and saw witnesses when testifying, will not be disturbed, unless clearly against weight of evidence, or induced by a mistaken view of law. Trujillo & Mercado v. Succession of Rodriguez, 233 F. 208, 147 C. C. A. 214; Columbia Graphophone Co. v. Searchlight Horn Co., 236 F. 135, 149 C. C. A. 345; Bijur Motor Lighting Co. v. Eclipse Mach. Co., 243 F. 600, 156 C. C. A. 298, affirming decree (D. C.) 237 F. 89; Vineyard Land & Stock Co. v. Twin Falls Oakley Land & Water Co., 245 F. 30, 157 C. C. A. 326; First Nat. Bank of McGregor v. Eiseman, 246 F. 597, 158 C. C. A. 567; Philadelphia & R. Ry. Co. v. U. S., 247 F. 466, 159 C. C. A. 520, affirming judgment U. S. v. Philadelphia & R. Ry. Co. (D. C.) 238 F. 428; Farmers' State Bank v. Freeman, 249 F. 579, 161 C. C. A. 505.

The finding of the chancellor should not be disturbed, unless it clearly appears that he has made a serious mistake of fact, or has fallen into some plain error of law. Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607; Wilson v. Sands, 231 F. 921, 146 C. C. A. 117; L. A. Westermann Co. v. Dispatch Printing Co., 233 F. 609, 147 C. C. A. 417; De Laski & Thropp Circular Woven Tire Co. v. United States Tire Co., 235 F. 290, 149 C. C. A. 6, affirming decree (D. C.) 232 F. 884; Semidey v. Central Aguirre Co., 239 F. 610, 152 C. C. A. 444; Estep v. Kentland Coal & Coke Co., 239 F. 617, 152 C. C. A. 451; Fay v. Hill, 249 F. 415, 161 C. C. A. 389; Ridge v. Healy (C. C. A.) 251 F. 798; Moran v. Morgan (C. C. A.) 252 F. 719.

28. —— **Findings on conflicting evidence.**—Findings of court based on conflicting evidence are conclusive on appeal. Butte & Superior Copper Co. v. Clark-Montana Realty Co., 248 F. 609, 160 C. C. A. 509, affirming decree Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547, and certiorari denied Butte & Superior Copper Co. v. Clark-Montana Realty Co., 38 S. Ct. 581, 247 U. S. 516, 62 L. Ed. 1245; Galle v. Hamburg Amerikanische Packetfahrt Actien Gesellschaft, 233 F. 424, 147 C. C. A. 360; Simmons v. Hodges (C. C. A.) 250 F. 424. And a finding of the District Court that miner's rules relating to the diversion of water were not in force when the rights of the parties originated, made upon conflicting evidence, cannot be disregarded by the Circuit Court of Appeals, even if contrary to the weight of evidence. Alaska-Juneau Gold Mining Co. v. Ebner Gold Mining Co., 239 F. 638, 152 C. C. A. 472.

Findings of fact, made on conflicting evidence, will not be reversed, unless it clearly appears that the court made a serious mistake in the finding of fact, or fell into a controlling error of law. Luten v. Sharp, 234 F. 880, 148 C. C. A. 478, affirming decree (D. C.) 217 F. 76; Great Northern Ry. Co. v. Philadelphia & Reading Coal & Iron Co., 242 F. 799, 155 C. C. A. 387; Ryan v. Ohmer, 244 F. 31, 156 C. C. A. 459; Schlank v. Smith, 246 F. 686, 158 C. C. A. 642; The F. B. Squire, 248 F. 469, 160 C. C. A. 479. And findings, based on conflicting evidence taken in open court, will not be disturbed on appeal, in the absence of a showing that in arriving at such findings the trial court erroneously applied some rule of evidence or found contrary to the decided weight of testimony. Leggat v. McLure, 234 F. 620, 148 C. C. A. 386.

Where, in equity case, testimony which was conflicting was heard orally by court, its findings for that reason are entitled to deference on appeal. U. S. v. United Shoe Machinery Co. of New Jersey, 38 S. Ct. 473, 247 U. S. 32, 62 L. Ed. 968, affirming decree (D. C.) 222 F. 349, and leave to file petition for rehearing granted 38 S. Ct. 581; Adamson v. Gilliland, 37 S. Ct. 169, 242 U. S. 350, 61 L. Ed. 356, reversing decree Gilliland v. Adamson, 227 F. 93, 141 C. C. A. 641; U. S. v. Cannon, 244 F. 750, 157 C. C. A. 198; Turner & Dahnken v. Crowley (C. C. A.) 252 F. 749.

29. —— **Conclusiveness of findings.**—Regardless of the rule as to review of findings of fact in case tried without a jury, the appellate court will examine the evidence of the facts, where a re-

view of the decision of the trial court on jurisdiction is invoked, although there is a presumption of the correctness of the trial court's decision. Davis v. Anderson-Tully Co. (C. C. A.) 252 F. 681.

Where an action at law is by stipulation tried to the court, under the provisions of Rev. St. §§ 649, 700 (Comp. St. 1916, §§ 1587, 1668), the findings of fact by the court are not reviewable by an appellate court, if there is any competent evidence on which they could have been made. Chautauqua Institution v. Zimmerman, 233 F. 371, 147 C. C. A. 307; Illinois Surety Co. v. U. S., 229 F. 527, 143 C. C. A. 595; Id., 229 F. 533, 143 C. C. A. 601; Sierra Land & Live Stock Co. v. Desert Power & Mill Co., 229 F. 982, 144 C. C. A. 264; Rutan v. Johnson & Johnson, 231 F. 369, 145 C. C. A. 363; Lillie v. Dennert, 232 F. 104, 146 C. C. A. 296; Shelton v. Gas Securities Co., 239 F. 653, 152 C. C. A. 487; Société Nouvelle d'Armement v. Barnaby, 246 F. 68, 158 C. C. A. 294; Virginia & West Virginia Coal Co. v. Charles (C. C. A.) 254 F. 379.

Whether the trial court's findings are supported by the agreed facts, and the additional evidence is a question of fact on the weight of the evidence, which, in a trial of an action at law by the court, the national courts are forbidden to review by Const. Amend. 7, and Rev. St. §§ 649, 700 (Comp. St. 1916, §§ 1587, 1668). Security Nat. Bank of Sioux City, Iowa, v. Old Nat. Bank of Battle Creek, Mich., 241 F. 1, 154 C. C. A. 1.

The Circuit Court of Appeals cannot review the trial court's construction of a contract, the language of which was so general and obscure as to make parol evidence as to its meaning competent, where there was testimony to sustain the construction. General Electric Co. v. Chattanooga Coal & Iron Corporation, 241 F. 38, 154 C. C. A. 38.

30. —— **Effect of findings as verdict.**—Where a jury was waived by stipulation, the court's finding on the issues of fact had the effect and force of a verdict by a jury. First Nat. Bank of Bayonne v. Anglo-South American Bank, 230 F. 817, 145 C. C. A. 127.

31. —— **Weight and sufficiency of evidence.**—Findings of fact by the chancellor, though not conclusive on appeal, are presumptively correct, and unless clearly against the weight of the evidence, will not be disturbed, particularly where the testimony was given orally. U. S. v. Grass Creek Oil & Gas Co., 236 F. 481, 149 C. C. A. 533; Bush v. Branson, 248 F. 377, 160 C. C. A. 387; Fuller v. Reed, 249 F. 158, 161 C. C. A. 210, affirming decree Thurston v. Same (D. C.) 229 F. 737; Fay v. Hill, 249 F. 415, 161 C. C. A. 389.

Where plaintiff and his associates testified to representation, and court evidently believed them, held, that decree could not be disturbed, notwithstanding the claimed improbability that such representation was made. Twin Lakes Land & Water Co. v. Dohner, 242 F. 399, 155 C. C. A. 175.

On review of action tried to the court without a jury, credibility of witnesses cannot be weighed. Turner v. Schaeffer, 249 F. 654, 161 C. C. A. 564.

32. **Review of findings on reference—In general.**—Under Rev. St. §§ 649, 700 (Comp. St. 1916, §§ 1587, 1668), where parties waived jury trial by attending proceeding under reference without objection, or written stipulation held, that the only question reviewable was whether the facts found sustained the judgment. Wm. Edwards Co. v. La Dow, 230 F. 378, 144 C. C. A. 520, modifying judgment In re Miller (D. C.) 221 F. 471.

Where, in an action to recover property on the ground that it was delivered as a preference, the parties, though there was no authority by statute, stipulated for trial to a referee, the trial court cannot review the referee's findings of fact, any more than an appellate court can review findings of fact in an action at law tried without a jury, where there is no statutory authority for the waiver of a jury and reservation of exceptions. Grant v. National Bank of Auburn (D. C.) 232 F. 201.

A finding of fact by a special master based on conflicting evidence, and credibility of witnesses, will not be disturbed, where supported by evidence. Parker v. Ross, 234 F. 289, 148 C. C. A. 191; Fleming v. Noble (C. C. A.) 250 F. 733; In re Victor (D. C.) 246 F. 727; In re S. & S. Mfg. & Sales Co. (D. C.) 246 F. 1005.

Findings of fact made by a referee, where the reference is to hear and determine the action, have the effect of the verdict of a jury; but judgment may be set aside where the findings are clearly against the weight of evidence. Fifth Nat. Bank of City of New York v. Lyttle (C. C. A.) 250 F. 361.

33. —— **Findings approved by court.**—A report of the master, approved by the trial judge, is presumptively correct, and will not be disturbed by the appellate court unless some obvious error of law or serious mistake in considering the evidence has occurred. Lasswell Land & Lumber Co. v. Lee Wilson & Co., 236 F. 322, 149 C. C. A. 454; Tatum Bros. Real Estate & Investment Co. v. Shenk, 246 F. 684, 158 C. C. A. 640, certiorari denied 38 S. Ct. 334, 246 U. S. 664, 62 L. Ed. 928; Brown v. Pennsylvania R. Co. (C. C. A.) 250 F. 513; Robinson v. U. S. (C. C. A.) 251 F. 461; John A. Schmitt's

Sons v. Shadrach (C. C. A.) 251 F. 874. Particularly where another finding disposing of appellant's contention was supported by evidence. Emerson v. Fisher, 246 F. 642, 158 C. C. A. 598. And especially where trial court's opinion showed that master was well fitted to discharge his duties, and that judge most painstakingly scrutinized report and exceptions. Firestone Tire & Rubber Co. v. Riverside Bridge Co., 247 F. 625, 160 C. C. A. 35.

Cited without definite application, McCoach v. Continental Passenger Ry. Co. of Philadelphia (C. C. A.) 233 F. 976; Schoenwald v. Bishop (C. C. A.) 244 F. 715; Equitable Trust Co. of New York v. Denver & R. G. R. Co. (C. C. A.) 250 F. 327; Prudential Ins. Co. of America v. Herold (D. C.) 247 F. 681.

§ 1670. (Act March 3, 1891, c. 517, § 10.) Remand of cause.

I. REVIEW AND DETERMINATION IN SUPREME COURT

2. Questions considered.—Where decree enjoining enforcement of municipal ordinance prescribing maximum water rates, on ground that they were confiscatory, could be affirmed on that ground, though complainant be not deemed owner of certain water rights, question whether complainant was, under state laws, entitled to such water rights, should not be determined. City and County of Denver v. Denver Union Water Co., 38 S. Ct. 278, 246 U. S. 178, 62 L. Ed. 649.

3. Persons entitled to allege error.—Any error in basing recovery in personal injury action upon federal Employers' Liability Act April 22, 1908 (Comp. St. 1916, § 8657), cannot be urged where defendant relied on that statute and the rights that under that statute it supposed it possessed. Minneapolis & St. L. R. Co. v. Winters, 37 S. Ct. 170, 242 U. S. 353, 61 L. Ed. 353, Ann. Cas. 1918B, 54, affirming judgment Winter v. Minneapolis & St. L. R. Co., 155 N. W. 1103, 131 Minn. 496.

7. Affirmance.—Decree affirmed on motion, where courts of two circuits had reached same conclusion on questions of fact, and questions of law were settled, and rulings clearly right. Eichel v. United States Fidelity & Guaranty Co., 38 S. Ct. 47, 245 U. S. 102, 62 L. Ed. 177, affirming decree United States Fidelity & Guaranty Co. v. Eichel, 241 F. 357, 154 C. C. A. 237.

10. Jurisdiction and proceedings after remand.—On remand from the Supreme Court, the District Court has no power, except to enter a decree in conformity with the mandate. In re Bensel (D. C.) 230 F. 932.

II. REVIEW AND DETERMINATION IN CIRCUIT COURT OF APPEALS

12. Scope and extent of review—Matters or evidence considered in determining questions.—In determining the propriety of rejecting an offer of proof, the entire offer, and not isolated portions, should be considered. Chambers v. Farnham, 236 F. 886, 150 C. C. A. 148.

On appeal from judgment sustaining demurrer to answer alleging rescission by Interstate Commerce Commission of order of reparation, later proceedings of the Commission, resulting in reinstatement of the order, will be passed upon, though not presented to the lower court. Morgan's Louisiana & T. R. & S. S. Co. v. Isaac Joseph Iron Co., 243 F. 149, 156 C. C. A. 15.

13. —— Questions considered.—Rulings by the trial court on an indictment, sentence under which was suspended, can be reviewed. Cooper v. U. S., 232 F. 81, 146 C. C. A. 273, certiorari denied 36 S. Ct. 725, 241 U. S. 675, 60 L. Ed. 1232.

Where one count in an indictment is good, and the sentence is no greater than could lawfully be imposed under such count, the sufficiency of other counts becomes immaterial in a reviewing court. Aczel v. U. S., 232 F. 652, 146 C. C. A. 578.

Where, in an equity case, testimony complained of by appellant was unnecessary to sustain the decree, the question of its admissibility will not be determined. Cooper v. Jewett, 233 F. 618, 147 C. C. A. 426.

Where the evidence may differ on retrial, there being other errors necessitating reversal, the appellate court need not determine whether an instruction correct in law was justified by the facts. Murray v. Third Nat. Bank of St. Louis, 234 F. 481, 148 C. C. A. 247.

Where an appeal in a proceeding involving claims against a bankrupt was by stipulation limited to two claims involving only preference, question whether claimant had been paid need not be reviewed, after a decision that claimant was not entitled to preference as to one claim, and that the other claim was unenforceable. Citizens' Trust Co. v. Mullinix, 235 F. 875, 149 C. C. A. 187.

Where the grand jury returned an indictment against corporations for violating Cr. Code, § 83 (Comp. St. 1916, § 10251), relating to campaign contributions, held that the inquiry being no longer in progress questions whether a witness was guilty of contempt in failing to produce documentary evidence and give testimony as required will not be determined on writs of error to review denial of his application for habeas corpus and to review motion to

quash presentment. Ex parte Fox, 236 F. 861, 150 C. C. A. 123.

Where assignments of error on cross-writ were contingent and in the alternative, they need not be reviewed, where judgment for defendant, which sued out the cross-writ, was affirmed. Proctor Coal Co. v. United States Fidelity & Guaranty Co., 236 F. 910, 150 C. C. A. 172.

Where trial court granted complainant relief in suit for unfair use of complainant's trade-mark, regardless of its registration, on upholding the decision on appeal, the validity of registration need not be determined. Baldwin Co. v. R. S. Howard Co., 238 F. 154, 151 C. C. A. 230, affirming decree (D. C.) 233 F. 439.

Where trial court found that chattel mortgagee had valid lien on automobile sought to be forfeited under Rev. St. § 2140 (Comp. St. 1916, § 4141), because used by mortgagor to carry intoxicating liquors into Indian country, but declared lien of mortgagee inferior to claim of United States, mortgagee was entitled to raise on record question whether automobile was subject to forfeiture, as well as whether its interest could be forfeited. Shawnee Nat. Bank v. U. S., 249 F. 583, 161 C. C. A. 509.

Where administrator of estate filed petition in state court to sell property for payment of debts, and trustee in bankruptcy of one of the heirs entitled to share in the land consented to sale, any question of jurisdiction to enjoin sale became moot, and petition seeking injunction should be dismissed. Tripplehorn v. Cambron (C. C. A.) 250 F. 605.

Where plaintiff appealed from a decree of noninfringement, and not from the part of the decree sustaining the validity of the patent, held, that the question of infringement was the only one presented. F. W. Rauskolb Co. v. Anthony Mfg. Co. (C. C. A.) 253 F. 650.

Where result would be same in any event, question whether a suit to cancel a certificate of naturalization will lie, or whether a writ of error in naturalization proceedings was only remedy, need not be determined. U. S. v. Smith (D. C.) 247 F. 131.

15. —— Theory and grounds of decision in lower court.—Inaccuracy of statement by court of last resort that assumption of risk was of no effect in an action under Employers' Liability Act furnishes no ground for reversing its affirmance of the judgment, where correctness of charge is not attacked. St. Louis & S. F. R. Co. v. Brown, 36 S. Ct. 602, 241 U. S. 223, 60 L. Ed. 966, affirming judgment 144 P. 1075, 45 Okl. 143.

Direction of verdict for passenger, alleged to have been ravished by porter, held not sustainable on theory that improper advances created liability, where question of damages was submitted on theory of actual rape. Dickinson v. Scruggs, 242 F. 900, 155 C. C. A. 488.

Where action was tried and submitted on theory that contract between plaintiff and defendants was legal, question whether it was valid under anti-trust laws will not be reviewed. Ford Motor Co. v. Farrington, 245 F. 850, 158 C. C. A. 190.

Decree should be sustained on appeal, though lower court assigned erroneous reasons. Gideon v. Hinds, 238 F. 140, 151 C. C. A. 216; Kalloch v. Hoagland, 239 F. 252, 152 C. C. A. 240; Linde Air Products Co. v. Morse Dry Dock & Repair Co., 246 F. 834, 159 C. C. A. 136, affirming decree (D. C.) 239 F. 909; Clinton Mining & Mineral Co. v. Cochran, 247 F. 449, 159 C. C. A. 503; U. S. v. Porter Fuel Co., 247 F. 769, 159 C. C. A. 627; Bush v. Branson, 248 F. 377, 160 C. C. A. 387.

Where trial court found on issues joined that it had no jurisdiction, and ordered petition dismissed, decree should be dealt with as dismissing petition for want of jurisdiction, and not for want of equity, regardless of court's opinion. Tripplehorn v. Cambron (C. C. A.) 250 F. 605.

Where a complaint was dismissed generally, without any reason being specified, the defendants are entitled to insist upon all the objections made below in order to sustain the judgment. Brown v. Denver Omnibus & Cab Co. (C. C. A.) 254 F. 560.

Where defendants moved to dismiss on several grounds, the judgment of dismissal may be sustained on any of the grounds made in the motion to dismiss. U. S. v. Board of Com'rs of Osage County, Okl. (C. C. A.) 254 F. 570.

16. —— Extent of review dependent on mode of review or nature of decision.—On writ of error from a judgment dismissing an action on demurrer, all questions raised by the demurrer are reviewable. Dowd v. United Mine Workers of America, 235 F. 1, 148 C. C. A. 495.

Appeal, after defendant's application to rehear motion for preliminary injunction was denied, presents for review only propriety of preliminary injunction complained of. Thompson v. Balke, 245 F. 841, 158 C. C. A. 181.

Where writ of error is directed only to judgment, order, made after judgment, denying new trial or application for modification of judgment, is not reviewable. Ford Motor Co. v. Farrington, 245 F. 850, 158 C. C. A. 190.

18. Persons entitled to allege error—Appellees or defendants in error.—In a suit for injunction against officers of labor unions, a clause in the decree, enjoining as confederates all present and future members of the unions, was not a matter of which the defendants might complain. Hitchman Coal &

Coke Co. v. Mitchell, 38 S. Ct. 65, 245 U. S. 229, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, reversing decree Mitchell v. Hitchman Coal & Coke Co., 214 F. 685, 131 C. C. A. 425, which reversed decree Hitchman Coal & Coke Co. v. Mitchell (D. C.) 202 F. 512. Mandate stayed 38 S. Ct. 190.

Where complainants, suing on a judgment designating the rate of interest, failed to appeal from that portion of the decree reducing the rate of interest, they cannot, on defendants' appeal, complain. Cooper v. Jewett, 233 F. 618, 147 C. C. A. 426.

Where defendant did not appeal from a decree awarding it affirmative relief, the propriety of the denial of some of the relief sought by defendant cannot be reviewed. Lasswell Land & Lumber Co. v. Lee Wilson & Co., 236 F. 322, 149 C. C. A. 454.

Where defendants, who had judgment below, did not appeal from ruling adverse to one of their contentions, such ruling cannot be reviewed. Henna v. Sauri & Subira, 237 F. 145, 150 C. C. A. 291.

Where trustee in bankruptcy took no appeal from decree of District Court, Circuit Court of Appeals may not consider point made in his brief that District Court erred in not making allowance. Sanborn-Cutting Co. v. Paine, 244 F. 672, 157 C. C. A. 120.

Where a trust company, which made advances to a lessee to enable her to build on the demised ground, sued the lessee and lessor to foreclose its liens, etc., and the lessor in the same proceeding recovered for rent due, and foreclosure was ordered, the original decree, not having been appealed from by the lessee, is conclusive as to her, notwithstanding lessor's appeal from the decree in favor of the trust company and a subsequent agreement between those parties. Finley v. Halliburton (C. C. A.) 251 F. 860.

Where defendant did not appeal from the portion of the decree which was adverse to it, that matter will not be reviewed on plaintiff's appeal. Rogers v. Marion County Lumber Corporation (C. C. A.) 251 F. 876.

21. —— Estoppel to allege error.—Objection to evidence on ground that it was no part of the case held untenable; it being directly relevant to a matter which defendant itself pleaded. Itasca Lumber Co. v. Martin, 230 F. 584, 144 C. C. A. 638.

Where defendant offered no evidence as to the cost of conforming to the warranty, and urged only an erroneous theory of damages, he cannot complain that the court instructed that the measure of damages was the difference between the value as warranted and the actual value. B. F. Sturtevant Co. v. Champion Fibre Co., 232 F. 1, 146 C. C. A. 193.

Where defendant read in evidence depositions taken by plaintiff, defendant cannot complain on appeal that the depositions contained incompetent and hearsay evidence. Chicago & E. I. R. Co. v. Collins Produce Co., 235 F. 857, 149 C. C. A. 169.

Where trial court, after giving charge fairly presenting controversy, stated that counsel might call his attention to any points they would like to have specifically answered, defendant, having been cast below, cannot raise in appellate court matter not then called to trial court's attention. Pennsylvania R. Co. v. Minds, 244 F. 53, 156 C. C. A. 481, affirming judgment Minds v. Pennsylvania R. Co. (D. C.) 237 F. 267.

A plaintiff cannot except to his own motion for voluntary nonsuit. Cybur Lumber Co. v. Erkhart, 247 F. 284, 159 C. C. A. 378.

Where defendant requested directed verdict at close of plaintiff's evidence, and again at close of all of evidence, it cannot be heard to say that case ought to have gone to jury; plaintiff's motion for directed verdict having been granted. La Crosse Plow Co. v. Pagenstecher (C. C. A.) 253 F. 46.

A party cannot complain that a case was submitted to the jury on his own theory of the issues, whether such theory was or was not correct. Weinstein v. Studebaker Corporation (D. C.) 238 F. 963.

22. Amendments of proceedings of lower court.—See notes under § 1591.

24. Trial de novo.—Appeal in equity opens up the whole case, and brings before reviewing tribunal the entire case. Linde Air Products Co. v. Morse Dry Dock & Repair Co., 246 F. 834, 159 C. C. A. 136, affirming decree (D. C.) 239 F. 909; Sun Co. v. Vinton Petroleum Co., 248 F. 623, 160 C. C. A. 523, certiorari denied 38 S. Ct. 580, 247 U. S. 514, 62 L. Ed. 1244. Hence incompetent evidence which trial court itself stated would be disregarded, the court receiving testimony, without determining in first instance its competency or relevancy, must be disregarded. Anderson v. Hultberg, 247 F. 273, 159 C. C. A. 367.

25. Presumptions on appeal or error —Burden of showing error.—There being no evidence to the contrary, the Supreme Court will adopt the assumption that trustees for shareholder savings banks acted lawfully in making payments to receiver of insolvent national bank. Korbly v. Springfield Inst. for Savings, 38 S. Ct. 88, 245 U. S. 330, 62 L. Ed. 326, affirming judgment Pepper v. Same, 218 F. 814, 134 C. C. A. 502.

Where no appeal was taken from order denying holders of receivers' certificates certain priorities, it must be assumed that they did not assert priority over those charges. Ball v. Improved Property Holding Co. of New York, 247 F. 645, 159 C. C. A. 547.

The legal presumption is that the

orders of the court below in a suit in equity are just, lawful, and without prejudice to any of the parties to the suit, and the burden is on an appellant, who assails one of them, to show by the record that it was erroneous and prejudicial to him. Bankers' Trust Co. v. Missouri, K. & T. Ry. Co. (C. C. A.) 251 F. 789.

26. —— **Facts or evidence not shown by record.**—Where court charged that defendant could not be held responsible criminally for salesman's misrepresentations, unless made by his authority, and record did not show objection, or purport to contain all the evidence, the verdict must be deemed to determine that the representations were made with defendant's sanction. Weeks v. U. S., 38 S. Ct. 219, 245 U. S. 618, 62 L. Ed. 513, affirming judgment 224 F. 64, 139 C. C. A. 626.

In an action for the death of a brakeman, it will be presumed that matter omitted from the record, to which a witness referred in indicating the position of a crack in the railroad truck, was sufficient to support the verdict. Pennsylvania R. Co. v. Glas, 239 F. 256, 152 C. C. A. 244.

In absence of record evidence showing what "service extensions" for which materials were furnished included, held that finding that the materials were not an operating expense will be adopted. John A. Roebling's Sons Co. of California v. Idaho Ry., Light & Power Co., 243 F. 527, 156 C. C. A. 225.

Where, in proceeding under Rev. St. § 2140 (Comp. St. 1916, § 4141), to forfeit automobile on ground that it was used as means for introduction of intoxicants into Indian country, court found that chattel mortgagee had valid lien, but that it was inferior to rights of United States under forfeiture proceeding, it must be presumed, in absence of evidence, that mortgagee had nothing to do with introduction of liquor into Indian country. Shawnee Nat. Bank v. U. S., 249 F. 583, 161 C. C. A. 509.

Where the evidence on which order was based was not incorporated in the record, it will be presumed that the evidence supports the order. Cross v. Georgia Iron & Coal Co. (C. C. A.) 250 F. 438.

27. —— **Organization and jurisdiction of lower court.**—Regarding jurisdiction to impose sentence after the trial term, it will be presumed on appeal that postponements were for a lawful purpose. Miner v. U. S., 244 F. 422, 157 C. C. A. 48.

29. —— **Interlocutory orders.**—Where order of reference did not show presence of or assent by defendants, and record threw no light on the subject, held, that it would be assumed that they were not present or did not assent. Wm. Edwards Co. v. La Dow, 230 F. 378, 144 C. C. A. 520, modifying judgment In re Miller (D. C.) 221 F. 471.

In view of presumption of validity attending acts of a court of record, held, that defendant against whom a foreign executor recovered judgment could not question judgment on appeal, because executor's bond was not in accordance with Rev. St. Colo. 1908, § 7153, for twice amount of recovery; lower court having discretion to accept lesser bond. Cordingly v. Kennedy, 239 F. 645, 152 C. C. A. 479.

32. —— **Instructions.**—Where the instructions are not in the record, it will be presumed that they properly applied the law to the facts. Inter-Island Steam Nav. Co. v. Ward, 232 F. 809, 147 C. C. A. 3, writ of error dismissed 37 S. Ct. 1, 242 U. S. 1, 61 L. Ed. 113.

Where defendant did not complain of the charge given, there is a presumption that the instructions were as favorable to defendant as the case warranted. Carolina C. & O. Ry. Co. v. Stroup, 239 F. 75, 152 C. C. A. 125.

In the absence of the evidence, it will be presumed there was testimony warranting refusal, in action against publishing company for libel, of instruction that any malice of its editor could not be imputed to it. American Issue Pub. Co. v. Sloan, 248 F. 251, 160 C. C. A. 329.

33. —— **Verdict, findings, or judgment.**—Where an order of reference requires the master to report his findings only, there is no presumption that his report contains all the evidence taken before him. Goldsmith Silver Co. v. Savage, 229 F. 623, 144 C. C. A. 33, affirming decree (D. C.) 211 F. 751.

Where the verdict was for plaintiff, each controverted issue on which the testimony was conflicting must be taken as decided in plaintiff's favor. Lehigh Valley Coal Co. v. Lukaszunas, 230 F. 792, 145 C. C. A. 102.

Where defendant did not appeal, and complainant only appealed from the award of damages, claiming it inadequate, it will be presumed that the determination of the trial court that defendant was liable was correct, although such matter might be reviewed. L. A. Westermann Co. v. Dispatch Printing Co., 233 F. 609, 147 C. C. A. 417.

Where the master, who paid some of the hospital and medical expenses of an injured servant, made no request that the award of damages be diminished on that ground, the award will not be disturbed on appeal, for it will be presumed that it was so diminished. Grand Trunk Ry. Co. of Canada v. Knapp, 233 F. 950, 147 C. C. A. 624.

There being a general finding for plaintiff, suing a contractor's surety, it must be assumed, on appeal, that deviations from specifications were found not to have been at plaintiff's instance or to have been authorized by

the contract. National Surety Co. v. Lincoln County, Mont., 238 F. 705, 151 C. C. A. 555, affirming judgment Lincoln County v. Coast Bridge Co. (D. C.) 231 F. 468.

In action for discrimination in distributing cars where there was evidence besides award, held, it will be presumed that verdict for less than amount of award was not based on award of Interstate Commerce Commission. Pennsylvania R. Co. v. Minds, 244 F. 53, 156 C. C. A. 481, affirming judgment Minds v. Pennsylvania R. Co. (D. C.) 237 F. 267.

Jury's finding that gesture by defendant's driver toward plaintiff's child was so threatening as to amount to negligence will be presumed to be supported by evidence; witness having illustrated gesture, which could not be reproduced in the record. Fell Brewing Co. v. Adamo, 245 F. 935, 158 C. C. A. 223.

33½. **Review of discretionary rulings of lower court—In general.**—An appellate court is only justified in setting aside an order addressed to the discretion of the trial court if an abuse of discretion clearly appears. City of Des Moines, Iowa, v. Des Moines Water Co., 230 F. 570, 144 C. C. A. 624, affirming judgment (D. C.) 218 F. 939.

35. —— **On pleadings.**—The allowance of amendments to pleadings is in the discretion of the court, and such discretion will ordinarily not be disturbed. In re Frank, 239 F. 709, 152 C. C. A. 543, affirming order (D. C.) 234 F. 665; Gooch v. Presbyterian Home Hospital, 239 F. 828, 152 C. C. A. 614. And so of a proposed amendment to answer to set up additional defenses after conclusion of evidence. Ames v. Sullivan, 235 F. 880, 149 C. C. A. 192. Or of a trial amendment. Western Coal & Mining Co. v. McCallum (C. C. A.) 237 F. 1003. Or leave to file a supplemental bill. General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.) 250 F. 160. And discretion of trial judge in refusing to require bill of particulars will not be disturbed, unless inspection of whole record clearly convinces appellate court that refusal resulted in injustice, which is not the case where both counts of the declaration relate to the same matters, and, in the second count, defendant's alleged wrongful acts are detailed. Harper v. Harper (C. C. A.) 252 F. 39.

35½. —— **Pleading in criminal prosecutions.**—A motion by the defendant in a criminal case for a bill of particulars is addressed to the discretion of the court, and its action thereon is not reviewable. Knauer v. U. S., 237 F. 8, 150 C. C. A. 210.

Discretion of trial court in granting leave to withdraw pleas of guilty and enter pleas of not guilty to indictment is not reviewable. Billingsley v. U. S., 249 F. 331, 161 C. C. A. 339, affirming judgment U. S. v. Billingsley (D. C.) 242 F. 330, and certiorari denied Billingsley v. U. S., 38 S. Ct. 583, 247 U. S. 523, 62 L. Ed. 1247.

36. —— **Dismissal or nonsuit before trial.**—An order setting aside dismissal and setting a case for hearing, relating to a discretionary matter, will be reviewed only in so far as the court did not have jurisdiction. S. M. Hamilton Coal Co. v. Watts, 232 F. 832, 147 C. C. A. 26, reversing order Watts v. S. M. Hamilton Coal Co. (D. C.) 219 F. 1003.

37. —— **Continuance.**—Granting or refusing a continuance rests in the sound discretion of the trial court, whose action will not be disturbed, except in a case of clear abuse of that discretion. Bond v. U. S. (C. C. A.) 252 F. 804; Washington Ry. & Electric Co. v. Scala, 45 App. D. C. 484, judgment affirmed 37 S. Ct. 654, 244 U. S. 630, 61 L. Ed. 1360; Spear v. U. S., 246 F. 250, 158 C. C. A. 140, certiorari denied 38 S. Ct. 335, 62 L. Ed. 929; McClendon v. U. S. (C. C. A.) 229 F. 523; Pennsylvania Co. v. Fanger, 231 F. 851, 146 C. C. A. 47; Hale v. U. S., 242 F. 891, 155 C. C. A. 479; Warren v. U. S. (C. C. A.) 250 F. 89; Shea v. U. S. (C. C. A.) 251 F. 433. And denial of 10 minutes to defendant's counsel to examine charge, for purpose of framing exceptions and requests for additional instructions, held not an abuse of discretion. Hughes v. U. S., 231 F. 50, 145 C. C. A. 238.

39. —— **Relating to jury.**—The length of time a jury will be held for deliberation rests within the sound discretion of the court, and no abuse of discretion is shown by holding them from Saturday afternoon till Monday. Bernal v. U. S., 241 F. 339, 154 C. C. A. 219.

40. —— **Conduct of trial or hearing.**—It is within the discretion of the trial court to limit the time for argument in a criminal case. Samuels v. U. S., 232 F. 536, 146 C. C. A. 494.

Discretion as to granting separate trial to numerous defendants can be reviewed only when abused. Schwartzberg v. U. S., 241 F. 348, 154 C. C. A. 228.

40½. —— **Requiring election.**—The disposition of an objection that defendants were or had been embarrassed in their defenses by a denial of their motion to require prosecution to elect would be within the discretion of the trial court, and reviewable only if that discretion was abused. Sidebotham v. U. S. (C. C. A.) 253 F. 417.

41. —— **Rulings on evidence.**—It is within the discretion of the trial court to limit the number of witnesses a defendant charged with a criminal offense may introduce on a single point in issue. Samuels v. U. S., 232 F. 536, 146 C. C. A. 494.

The exclusion of testimony on objection that it is too remote does not require reversal, though the appellate

court is of the opinion it should have been admitted. Overstreet v. Norfolk & W. Ry. Co., 238 F. 565, 151 C. C. A. 501.

The propriety of leading questions is so largely a matter of discretion, and depends so much on the circumstances of each case, that it is unwise for an appellate tribunal to review the act of the trial court in allowing leading questions. Linn v. U. S. (C. C. A.) 251 F. 476.

42. —— **Directing verdict.**—When trial court has directed verdict on conflicting evidence, appellate court may not reverse judgment, unless convinced, on consideration of evidence, that lower court in its discretion might have sustained contrary verdict. Fricke v. International Harvester Co., 247 F. 869, 160 C. C. A. 91.

43. —— **Submission of questions to jury.**—The submission of special questions or findings of fact to the jury in a personal injury action is discretionary on the part of the trial court, and error cannot be assigned thereon. Fisher Mach. Works Co. v. Dougherty, 231 F. 910, 146 C. C. A. 106.

44. —— **New trial or rehearing.**—The discretion of the court, in the granting or denial of a motion for new trial, where there is evidence to support the verdict, is not reviewable on error. Shepard v. U. S., 236 F. 73. 149 C. C. A. 283; Smith v. U. S., 231 F. 25, 145 C. C. A. 213; Towe v. U. S., 238 F. 557, 151 C. C. A. 493; Maryland Casualty Co. of Baltimore, Md., v. Orchard Land & Timber Co., 240 F. 364, 153 C. C. A. 290; R. D. Cole Mfg. Co. v. Mendenhall, 240 F. 641, 153 C. C. A. 439; City of Grafton v. Gentry Bros.' Shows, 240 F. 646, 153 C. C. A. 444; Bernal v. U. S., 241 F. 339, 154 C. C. A. 219; Ford Motor Co. v. Farrington, 245 F. 850, 158 C. C. A. 190; Chicago, M. & St. P. Ry. Co. v. Chamberlain (C. C. A.) 253 F. 429. And disposition of a motion for new trial, based on alleged newly discovered evidence, is within the discretion of the trial judge, reviewable only for manifest abuse. Yeates v. U. S. (C. C. A.) 254 F. 60. But while ordinarily the ruling of the trial court on motion for new trial is not subject to review, yet, if an abuse of discretion is shown, the matter may be reviewed. United Press Ass'ns v. National Newspapers Ass'n (C. C. A.) 254 F. 284. And while the grant of a new trial on the ground of excessive damages is a matter of discretion with the trial court, not subject to review (Southern Ry. Co. v. White, 232 F. 144, 146 C. C. A. 336) where amount of plaintiff's recovery was uncontroverted, but jury, in violation of court's charge, found for less amount than that established by evidence, reversal of judgment based on such verdict was not violation of rule that refusal of trial court to disturb verdict on motion for new trial is matter of discretion. Glenwood Irr. Co. v. Vallery, 248 F. 483, 160 C. C. A. 493. And notwithstanding rule as to review of discretion in granting or refusing new trial, prejudicial error in denial of new trial for juror's disqualification held reviewable. Memphis St. Ry. Co. v. Illinois Cent. R. Co., 242 F. 617, 155 C. C. A. 307.

44½. —— **Sentence and extent of punishment in criminal cases.**—The appellate court cannot substitute its own discretion for that of the District Court, and, those believing lighter punishments than those imposed for violation of the Harrison Drug Act (Comp. St. 1916, § 6287) would have vindicated the law, punishment imposed cannot be treated as excessive. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

Nature of sentence held discretionary in trial court, and not reviewable, if within the statutory limits. Freeman v. U. S., 243 F. 353, 156 C. C. A. 133.

Where sentence imposed for theft of property of United States, was within Penal Code, § 190 (Comp. St. 1916, § 10360), appellate court cannot treat punishment as excessive and showing abuse of discretion of trial judge, though judge admitted he considered defendant's ulterior purpose in theft and fact that he was guilty of subornation of perjury. Peterson v. U. S., 246 F. 118, 158 C. C. A. 344, certiorari denied 38 S. Ct. 332, 62 L. Ed. 932.

45. —— **Proceedings after judgment, and costs and allowances.**—Discretion of court in authorizing new parties after judgment cannot be reviewed except for abuse. United States ex rel. State of Louisiana v. Boarman, 37 S. Ct. 605, 244 U. S. 397, 61 L. Ed. 1222, affirming decree U. S. v. Same, 217 F. 757, 133 C. C. A. 487.

As the amount of fees to be allowed complainant's counsel in a creditors' suit rests peculiarly within the knowledge of the trial judge, unless his discretion is abused, an allowance will not be disturbed. Central Trust Co. of New York v. United States Light & Heating Co., 233 F. 420, 147 C. C. A. 356.

An appellate court will not interfere with the discretion of the trial court in adjudging costs in a suit in equity. Weiland v. Pioneer Irr. Co., 238 F. 519, 151 C. C. A. 455.

Allowance of counsel fees under Copyright Act, § 40 (Comp. St. 1916, § 9561), held not reviewable, unless an abuse of discretion is shown. S. E. Hendricks Co. v. Thomas Pub. Co., 242 F. 37, 154 C. C. A. 629.

In suit to set aside corporation's deed of assignment to controlling stockholder, and to determine validity of bonds, discretion of trial court in allowing fees to plaintiff's solicitor against the company instead of such

stockholder held not reviewable. Williamson v. Collins, 243 F. 835, 156 C. C. A. 347.

Under Rev. St. & Codes Porto Rico, § 5350, providing that, when its Supreme Court reversed a judgment, it shall render such judgment as should have been rendered, except when some matters of fact need ascertainment, or there is uncertainty as to the damages to be assessed or matter to be decreed, courts should be slow to control its discretion in determining the damages, which had been fully tried. Ana Maria Sugar Co. v. Quinones (C. C. A.) 251 F. 499.

46. Error waived in appellate court.—Contentions not discussed either in appellant's brief or orally must be treated as abandoned. Pond Creek Coal Co. v. Hatfield, 239 F. 622, 152 C. C. A. 456; Town of Newbern v. National Bank of Barnesville, Ohio, 234 F. 209, 148 C. C. A. 111; May v. U. S., 236 F. 495, 149 C. C. A. 547; Bandy v. U. S., 245 F. 98, 157 C. C. A. 394; Sun Co. v. Vinton Petroleum Co., 248 F. 623, 160 C. C. A. 523, certiorari denied 38 S. Ct. 580, 247 U. S. 514, 62 L. Ed. 1244; Consolidated Interstate-Callahan Mining Co. v. Witkouski (C. C. A.) 249 F. 833. And where error assigned, on ground of objection to the indictment that the grand jury was not selective, designated, nor impaneled according to law, was not argued orally or by brief, and the record disclosed no fact upon which the claim could be based, it would not be considered. Sugar v. U. S. (C. C. A.) 252 F. 74. And so where nothing more than the bare assignment of error is set forth in the brief. Wege v. Safe-Cabinet Co., 249 F. 696, 161 C. C. A. 606. And the propriety of refusal of requested instructions will not be determined, where, on hearing in appellate court, assignments of error complaining of refusal were waived. Boston & M. R. R. v. Baker, 236 F. 896, 150 C. C. A. 158. But the waiver of assignments of error, for failure to argue the same on appeal, will, where appellant proceeded on the theory that action was one of trover, when it was also one on the case, be overlooked, and assignment will be considered. Arnold v. Horrigan, 238 F. 39, 151 C. C. A. 115.

47. Subsequent appeals—Scope and extent of review.—Save in exceptional circumstances questions decided upon one writ of error or appeal are not open to consideration by same appellate court on subsequent writ of error or appeal in same case. Tillar v. Cole Motor Car Co., 246 F. 831, 159 C. C. A. 133, certiorari denied 38 S. Ct. 579, 247 U. S. 511, 62 L. Ed. 1242.

Where decree for defendant was on complainant's appeal reversed, defendant, not having urged in appellate court that decree in its favor was proper under its cross-demand for reformation of written instrument, cannot complain, on appeal from subsequent decree for complainant, that trial court refused to consider its cross-demand. Sun Co. v. Vinton Petroleum Co., 248 F. 623, 160 C. C. A. 523, certiorari denied 38 S. Ct. 580, 247 U. S. 514, 62 L. Ed. 1244.

48. —— Former decision as law of case.—Where the original decree in a suit applies to the facts, it becomes the law of the case on subsequent litigation. Ferrell v. Prame, 236 F. 727, 150 C. C. A. 59. Thus holding on former appeal that verdict for defendant should have been directed was the law of the case, where the evidence was the same. Linkous v. Virginian Ry. Co., 242 F. 916, 155 C. C. A. 504, certiorari denied 38 S. Ct. 10, 245 U. S. 649, 62 L. Ed. 530. And a decision on a former writ of error that plaintiff was entitled to recover future profits is the law of the case on subsequent trial; the relevant facts remaining the same. United Press Ass'ns v. National Newspapers Ass'n (C. C. A.) 254 F. 284.

Decision of Circuit Court of Appeals, reversing decree for defendant, will, on appeal from decree entered pursuant to that decision, be accepted as law of case, where purpose of appeal was to keep alive right of defendant to present question involved for determination of Supreme Court. Ash Sheep Co. v. U. S. (C. C. A.) 250 F. 591. And a decree amended in conformity with a decision of the Circuit Court of Appeals, rendered on appeal from an earlier decree, will not be disturbed upon second appeal; the earlier decision having announced the law of the case. Lesamis v. Greenberg (C. C. A.) 250 F. 848.

While a decision on a former appeal is the law of the case on second appeal, the court may determine that its mandate was misinterpreted below. Continental & Commercial Trust & Savings Bank v. North Platte Valley Irr. Co., 237 F. 188, 150 C. C. A. 334.

Contentions of accused disposed of on prior appeal become law of case, and, having been settled adversely to him, are no ground for reversal on subsequent appeal. Perara v. U. S., 235 F. 515, 149 C. C. A. 61.

49. —— Questions concluded.—Where, on appeal from first trial, appellate court held plaintiff could not recover for breach of contract, count of complaint setting up defendant's own repudiation and seeking recovery on that ground, thus excusing plaintiff's breach, cannot be treated as stating a cause of action not arising out of contract, but the former decision governs. Caledonian Ins. Co. v. Levy, 233 F. 92, 147 C. C. A. 162.

In an action at law, previous decisions of an appellate court are not findings of fact, nor are conclusions

used for the purpose of argument in directing formulation of pleadings equivalent to decision upon meaning of statements to be included in pleadings. Gleason v. Thaw, 234 F. 570, 148 C. C. A. 336.

Permission granted by appellate court to file in the court below a supplemental bill does not bind the court as to the validity of the new claims sought thereby to be presented. Saalfield Pub. Co. v. G. & C. Merriam Co., 238 F. 1, 151 C. C. A. 77.

Questions decided on former appeal, and reconsidered on petition for rehearing and on petition for order directing subsequent proceedings below, must be accepted as final on subsequent appeal, where nothing was presented to court which had not been previously considered. United States Fidelity & Guaranty Co. v. Eichel, 241 F. 357, 154 C. C. A. 237.

Where decree provided for taxation of disbursements if appeal was taken and decree affirmed, held, that any error or abuse of discretion in such provision should have been presented on the appeal, and could not be presented on subsequent appeal from order taxing disbursements. Guaranty Trust Co. of New York v. International Steam Pump Co., 242 F. 920, 155 C. C. A. 508.

Reversal on writ of error of judgment for defendant, on ground that refusal of instructions as to defenses was erroneous, does not on retrial warrant direction of a verdict for defendant; defenses not being established by uncontroverted evidence. Board of Com'rs of Muddy Bottom Swamp Land Dist., No. 1, Tippah County, Miss., v. Equitable Surety Co., 246 F. 633, 158 C. C. A. 589.

Where after reversal of a judgment against defendants as executors the trial court set aside stipulation executed on first trial which dismissed action against defendants as individuals, and authority and jurisdiction of trial court to dismiss stipulation was upheld on defendant's application for prohibition or mandamus, the matter will not be reconsidered on a writ of error to review a judgment against defendants as individuals. Griggs v. Nadeau (C. C. A.) 250 F. 781.

54. **Decision of cause—Scope of decision or relief.**—Though an injunction was denied, the court has jurisdiction to preserve the status quo, pending appeal or final determination, though dismissing the bill. Toledo Newspaper Co. v. U. S., 237 F. 986, 150 C. C. A. 636, affirming judgment U. S. v. Toledo Newspaper Co. (D. C.) 220 F. 458.

58. **Affirmance—Error not shown.**—In reviewing judgment of Supreme Court of Porto Rico, in action where local law governs, Circuit Court of Appeals must uphold decision of lower court, unless convinced that clear error was committed. Plazuela Sugar Co. v. Pastoriza, 245 F. 115, 157 C. C. A. 411.

60. **—— Remission of part of recovery.**—Evidence and instructions held reasonably to show that the verdict was for the proper amount of damages, with interest, so as to permit plaintiff to remit the interest to avoid a reversal. B. F. Sturtevant Co. v. Champion Fibre Co., 232 F. 1, 146 C. C. A. 193.

In action for damages for breach of contract to sell vessel, where unpaid installment was not deducted from value of vessel as fixed by jury, because it had been deducted in admiralty suit, growing out of same transaction, such unpaid installment must be remitted, if judgment for plaintiff be allowed to stand; decree in admiralty suit having been vacated for want of jurisdiction. Rederiaktiebolaget Amie v. Universal Transp. Co. (C. C. A.) 250 F. 400.

64. **Modification—Amendment of defects and correction of errors.**—Where right to recover against all owners of vessel on shipper's libel for full amount, in case any of them was liable, was not controverted, decree of Circuit Court of Appeals that payment should be made by a certain estate, a part owner only, should be modified to render all the owners liable. Luckenbach v. W. J. McCahan Sugar Refining Co., 39 S. Ct. 53, 63 L. Ed. ——.

65. **—— Modification as to amount of recovery.**—Where fine imposed in prosecution under Act Cong. July 23, 1892 (Comp. St. 1916, § 4140), as amended by Act Jan. 30, 1897 (Comp. St. 1916, § 4137), for selling intoxicating liquor to an Indian, was not authorized, the judgment, which was otherwise correct, will not be reversed, but Circuit Court of Appeals may modify it, by striking out provisions imposing excessive fine. Salazar v. U. S., 236 F. 541, 149 C. C. A. 593.

An alleged excess in the verdict is a matter to be dealt with by the trial court, and not on writ of error by a federal appellate tribunal. Stultz v. Cousins, 242 F. 794, 155 C. C. A. 382.

66. **—— Modifying provisions of judgment.**—Where vendor, who took back deed of trust for unpaid purchase money providing that purchaser or his heirs or assigns might obtain releases for any parcels not less than 640 acres upon payment of amount due thereon as prorated, foreclosed deed of trust against unreleased lands which had been disposed of, modification of decree on appeal, consented to by vendor, so as to permit each defendant to prevent sale of his land by paying proportionate share of amount decreed, is proper. Carson v. Hurt (C. C. A.) 250 F. 30.

69. **Reversal—Jurisdictional defects.**—Though record on appeal to Circuit Court of Appeals discloses no facts to support federal jurisdiction, yet, where judgment on merits is valid, it will be upheld, pending inquiry into jurisdic-

tional facts, or judgment may be reversed, with directions to trial court, on finding jurisdictional facts, to enter final judgment. Alexandria Paper Co. v. Cleveland, C., C. & St. L. Ry. Co., 246 F. 122, 158 C. C. A. 348.

Where counsel for plaintiff in error, upon oral argument in open court admitted facts supporting federal jurisdiction, the judgment, being otherwise valid, cannot be reversed because the record failed to show facts supporting federal jurisdiction. Id.

70. —— **Error as to ground of decision.**—On an erroneous conviction on a count for aiding a convict to escape from a federal penitentiary, and on a proper conviction on a count for harboring and concealing the convict, both parts of a single transaction, within Criminal Code, § 141 (Comp. St. 1916, § 10311), imposing an imprisonment of not more than six months for each related offense, where there should have been but one sentence, not exceeding six months, defendant, sentenced to imprisonment for twelve months, was entitled to have the case remanded for sentence according to law. Orth v. U. S. (C. C. A.) 252 F. 566.

71. —— **Technical or trivial defects or errors.**—See notes under §§ 1246, 1591, 1691.

A case for injury to railroad employé, fairly tried on the merits, will not be reversed on refined distinctions between interstate and intrastate commerce, except on a clear conviction of error in the trial judge's view. Southern Ry. Co. v. O'Dell (C. C. A.) 252 F. 540.

72. —— **Amount or extent of recovery.**—While it is the general rule in equity that costs are in the discretion of the trial court, and that no appeal will lie upon a decree merely upon the ground of error in awarding costs, yet, where the decree is erroneous in any other respect, the appellate court may reverse or modify it with respect to costs. Chapin-Sacks Mfg. Co. v. Hendler Creamery Co. (C. C. A.) 254 F. 553.

73. —— **Reversal in part, or as to one or more coparties.**—Where defendants were charged severally, judgment may be affirmed as to those properly held liable, and reversed as to any not properly held. Chiarello Bros. Co. v. Pederson, 242 F. 482, 155 C. C. A. 258.

Where gold coin was forfeited in proceedings under Act June 15, 1917, post, § 7678d, on the ground it was delivered for export outside of the United States, but it was ordered delivered to the claimant on his giving a bond conditioned that it would not be exported, etc., held that, though the provision for delivery on bond was unwarranted, the entire judgment will be reversed, to enable the trial court to pass on questions of law and fact under a proper construction of the statute. U. S. v. Fernandez (C. C. A.) 254 F. 302.

74. —— **Rendering final judgment.**—Where issues were fully heard before master, and all proper evidence was admitted, and exceptions to his findings raised no serious question of fact, appellate court may dispose of such exceptions without remanding case to trial court, which erroneously declined to consider them. City and County of Denver v. Denver Union Water Co., 38 S. Ct. 278, 246 U. S. 178, 62 L. Ed. 649.

In action for breach of alleged contract for sale of sugar plantation, Circuit Court of Appeals, though finding there was no evidence warranting submission of case to jury and that verdict should have been directed for defendant, cannot, on defendant's writ of error, enter verdict and render judgment for defendant, but must remand for new trial. Sucrerie Central Coloso de Porto Rico v. Fajardo, 248 F. 432, 160 C. C. A. 442.

75. —— **Directing judgment in lower court.**—An appeal from a decree adverse to the government's contention that a combination of steamships to monopolize ocean travel violates Anti-Trust Act July 2, 1890 (Comp. St. 1916, § 8821), will be reversed, and case remanded with directions to dismiss without prejudice, where the controversy has become a moot one in consequence of the European War. U. S. v. American-Asiatic S. S. Co., 37 S. Ct. 233, 242 U. S. 537, 61 L. Ed. 479, reversing decree Same v. Prince Line (D. C.) 220 F. 230.

76. —— **New trial and directing further proceedings in lower court.**—Where action for damages for false imprisonment was heard on pleadings, and questions involving police powers of large municipality in times of widespread disorder could be far more intelligently disposed of when evidence had been heard and was before appellate court, judgment will be reversed, and case remanded for disposition on evidence. Pfeil v. Jamison, 245 F. 119, 157 C. C. A. 415.

In action on bonds and interest coupons, where record did not show how much judgment should be reduced on account of recovery improperly allowed on interest coupons upon which action was barred by limitations and there was no stipulation as to matter, judgment must be reversed and remanded for further proceedings. Rialto Irr. Dist. v. Stowell (C. C. A.) 246 F. 294; Same v. Chellis (C. C. A.) 246 F. 308.

A general verdict, returned on trial of an action which was without reversible error, may be permitted to stand pending an inquiry and determination by the trial court on the question of its jurisdiction. Chicago & A.

R. Co. v. Allen, 249 F. 280, 161 C. C. A. 288.

It fairly appearing from trial court's opinion that the conflicting evidence, on the question of an unrecorded mortgage on stock of goods being in fraud of subsequent creditors, was not duly considered, because of misapprehension that mortgagee had agreed to sell mortgagor all the goods it needed; and so did not contemplate that mortgagor would seek credit elsewhere, there will be a reversal and remand for new trial. Hawkins v. Dannenberg Co. (C. C. A.) 253 F. 529.

79. Mandate and proceedings in lower court—Mandate and order of remand.—A mandate from the Circuit Court of Appeals, reversing a judgment, with costs "in the sum of $50.10," held not to entitle plaintiff to execution for costs incurred by him in the District Court, but only for costs of the appellate proceedings, including those specified in the mandate. Bailey v. Mississippi Home Telephone Co. (D. C.) 254 F. 358.

80. —— Effect in lower court of appellate court decision.—Where appellate court, on reversing judgment for defendant, expressly declared it was not its intention to in any wise pass upon merits of controversy, presumption that there was evidence sufficient to warrant finding for either party is conclusively negatived. F. M. Davies & Co. v. Porter, 248 F. 397, 160 C. C. A. 407.

81. —— Powers and duties of lower court.—After dismissal and remand on appeal, on discovery of new evidence, held that, the decree being interlocutory, the District Court is not deprived of power to set aside its decree and reopen the case because a term expired while the appeal was pending. Wagner v. Meccano, Limited, 235 F. 890, 149 C. C. A. 202, authorizing reopenment in District Court Meccano v. Wagner (D. C.) 234 F. 912.

After trial and determination on appeal on the theory that defendants' dictionary was a revision of one, the copyright to which plaintiff had owned before its expiration, plaintiff cannot change his theory by alleging that it was a revision of a different dictionary. Saalfield Pub. Co. v. G. & C. Merriam Co., 238 F. 1, 151 C. C. A. 77.

After a decree of a District Court has been affirmed or reversed by the appellate court, the question whether a party should be allowed to file a bill of review in the District Court must be passed upon by the appellate court. Suhor v. Gooch, 248 F. 870, 160 C. C. A. 628, denying petition for leave to file bill of review 244 F. 361, 156 C. C. A. 647.

When the decree of the trial court in an equity case is reversed or modified on appeal, with costs, the costs of the appellate court are meant, unless the mandate otherwise provides; and, the trial court having a discretion as to costs in such cases, the application of the successful party for costs after the mandate has gone down must be addressed to the trial court. Romeike v. Romeike (C. C. A.) 251 F. 273.

Where appellate court had granted new trial, to allow defendant opportunity to litigate an issue, the trial court, in granting defendant's motion to amend, to plead such matter, did not abuse its discretion in failing to impose costs as a condition. Mundler v. Palmer (Sup.) 165 N. Y. S. 987.

82. —— Proceedings after remand.—See Cybur Lumber Co. v. Erkhart, 247 F. 284, 159 C. C. A. 378.

Where a District Court erroneously held on demurrer to a bill that a certain person was not a necessary party, on reversal of the final decree in the case complainant is entitled to amend the bill by making such person a party. Brown v. Fletcher, 231 F. 92, 145 C. C. A. 280.

85. —— Rendition of judgment as directed.—Decree pursuant to mandate of Circuit Court of Appeals in foreclosure of vendor's lien held not void because ordering deficiency execution against defendant and sureties on his appeal bond. Pease v. Rathbun-Jones Engineering Co., 37 S. Ct. 283, 243 U. S. 273, 61 L. Ed. 715, affirming decree 228 F. 273, 142 C. C. A. 565.

No objection to form of decree on foreclosure of vendor's lien can be raised in lower court after decree was affirmed on appeal, where no objection was taken on the appeal. Id.

Decree of federal District Court restraining sales by certain railroads of land grants in violation of covenants, and enjoining selling of timber on said lands, or mineral deposits except as part of land, held warranted by mandate of federal Supreme Court on remand on reversal for further proceedings and enjoining sales of timber until Congress should provide for their sale. Oregon & C. R. Co. v. U. S., 37 S. Ct. 443, 243 U. S. 549, 61 L. Ed. 890.

The decree of a District Court, entered upon a mandate of the Circuit Court of Appeals in a suit for infringement of trade-mark, considered and modified, and, as so modified, approved as in conformity to the mandate. Fairbanks v. American Piano Co., 242 F. 490, 155 C. C. A. 266.

After affirmance of decree, trial court cannot take action on allowance of costs by appellate court. Tompkins v. St. Regis Paper Co. (D. C.) 240 F. 838.

87. —— New trial.—Where Circuit Court of Appeals reversed judgment on writ of error, its finding on the evidence before it can have no weight on the new trial, unless the evidence is practically the same as that on which the court based its finding. Washing-

ton & Berkeley Bridge Co. v. Pennsylvania Steel Co. (C. C. A.) 252 F. 487.

Where, on a second trial, after reversal of a conviction, the evidence was different, and the testimony of an accomplice, on which the prosecution relied, was much shaken, the trial court is not bound to follow the decision of the appellate court on a former trial, to the effect that the jury's findings were conclusive. U. S. v. Murphy (D. C.) 253 F. 404.

89. Jurisdiction and proceedings of appellate court after remand—Recall or return of cause from lower court.—Writ of error to review judgment of reversal with instructions to dismiss entered by Circuit Court of Appeals on rehearing after recall of its mandate ordering a new trial, will not be dismissed because trial court had theretofore entered judgment on original mandate and had adjourned before writ of error sought. Thomsen v. Cayser, 37 S. Ct. 353, 243 U. S. 66, 61 L. Ed. 597, reversing judgment Union Castle Mail S. S. Co. v. Thomsen, 190 F. 536, 111 C. C. A. 368, and Id., 190 F. 1022, 111 C. C. A. 674.

90. —— Rehearing in appellate court.—Though court discussed questions other than jurisdictional question upon which decision was based, held, that rehearing on such questions would not be ordered. Supreme Council of Royal Arcanum v. Hobart, 244 F. 385, 157 C. C. A. 11.

That after submission and before decision party intervened giving necessary diversity of citizenship held not ground for rehearing, when not called to court's attention until after decision. Id.

Where petitioner would be affected by decree appealed from, though he was not named therein, and had he then asked, he would have been heard when appeals were originally argued, his petition for reargument will be granted to avoid possible injustice; it appearing that he had no record notice of appeals. Alexander v. Fidelity Trust Co., 249 F. 1, 161 C. C. A. 61.

92. —— Amendment of judgment.—Where, after decision of case by Circuit Court of Appeals, Supreme Court in similar case laid down a different measure of damages, Circuit Court of Appeals will modify its opinion accordingly. Utah Power & Light Co. v. U. S., 242 F. 924, 155 C. C. A. 512, modifying opinion 230 F. 328, 144 C. C. A. 470.

93. —— Amendment of mandate.—After expiration of term at which decree was reversed, appellant's petition to recall mandate for correction, by adding to costs taxed, must be denied, where item sought to be added was contested, and no voucher was before clerk when he prepared mandate. E. G. Staude Mfg. Co. v. Labombarde, 247 F. 879, 160 C. C. A. 101.

94. Dismissal or withdrawal of appeal or error.—Motions to dismiss appeals without consideration of the merits should not be granted, except when it clearly appears that there has been a fatal failure to comply with legal requirements. Halfpenny v. Miller, 232 F. 113, 146 C. C. A. 305.

As a question of defect of parties is one requiring opening up of record, that matter will not be considered on motion to dismiss appeal, where error may probably be met by amendment, but will be postponed until hearing on merits. Graham v. O'Ferral, 236 F. 717, 150 C. C. A. 49.

Dismissal of appeal from decree vacating probate of and holding void a will held not to vacate the decree and leave the will in force, even as to an unborn remainderman, though dismissal was pursuant to compromise out of court. Stewart v. Oneal, 237 F. 897, 150 C. C. A. 547.

A cause should not be dismissed by an appellate court without a hearing on the merits, because of a mere inadvertence of counsel, not amounting to flagrant neglect. E. I. Du Pont de Nemours & Co. v. Smith, 249 F. 403, 161 C. C. A. 377.

§ 1672. (R. S. § 1011, as amended, Act Feb. 18, 1875, c. 80, § 1.) Reversal on error limited.

3. Review of questions of law or fact in general.—See notes under §§ 1583, 1587, 1668, and Const. Amend. 7.

On writ of error to review a judgment rendered in an action where jury was waived, only inquiries open are, in view of Rev. St. §§ 700, 1011 (Comp. St. 1916. §§ 1668, 1672), whether evidence tends to support ultimate finding, and whether the finding in turn is sufficient to sustain the judgment. Turner v. Schaeffer, 249 F. 654, 161 C. C. A. 564.

8. Conflicting evidence.—Under this section, jury's finding of facts on conflicting evidence is conclusive on appeal. Hobbs v. Kizer (C. C. A.) 236 F. 681, 150 C. C. A. 13.

Cited without definite application, Schoenwald v. Bishop (C. C. A.) 244 F. 715.

CRIMINAL PROCEDURE

§ 1674. (R. S. § 1014.) Offenders, how arrested and removed.

I. VALIDITY, CONSTRUCTION, AND OPERATION IN GENERAL

5. Construction and operation in general—"Mode of process" defined.—The provision of this section authorizing designated state officers to make arrest for violation of federal statutes, process to be issued against offender "agreeably to the usual mode of process against offenders in such state," requires such arrest to be made with complaint and warrant. McMichael v. Culliton (N. J. Sup.) 104 A. 433.

6. —— "Process" defined.—Relative to commission of perjury under Criminal Code, § 125 (Comp. St. 1916, § 10295), a United States commissioner, under this section, wherein "process" is used with the meaning of "procedure," has authority to conduct a preliminary hearing (recognized by section 981 [Comp. St. 1916, § 1622], and called for by Comp. St. 1916, § 1678), and therein to administer oaths. Safford v. U. S. (C. C. A.) 252 F. 471.

7. —— "Court of the United States" within statute.—Despite the amendment of Rev. St. §§ 5399, 5406, by Criminal Code, §§ 135, 136 (Comp. St. 1916, §§ 10305, 10306), United States commissioner is not a court, and costs of preliminary hearing before him cannot, under Rev. St. §§ 974, 1014 (Comp. St. 1916, §§ 1615, 1674), be assessed against the defendant. U. S. v. Schwartz (D. C.) 249 F. 755.

14. Authority to arrest, hold to bail, or commit to jail in general.—Rev. St. §§ 1014, 1015 (Comp. St. 1916, §§ 1674, 1679), referring to admission of offenders to bail, are, as to District Courts, declarative of inherent common-law power of such courts to admit offenders. Ewing v. U. S., 240 F. 241, 153 C. C. A. 167.

II. COMPLAINT, WARRANT, EXAMINATION, COMMITMENT, AND BAIL

(A) Preliminary complaint

18. Necessity and procedure for.—In criminal procedure, several modes to bring defendant to trial are accepted as regular; one being by complaint, followed by warrant of arrest, preliminary hearing, and indictment, a second by presentment of grand jury, followed by issuance of bench warrant, and a third being by information from official representative of sovereign power. U. S. v. Simon (D. C.) 248 F. 980.

(B) Preliminary warrant and commitment

29. Arrest without warrant.—A state officer was not justified in law in making an arrest without complaint and warrant for acts which under the federal statute constitute only a misdemeanor and were not committed in the presence of such officer. And in action for false imprisonment, the fact that the arrest was made upon information received from agents of the Red Cross that plaintiff had committed acts constituting a misdemeanor under federal statutes is not legal justification, where arrest was without complaint and warrant; this section authorizing designated state officers to make arrest for violation of federal statutes, requiring that such arrest be made with complaint and warrant. McMichael v. Culliton (N. J. Sup.) 104 A. 433.

(C) Examination and commitment

41. Conduct of examination—Evidence, sufficiency of.—On preliminary examination before United States commissioner, where the evidence shows probable cause that the offense charged was committed, he is warranted in holding defendants. Ex parte Westbrook (D. C.) 250 F. 636.

46½. Costs.—Costs to which Rev. St. § 974 (Comp. St. 1916, § 1615), declares defendant subject, when judgment is rendered against him in prosecution for fine or forfeiture, held only those of trial under indictment, and not of preliminary trial, governed by section 1014 (section 1674). U. S. v. Briebach (D. C.) 245 F. 204. See, also, U. S. v. Schwartz (D. C.) 249 F. 755.

(D) Admission to bail

66. Proceedings to admit to bail.—It is sufficient that judge, when informed by deputy clerk that accused desired admission to bail and offered as surety an attorney well known to judge, fix amount and direct approval of bond. Ewing v. U. S., 240 F. 241, 153 C. C. A. 167.

Admitting accused to bail is not a step in trial, and bail bond cannot be attacked because accused was not present when judge accepted it. Id.

70. Bond, undertaking, recognizance, and deposits—Requisites and validity in general.—A bail bond executed on Sunday, given to secure the release of one arrested in Texas on a charge of violating the federal law, is valid under the Texas laws, which govern, pursuant to this section. De Orozco v. U. S. (C. C. A.) 237 F. 1008.

While the purpose of a recognizance and a bail bond is the same, a "recognizance" is an obligation of record entered into before some court of record, and need not be signed by the principal or the surety, while a "bail bond," is signed by the parties; the considera-

tion being the release of one accused from custody. Ewing v. U. S., 240 F. 241, 153 C. C. A. 167.

Bail bond taken in federal District Court for Tennessee held sufficient, under Shannon's Code Tenn. §§ 7116, 7118, 7119, 7125, 7126, containing all the requisites of common-law bond, though signed by only one surety. Id.

Attorney, surety on bail bond, having secured release of offender, cannot question authority of deputy clerk, who received bond; the United States having changed its position to its prejudice. Id.

A bail bond is not rendered invalid because of a mere verbal inaccuracy, caused by acicdental transposition of words, which does not work injury to any person in interest. Anduaga v. U. S. (C. C. A.) 254 F. 61.

74. —— **Conditions and obligations.**—Condition of bail bond given by one charged by United States commissioner with violating federal laws held to substantially comply with Code Cr. Proc. Tex. 1911, art. 293, which governed. De Orozco v. U. S. (C. C. A.) 237 F. 1008.

In view of Acts Tenn. 1903, c. 99 (Shannon's Code Supp. p. 852), held, that bail bond covered accused's release pending motion for new trial before sentence, and, where he then absconded, surety on his bond became liable. Ewing v. U. S., 240 F. 241, 153 C. C. A. 167.

77. **Liability of sureties.**—Surety on bail bond can be held liable only within absolute terms of his undertaking, which cannot be enlarged; and before there can be recovery on bail bond, it must appear that offender was bailed by one qualified to admit to bail. Ewing v. U. S., 240 F. 241, 153 C. C. A. 167.

79½. —— **Liability of principal to reimburse surety.**—Surety on bail bond is quasi jailer, and there is no implied obligation on part of principal to reimburse surety for amount paid on principal's default. Ewing v. U. S., 240 F. 241, 153 C. C. A. 167.

81. **Discharge of sureties.**—In view of Code Cr. Proc. Tex. 1911, art. 293, held, that the bail bond of one charged with violating the federal laws, who was arrested in Texas, is not released because the United States commissioner, ordering his arrest, postponed hearing without the affidavit provided by Code Cr. Proc. Tex. 1911, art. 205. De Orozco v. U. S. (C. C. A.) 237 F. 1008.

The failure of the United States commissioner, ordering the arrest of the principal in a bail bond, to enter a continuance of hearing on his docket, will not exonerate the bail and authorize principal to refuse to appear at the time set for the subsequent hearing. Id.

82. **Relief from liability or forfeiture.**—Under this section and Code Cr. Proc. Tex. 1911, § 500, it is no defense to forfeiture of bail bond of accused, arrested in Texas for offense against the United States, that he died after forfeiture and before final judgment on the bond. De Orozco v. U. S. (C. C. A.) 237 F. 1008.

84. **Action or scire facias on bond, undertaking, or recognizance—Remedy.**—A recognizance or bail bond may be enforced by scire facias or civil action; debt lying on the recognizance. The United States may adopt remedy of scire facias in recovering on bail bond, and have judgment entered after return of process, if no sufficient cause is shown for setting aside conditional judgment. Ewing v. U. S., 240 F. 241, 153 C. C. A. 167.

88. —— **Pleading.**—In view of Rev. St. § 716 (Comp. St. 1916, § 1239), authorizing the issuance of scire facias out of the United States court, and Rev. St. § 954 (Comp. St. 1916, § 1591), providing for the amendment of such writs for any defect or want of form, a scire facias issued out of the federal District Court for Tennessee to recover on a bail bond may be amended to show the missing jurisdictional fact that the court admitted the offender to bail. A writ of scire facias is considered both as process and declaration, and informalities which may be taken advantage of by demurrer can be cured by amendment; an amendment being permissible to show custom of taking bond out of court. Ewing v. U. S., 240 F. 241, 153 C. C. A. 167.

89. —— **Evidence.**—In scire facias on conditional judgment on bail bond, testimony that offender was admitted to bail by judge is not objectionable as contradictory of record, where record did not show by whom offender was admitted to bail. Ewing v. U. S., 240 F. 241, 153 C. C. A. 167.

91. —— **Judgment and enforcement.**—No judgment can be rendered against the wife of the principal in a bail bond, who did not execute the bond as principal or surety, and did not upon the death of the principal become his legal representative. De Orozco v. U. S. (C. C. A.) 237 F. 1008.

Though scire facias on conditional judgment on bail bond did not allege accused was admitted to bail by judge, yet, where evidence of fact which rested in parol was received without objection, judgment cannot be attacked on ground it was not supported by writ. Ewing v. U. S., 240 F. 241, 153 C. C. A. 167.

IV. REMOVAL OF OFFENDERS TO OTHER DISTRICT FOR TRIAL

(A) *Validity and construction in general*

111. **Removal in general.**—Though defendants were indicted in the District Court for Rhode Island, they may be removed for trial on indictment against

them in the District Court in the Southern District of New York; there being no claim for speedy trial in District Court for Rhode Island, and no showing that granting of warrant of removal would result in unreasonable delay. In re Tillinghast (D. C.) 233 F. 712.

115. District of Columbia.—One charged with offense created by act of Congress applying specially to District of Columbia may, under this section, be removed to District of Columbia for trial, it appearing he was taken into custody elsewhere, for there is no extradition between District of Columbia and a state. U. S. v. McCarthy (D. C.) 250 F. 800.

118. Sufficiency of indictment or complaint.—In proceedings for the removal of one charged with crime from one federal district to another for trial, merely technical objections to the sufficiency of the indictment should not be considered. Conetto v. U. S. (C. C. A.) 251 F. 42.

119. Conclusiveness and effect of indictment.—An indictment charging a criminal conspiracy introduced in evidence in proceedings before a United States commissioner for removal of defendant to another district for trial is itself prima facie evidence of probable cause. Witte v. Shelton, 240 F. 265, 153 C. C. A. 191.

§ 1678. (Act Aug. 18, 1894, c. 301, § 1.) Persons arrested to be taken before nearest officer; complaint attached to warrant.

See Safford v. U. S. (C. C. A.) 252 F. 471; note under § 1674, ante.

§ 1679. (R. S. § 1015.) Bail in cases not capital.

Declarative of common law.—Rev. St. §§ 1014, 1015 (Comp. St. 1916, §§ 1674, 1679), referring to admission of offenders to bail, are, as to District Courts, declarative of inherent common-law power of such courts to admit offenders. Ewing v. U. S., 240 F. 241, 153 C. C. A. 167.

§ 1684. (R. S. § 1020.) When penalty of recognizances may be remitted.

Construction in general.—Under the provision that a court may in its discretion remit the penalty of a forfeited criminal recognizance, whenever it appears "that there has been no willful default of the party," etc., the court can exercise such discretion only when the failure of defendant to appear was not willful. U. S. v. Fabata (D. C.) 253 F. 586.

—— **"Willful default" defined.**—That the failure of defendant in a criminal case to appear to the time required by his recognizance was by advice of his attorney does not make his default other than "willful." U. S. v. Fabata (D. C.) 253 F. 586.

Discretion of court.—An application under this section for relief from the forfeiture of a recognizance is addressed to the discretion of the court. U. S. v. Smart, 237 F. 978, 150 C. C. A. 628.

Application for remission of penalty.—A petition for relief from the penalty of a forfeited recognizance held sufficient under this section. U. S. v. Smart, 237 F. 978, 150 C. C. A. 628.

§ 1690. (R. S. § 1024.) Charges joined in one indictment.

1. Joinder of counts on offenses in general.—See Morris v. U. S. (C. C. A.) 229 F. 516.

Separate criminal acts in a single transaction may be split up into as many counts relating to the transaction as the United States attorney may think necessary, so that, if the proof is insufficient for a conviction on one count, the government may have its benefit on another charge to which it is applicable. Orth v. U. S. (C. C. A.) 252 F. 566. And a motion to quash an indictment on the ground that the three counts charged the same offense is properly denied, for such motion is not favored, and is addressed to the discretion of the court, while a motion to elect is the proper remedy. Wetzel v. U. S., 233 F. 984, 147 C. C. A. 658. Under Laws Alaska 1913, c. 39, one charged of violating Act June 26, 1906, regulating fisheries of Alaska, cannot complain that the indictment, which was in several counts, included more than one offense. Thlinket Packing Co. v. U. S., 236 F. 109, 149 C. C. A. 319.

6. Offenses against the postal service in general.—Under this section United States may in one indictment join two charges of embezzlement against cashier of post office; one embezzlement of money, and the other embezzlement of stamps, property of United States. McNeil v. U. S., 246 F. 827, 159 C. C. A. 129.

A count charging a violation of Criminal Code, § 211 (Comp. St. 1916, § 10381), by mailing obscene matter, etc., was properly joined in one indictment with a count under section 212 (Comp. St. 1916, § 10382), charging the mailing

of an envelope bearing defamatory and obscene matter. U. S. v. Davidson (D. C.) 244 F. 523.

12. Conspiracy and other offenses.—A charge, under Penal Code, § 215 (Comp. St. 1916, § 10385), for using the mails for a scheme to defraud, and a charge under section 37 (section 10201), for a conspiracy to commit such offense, may be joined under this section, relating to several charges for same transaction or for two or more transactions connected together. Sidebotham v. U. S. (C. C. A.) 253 F. 417.

16. Offenses created by oleomargarine act.—A number of charges of violations of the oleomargarine laws may under this section be joined in one indictment; the several charges being based on acts connected with the other and for transactions of the same class of crime. Kreuzer v. U. S. (C. C. A.) 254 F. 34.

23. Election between counts or offenses.—Under indictment charging entry into railroad car containing interstate shipment, with intent to steal, and larceny therefrom, held, that defendants could be convicted on both counts. Morris v. U. S., 229 F. 516, 143 C. C. A. 584.

Under this section, government cannot, in a prosecution for conspiring to violate and for violating Harrison Drug Act, be required at close of its case to elect on which of acts conviction would be sought; several charges being joined in one indictment. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

Under indictment under Comp. Laws Territory Alaska 1913, § 266, charging that on July 30, 1913, defendant wantonly wasted and destroyed salmon taken in waters of Alaska, prosecution's evidence tending to prove offense on July 26th was not an election to prove the offense on that day. Alaska Packers' Ass'n v. U. S., 244 F. 710, 157 C. C. A. 158.

Where one indictment charges two offenses, motion to require prosecution to elect is addressed to sound discretion of trial court. McNeil v. U. S., 246 F. 827, 159 C. C. A. 129.

Where an indictment was duplicitous because charging, in one count, the three several offenses denounced by the Espionage Act, § 3, post § 10212c, the United States attorney will not be allowed to elect to rely on one of the offenses and nolle pros. the others; for that would amount to an amendment, and violate U. S. Const. Amend. 5, declaring no person shall be held to answer for an infamous crime unless on presentment of an indictment of a grand jury, etc. U. S. v. Dembowski (D. C.) 252 F. 894.

25. Charging different acts as one offense, or duplicity.—It is elementary that two separate offenses cannot be included in one count of an indictment. Where a statute creates a single offense, but specifies in the alternative different acts, any one of which will constitute the offense, an indictment may charge the commission of such offense by all the means mentioned, using the conjunctive "and" wherever the statute uses the word "or," without being duplicitous. And where a statute prohibits the doing of a certain thing, or attempting to do such thing, these are merely different modes of doing one thing; hence an indictment in one count charging that defendant with the offense of causing insubordination in violation of the Espionage Act, § 3, post, § 10212c, and attempting to cause such insubordination, is not duplicitous. Such act, declaring that whoever shall willfully make or convey false reports with intent to interfere with military operations, and whoever shall willfully cause or attempt to cause insubordination, or shall obstruct the recruiting or enlistment services, shall be punished, includes three different offenses, which cannot be joined in one count of an indictment. U. S. v. Dembowski (D. C.) 252 F. 894. And see U. S. v. Blakeman (D. C.) 251 F. 306.

Under Criminal Code, § 332 (Comp. St. 1916, § 10506), making person aiding, abetting, etc., a principal, indictment for aiding, abetting, etc., violations of Act May 18, 1917, post, § 2044e, held not to charge more than one offense. Ruthenberg v. U. S., 38 S. Ct. 168, 245 U. S. 480, 62 L. Ed. 414.

Terms "house of ill fame," "bawdy house," and "brothel" being synonymous, indictment charging keeping of all three resorts charges but one offense. And indictment charging that defendants conspired to set up or keep house of ill fame, brothel, or bawdy-house within prohibited zone of military post, in violation of Selective Service Act May 18, 1917, § 13, post, § 2019b, is not duplicitous, as charging several offenses; conspiracy alone being charged. U. S. v. Casey (D. C.) 247 F. 362. And see U. S. v. Stilson (D. C.) 254 F. 120. And an indictment, charging a conspiracy to commit four separate offenses, is not bad for duplicity. Knoell v. U. S., 239 F. 16, 152 C. C. A. 66, affirming judgment U. S. v. Knoell (D. C.) 230 F. 509. Nor is a charge in a single count of a conspiracy to violate two or more laws of the United States. Knauer v. U. S., 237 F. 8, 150 C. C. A. 210.

Indictment charging cashier of bank with issuing "and" putting forth a certificate of deposit with intent to injure "and" defraud the bank held not duplicitous and bad, under Rev. St. § 5209 (Comp. St. 1916, § 9772). Simpson v.

U. S., 229 F. 940, 144 C. C. A. 222, certiorari denied 36 S. Ct. 552, 241 U. S. 668, 60 L. Ed. 1229.

Indictment charging violation of Criminal Code, § 217 (Comp. St. 1916, § 10387), which alleged that accused did deposit and cause to be deposited in post office for mailing and delivery a poison, etc., is not duplicitous because of allegation that accused did deposit and cause to be deposited such poison. Murray v. U. S., 247 F. 874, 160 C. C. A. 96.

Where a notary appended false certificates to statements by several physicians, which were intended to be used in connection with a claim for exemption from military service, the false certification of each statement was a separate offense under the Selective Service Act, and the several offenses could not be charged in a single count of the indictment. U. S. v. Blakeman (D. C.) 251 F. 306.

Indictment charging that defendants conspired to commit an offense against and to defraud the United States in violation of Pen. Code, § 37 (Comp. St. 1916, § 10201), and to unlawfully and willfully aid and counsel unknown persons to refuse to register under the Selective Draft Act, post, § 2044e, did not charge two distinct offenses, no facts being alleged to show a conspiracy to defraud the United States, so that the allegation as to fraud was surplusage. Sugar v. U. S. (C. C. A.) 252 F. 79.

Where a statute creates a single offense, but specifies in the alternative different acts, any one of which will constitute the offense, an indictment may charge the commission of such offense by all the means mentioned, using the conjunctive "and" wherever the statute uses the word "or," without being duplicitous. U. S. v. Dembowski (D. C.) 252 F. 894.

28. Consolidation of indictments.—The trial court may, in its discretion, consolidate several indictments before trial, and try the same together. Le More v. U. S. (C. C. A.) 253 F. 887.

The consolidation for trial of an indictment for conspiracy to commit a crime against the United States and one against the same defendants for commission of such crime held proper, under this section. Vane v. U. S. (C. C. A.) 254 F. 28.

Where defendants were charged with violation of the Sherman Act (Comp. St. 1916, § 8820 et seq.), as well as violating Criminal Code, § 37 (Comp. St. 1916, § 10201), by conspiring to form a military enterprise, in violation of section 13 (Comp. St. 1916, § 10177), against the dominions of a foreign prince with whom United States was at peace, and the several acts charged were practically the same, the indictments should be consolidated and tried together. U. S. v. Bopp (D. C.) 237 F 283.

29. Proof as to part of counts.—Where evidence supports one count, and sentence might be imposed under one court, refusal to direct verdict is not error. McDonald v. U. S., 241 F. 793, 154 C. C. A. 495.

Separate criminal acts in a single transaction may be split up into as many counts relating to the transaction as the United States attorney may think necessary, so that, if the proof is insufficient for a conviction on one count, the government may have its benefit on another charge to which it is applicable. Orth v. U. S. (C. C. A.) 252 F. 566.

Where, under the evidence, there might be a conviction on some of the counts, if not on others, requested charge that, to convict in this cause, certain matter must be proved, is bad, as requiring conviction or acquittal on all the counts. Bonfoey v. U. S. (C. C. A.) 252 F. 802.

30. Verdict under indictment containing several counts.—Acquittal of a defendant, charged with using the mails to defraud, on some of the counts of the indictment, held not to negative guilt on other counts. Lyman v. U. S., 241 F. 945, 154 C. C. A. 581.

Where jury did not have indictment before them, and had been instructed that there were in substance only two charges, verdict finding defendants guilty as indicted in both counts is sufficient to support a conviction though indictment contained more than two counts, indicating that the jury found defendants guilty on the whole indictment. U. S. v. Bachman (D. C.) 246 F. 1009.

§ 1691. (R. S. § 1025.) Indictments; defects of form.

1. Defects or imperfections in matters of form in general.—The rule applicable to an information is no less liberal than that prescribed for indictments by this section, and its averments of facts constituting the offense need be only so certain and specific as fairly to inform defendant of the crime intended to be alleged, and to make the judgment a complete defense to a second prosecution for the same offense. Simpson v. U. S. (C. C. A.) 241 F. 841.

This section authorizes observance of dictates of common sense. Whitehead v. U. S., 245 F. 385, 157 C. C. A. 547, certiorari denied 38 S. Ct. 191, 245 U. S. 670, 62 L. Ed. 540.

Defects in an indictment charging that railroad company, in violation of Interstate Commerce Act, § 10 (Comp. St. 1916, § 8574), assisted a shipper to obtain transportation at less than the regular rates, etc., held mere imperfections of form, which, after verdict,

were cured by this section. Elgin, J. & E. Ry. Co. v. U. S. (C. C. A.) 253 F. 907.

2. **Preliminary proceedings in general.**—A sworn charge previously made is not necessary to render an indictment valid. Ruthenberg v. U. S., 38 S. Ct. 168, 245 U. S. 480, 62 L. Ed. 414.

4. **Selecting, summoning, and impaneling grand jury.**—Socialists held denied no constitutional or statutory rights because grand jury was composed exclusively of members of other parties and of property owners. Ruthenberg v. U. S., 38 S. Ct. 168, 245 U. S. 480, 62 L. Ed. 414.

Failure of clerk to participate in selection of grand jury, as required by 36 Stat. 1164 (Comp. St. 1916, § 1253), held prejudicial error which cannot be disregarded under this section, and indictment thereunder must be set aside. Dunn v. U. S., 238 F. 508, 151 C. C. A. 444.

An indictment is not effective until it is found a true bill by a properly constituted grand jury. Cooper v. U. S., 247 F. 45, 159 C. C. A. 263.

5. **Proceedings of grand jury.**—The absence of the judge from the district during a part of the deliberations of the grand jury does not invalidate the indictment. Badders v. U. S., 36 S. Ct. 367, 240 U. S. 391, 60 L. Ed. 706.

Though the district attorney was guilty of misconduct before the grand jury, in attempting to influence them to return an indictment, the indictment is not open to attack, unless it appears that the rights of accused were prejudiced. And where the district attorney in impartial judicial manner summarized the evidence produced before the grand jury, informed them as to the law, and then stated that he desired an indictment, but in no way attempted to dominate them, the indictment, returned without discussion, is not open to objection, being free from coercion; the evidence being clear and conclusive. U. S. v. Rintelen (D. C.) 235 F. 787.

An indictment is not subject to attack where founded on sufficient evidence, because the grand jurors from reading newspapers had acquired strong opinions, and even bias against accused. Id.

An indictment is not subject to plea in abatement because incompetent testimony was presented to the grand jury, unless competent evidence sufficient to justify the indictment was not presented. U. S. v. Rintelen (D. C.) 235 F. 787. And the use in evidence before the grand jury of papers seized under a valid search warrant is not ground for quashing the indictment. U. S. v. Gouled (D. C.) 253 F. 242. That matter was brought to attention of grand jury by one of its members having dealings with defendants concerning the matter involved, held not ground for quashing, where he withdrew and took no part in the proceedings. Elder v. U. S., 243 F. 84, 155 C. C. A. 614.

After finding of indictment and apprehension of defendant, asking of and being informed by grand jurors what transpired before them is not improper. U. S. v. Perlman (D. C.) 247 F. 158.

11. **Requisites and sufficiency of indictment in general.**—Under this section an indictment will be held sufficient which contains a sufficient accusation and alleges facts sufficient to sustain a conviction and apprise defendant of the charge against him. Knauer v. U. S., 237 F. 8, 150 C. C. A. 210. And to avail themselves of the record of conviction or acquittal against further prosecution, etc. U. S. v. Prieth (D. C.) 251 F. 946. The purpose of an indictment is to inform accused, with reasonable certainty, of the nature of the offense charged, so he may properly prepare his defense, to enable him to use his acquittal, if again accused, and to enable the court to determine whether acts alleged to constitute a crime would warrant a conviction thereof, if proved. U. S. v. Greenbaum (D. C.) 252 F. 259.

An indictment, averring goods stolen from a freight house and consigned to certain persons while in the course of interstate shipment were received by accused, held, in view of this section, sufficient to charge the offense of receiving such goods, denounced by Act Feb. 13, 1913 (Comp. St. 1916, § 8603). Kasle v. U. S., 233 F. 878, 147 C. C. A. 552.

In view of this section, an indictment held sufficient to charge offense of introducing, from without into that part of state of Oklahoma which was Indian Territory, intoxicating liquor. Dosset v. U. S., 248 F. 902, 161 C. C. A. 20.

12. **Indictment in several counts or charging separate and distinct offenses.**—In determining the sufficiency of an indictment, each count must be treated as a whole, and not merely as a part thereof. Samuels v. U. S., 232 F. 536, 146 C. C. A. 494. And where accused was convicted on two counts, and sentence was passed on both counts, but ordered to run concurrently, and one of the counts was sufficient, error in sustaining the other count was harmless. Frankfort v. U. S., 231 F. 903, 146 C. C. A. 99; Kreuzer v. U. S. (C. C. A.) 254 F. 34. And a general conviction on several counts will not be disturbed, because of defects in some of the counts, where there is one good count. Greenburg v. U. S. (C. C. A.) 253 F. 728; Thurston v. U. S., 241 F. 335, 154 C. C. A. 215, certiorari denied 38 S. Ct. 9, 62 L. Ed. 529; Gee Woe v. U. S. (C. C. A.) 250 F. 428; Doe v. U. S. (C. C. A.) 253 F. 903.

Where defendants were convicted of entering a railroad car with intent to commit larceny, and of stealing goods therefrom, but the punishment imposed

on both counts was the same and ran concurrently, they were not prejudiced, even though there was no evidence to warrant the verdict of guilty on one count; the evidence clearly warranting a conviction on the other. Morris v. U. S. (C. C. A.) 229 F. 516.

Where sentence imposed did not exceed that which might be imposed for a single conviction for violating postal laws (Criminal Code, § 211; Comp. St. 1916, § 10381), accused cannot complain of overruling of his motion to compel government to elect under which count of indictment it would proceed. Wetzel v. U. S., 233 F. 984, 147 C. C. A. 658.

Where there was evidence to support a conviction under one count of the indictment, and there was a single sentence upon the two counts, the conviction will not be reversed, as without support in evidence, though one of the counts was not established. Brand v. U. S., 236 F. 219, 149 C. C. A. 409.

Where the evidence abundantly supported more than one of the five counts charging the defendant with violating Drug Registration Act Dec. 17, 1914 (Comp. St. 1916, § 6287o), and the sentence imposed was such as could have been imposed under section 9 of that act for a single offense, the judgment will not be reversed for errors affecting only one count. Baldwin v. U. S., 238 F. 793, 151 C. C. A. 643.

To amend is to correct or rectify or to free from error; hence to cure an indictment of the defect of duplicity, by striking from the single count in which several offenses were charged, is to amend the same. U. S. v. Dembowski (D. C.) 252 F. 894.

In view of this section, an indictment held not fatally defective, on motion for new trial, because it charged in separate counts a conspiracy to commit acts which constituted offenses under different statutes. U. S. v. Stilson (D. C.) 254 F. 120.

13. —— Reference between counts.—In a prosecution under Criminal Code, § 215 (Comp. St. 1916, § 10385), for using the mails in connection with a scheme to defraud, subsequent counts in an indictment may refer to a previous count for the scheme. Linn v. U. S., 234 F. 543, 148 C. C. A. 309.

That a count in an indictment is bad does not affect the propriety of references in other counts to facts stated therein to avoid repetition. Doe v. U. S. (C. C. A.) 253 F. 903.

14. Description of offense in general.—An indictment for seditious conspiracy under Criminal Code, § 6 (Comp. St. 1916, § 10201), must charge force, which cannot be implied from the words "feloniously, unlawfully, willfully, and maliciously"; but where the overt act is alleged in charging defendants with intent to engage in armed hostility against the United States, "by attacking with force and arms," defendant is so apprised of element of force that to sustain a demurrer on such ground would give effect to a mere defect of form, contrary to this section. Phipps v. U. S. (C. C. A.) 251 F. 879.

Indictment charging that defendants conspired to interfere with registration under Selective Draft Act May 18, 1917, § 5, post, § 2044e, by publication of newspaper counseling persons not to register, sufficiently charged a public offense, notwithstanding section 6 of the Selective Draft Act, post, § 2044f, was also the basis of the offense charged, the act and not the sections being important, in view of this section. Sugar v. U. S. (C. C. A.) 252 F. 79.

In view of this section, the allegations of an information need only fairly inform defendant of crime intended to be alleged, and to make available a plea of former acquittal or conviction, if a second prosecution were instituted for the same offense. Dr. J. H. McLean Medicine Co. v. U. S. (C. C. A.) 253 F. 694.

15. Certainty and particularity.—In view of this section, indictment need only be so certain and specific as to fairly inform defendant of crime alleged and make judgment defense to second prosecution. Simpson v. U. S., 241 F. 841, 154 C. C. A. 543; Linn v. U. S., 234 F. 543, 148 C. C. A. 309; U. S. v. United States Brewers' Ass'n (D. C.) 239 F. 163. The highest degree of certainty is not required, but certainty to a common intent is sufficient. Finnegan v. U. S., 231 F. 561, 145 C. C. A. 447. And while the rules of criminal procedure require that one accused shall be fully apprised of the charge against him, yet the object is to convict the guilty, as well as to shield the innocent, and no impracticable standard of particularity should be set up. U. S. v. Gouled (D. C.) 253 F. 239.

Indictment under Criminal Code, § 37 (Comp. St. 1916, § 10201), for conspiracy to corrupt election for Representative in Congress, held so vague, uncertain, insufficient, and duplicitous as not to sufficiently apprise defendants of the nature of the charge. U. S. v. Gradwell (D. C.) 234 F. 446, judgment affirmed 37 S. Ct. 407, 61 L. Ed. 857.

If indictment for conspiracy to intimidate voter was intended to charge a direct threat to have sentence pronounced, held that it was argumentative and lacked positiveness. U. S. v. Welch (D. C.) 243 F. 996.

17. Indictment where statute punishes common-law crime.—When the definition of an offense, whether it be by common law or by statute, includes generic terms, it is not sufficient that an indictment charge the offense in the same generic terms, but it must aver the particulars. Knauer v. U. S., 237 F. 8, 150 C. C. A. 210; U. S. v. Bopp (D. C.) 230 F. 723.

22. Particulars constituting or evidence of offense.—An indictment charging that a railroad company violated Interstate Commerce Act. § 10 (Comp. St. 1916, § 8574), by false billing, etc., assisting a shipper to obtain transportation at less than the usual rates, is not defective because it did not set out the waybills, for the waybills are mere evidence of the classification, etc. Elgin, J. & E. Ry. Co. v. U. S. (C. C. A.) 253 F. 907.

An indictment must fully and clearly set out the elements which constitute the crime, but need not allege matters of evidence nor the means by which the crime was to be accomplished, unless the act is one the criminality of which depends on the circumstances under which it was done. U. S. v. United States Brewers' Ass'n (D. C.) 239 F. 163.

24. Surplusage.—In an indictment for using the mails to defraud, the words "as aforesaid," in a paragraph alleging facts not previously mentioned, are surplusage. Finnegan v. U. S., 231 F. 561, 145 C. C. A. 447.

Indictment charging conspiracy to induce persons to violate Conscription Act, post, § 2044a et seq., held not bad, as including in single count charge of conspiracy to commit an offense, as well as to defraud United States; averments of conspiracy to defraud in accordance with Criminal Code, § 37 (Comp. St. 1916, § 10201), being surplusage. U. S. v. Sugar (D. C.) 243 F. 423.

25. Bill of particulars.—Where an indictment sets forth all the essential elements of an offense, the filing of a bill of particulars under the order of the court would not involve any usurpation upon the functions of the grand jury. U. S. v. Stobo (D. C.) 251 F. 689.

A motion by the defendant in a criminal case for a bill of particulars is addressed to the discretion of the court. Knauer v. U. S., 237 F. 8, 150 C. C. A. 210; U. S. v. Pierce (D. C.) 245 F. 888. But where indictment sufficiently charged all of the essential facts to constitute the offense, defendant, if desirous of other details, must demand a bill of particulars. Sheridan v. U. S., 236 F. 305, 149 C. C. A. 437.

A bill of particulars can in no way aid an indictment fundamentally bad; the office of the bill, which is addressed to the discretion of the court, being to render the defendant more particular information as to matters essential to his defense. Collins v. U. S. (C. C. A.) 253 F. 609; U. S. v. Rintelen (D. C.) 233 F. 793. And, in reviewing judgment sustaining demurrer to indictment, bill of particulars is to be disregarded; it forming no part of the record for the purpose of the demurrer. U. S. v. Comyns, 39 S. Ct. 98, 63 L. Ed. —. And see Foster v. U. S. (C. C. A.) 253 F. 481.

A bill of particulars may be ordered by the court, in its discretion, in cases where the indictment, while so expressed as to be good on demurrer, does not furnish defendant with all information he is entitled to have before being compelled to go to trial. Foster v. U. S. (C. C. A.) 253 F. 481; U. S. v. Pierce (D. C.) 245 F. 888. And a bill of particulars should never be granted where it will unduly limit the evidence of the prosecution; but it is a settled rule that, while an indictment may be sufficient in itself, if it charges an offense in the words of the statute, it is not sufficient as against a motion for bill of particulars, but the court, upon motion, may in its discretion require the pleader in such case to descend to particulars. U. S. v. Gouled (D. C.) 253 F. 239.

When a bill of particulars is made and served, it concludes the rights of all parties, and the prosecution must be confined to the particulars specified. U. S. v. Gouled (D. C.) 253 F. 239; U. S. v. Pierce (D. C.) 245 F. 888.

Defendants indicted for conspiracy and violation of Espionage Act June 15, 1917, § 3, post, § 1012c, held not entitled to bill of particulars setting forth names of those to whom pamphlets containing alleged false statements regarding military operations of United States were delivered, or setting forth names of persons solicited, etc. U. S. v. Pierce (D. C.) 245 F. 888.

Where an indictment charged that defendants conspired to impede enlistment service by public speeches, private solicitation, and the publication of a magazine, held, that they were entitled to a bill of particulars of the speeches, etc., relied on. U. S. v. Eastman (D. C.) 252 F. 232.

32. Description of persons and misnomer.—Under this section, indictment for entering railroad car containing interstate shipment and stealing goods therefrom held not defective for failure to allege that railroad company was incorporated. Morris v. U. S., 229 F. 516, 143 C. C. A. 584.

The failure of an indictment for using the mails in the execution or attempted execution of a scheme to defraud a bank to allege that the bank was incorporated did not prejudice the defendant, and hence the indictment would not be quashed because thereof, in view of this section. McClendon v. U. S. (C. C. A.) 229 F. 523.

Indictment under Criminal Code, §§ 37, 215 (Comp. St. 1916, §§ 10201, 10385), charging conspiracy to violate and violation of section 215, with reference to illegal use of mails, held not bad for failure to state that collection agency through which defendants realized on scheme was corporation, etc., or show relation of defendants

to agency. Preeman v. U. S., 244 F. 1, 156 C. C. A. 429, certiorari denied 38 S. Ct. 12, 245 U. S. 654, 62 L. Ed. 533.

It is not always necessary that the names of third persons be set forth in the indictment, or that there be an allegation that such names are unknown. U. S. v. Prieth (D. C.) 251 F. 946.

33. **Designation of defendants.**—An indictment charging defendants with defrauding the United States of taxes on artificially colored oleomargarine, which alleged that they carried on their business under a corporate name, but treated them as principals, is not bad as failing to charge them as principals. U. S. v. Orr (D. C.) 233 F. 718.

34. **Averment of venue or place of offense.**—In view of this section, an inaccurate statement as to the voting precinct in which defendant resided, contained in an indictment charging failure to register as required by the Selective Draft Act, must, in view of the usual knowledge prevailing as to such locations, be disregarded. Breitmayer v. U. S. (C. C. A.) 249 F. 929.

Objection that no venue was laid in indictment for combining and engaging in monopoly in restraint of interstate commerce held without merit. U. S. v. Cowell (D. C.) 243 F. 730.

Indictment charging conspiracy to commit an offense against the United States should allege place of commission of overt act; and an indictment for conspiracy in anticipation of bankruptcy to conceal assets from trustee held sufficient. U. S. v. Baker (D. C.) 243 F. 741.

An indictment for concealing property while bankrupt, alleging the concealment took place at the city of Detroit, in this district, on July 5, 1916, specifies the place. U. S. v. Greenbaum (D. C.) 252 F. 259.

35. **Averment of time or date.**—It is the general rule that, though the grand jury has not evidence of exact date of offense, and though its oath is to make true presentment, and though time is not of essence, indictment must allege offense as of day certain, though the offense may be proved as of any day prior to indictment and within limitations. To the requirement that the indictment must allege a day certain, there are two exceptions: Misdemeanors, and offenses of omission, rather than of commission. And an indictment charging violation of Anti-Drug Act, in that defendant gave order for opium and failed to preserve duplicate so as to be accessible, comes within one of these exceptions, and need not allege offense as of day certain; the charge being omission to perform statutory duty, though the indictment must allege that the offense was committed within two years after acceptance of order. But where time is not of essence of offense, allegation of indictment of commission on day certain is so far of form, rather than of substance, as to be within this section, and the indictment in question was held sufficient, though alleging date of offense no more definitely than unknown date within essential two-year period. U. S. v. Gaag (D. C.) 237 F. 728.

Indictment for combining and engaging in monopoly in restraint of interstate commerce held to sufficiently allege the time of the offense by alleging that the parties were engaged in the unlawful combination or contract between specified dates. U. S. v. Cowell (D. C.) 243 F. 730.

An indictment, charging theft from the mails, which laid the date of the theft at a time after the filing of indictment, is not subject to general demurrer, where true date appeared from other averments. Adams v. U. S., 246 F. 830, 159 C. C. A. 132.

An indictment under Selective Service Act, § 13, post, § 2019b, as to disorderly houses, was not defective, because not giving the correct date of the regulations prescribed thereunder; they being judicially noticed. U. S. v. Scott (D. C.) 248 F. 361.

An indictment for concealing property while bankrupt, alleging the concealment took place at the city of Detroit, in this district, on July 5, 1916, specifies the time. U. S. v. Greenbaum (D. C.) 252 F. 259.

An averment in an indictment that the conspiracy charged was formed "on the —— day of May, 1917," held sufficiently definite, where the statute charged to have been violated was enacted on May 18, 1917. Firth v. U. S. (C. C. A.) 253 F. 36.

36. **Alleging intent.**—An indictment charging that defendant did willfully, unlawfully, and feloniously commit a robbery is sufficient, and need not allege the specific intent. Vane v. U. S. (C. C. A.) 254 F. 32.

37. **Alleging scienter or knowledge.**—An information charging an interstate shipment of drugs misbranded, in that the package and an accompanying circular contained false and fraudulent statements, alleged that the shipment was made by S., the defendant, trading as S.'s Medical Institute, that the name of the article given on the label was S.'s Nerve Compound, and that the representations were false and fraudulent, in that they were applied to such article knowingly and in reckless and wanton disregard of their truth and falsity. Held, that the information sufficiently showed that it was defendant's knowledge and defendant's wanton and reckless disregard of the truth that was intended to be charged, especially in view of this section. Simpson v. U. S. (C. C. A.) 241 F. 841.

38. **Allegation of "willfulness" or "willfully" committing acts.**—Indict-

ment, charging conspiracy to use mails in connection with scheme to defraud, held to sufficiently allege defendants' fraudulent intent, though not using word "willful." Holsman v. U. S., 248 F. 193, 160 C. C. A. 271.

40. **Charging fraud.**—Though the owners of the stock of a corporation may technically commit a fraud on the corporation, such an offense would be so technical and so contrary to ordinary understanding that an indictment will not be construed to charge it, if such construction may be avoided. Hart v. U. S., 240 F. 911, 153 C. C. A. 597.

43. **Conclusion of pleader.**—See U. S. v. Bopp (D. C.) 230 F. 723.

In an indictment for using the mails to defraud, the paragraph alleging the particular use of the mails, held not bad as an argumentative conclusion. Finnegan v. U. S., 231 F. 561, 145 C. C. A. 447.

In an indictment of a physician under Harrison Anti-Narcotic Law, § 2 (Comp. St. 1916, § 6287h), for dispensing opium "not in the course of his professional practice," the phrase quoted, following the language of the statute, is not bad as a conclusion of the pleader, as it states the ultimate facts. U. S. v. Rosenberg (D. C.) 251 F. 963.

45. **Inconsistent allegations and repugnancy.**—An indictment for conspiracy to conceal assets from trustee in bankruptcy, averments that the property which was to belong to bankrupt estate consisted of proceeds of sale of firm merchandise, and that property to be concealed belonged to partners individually and as members of firm, held not repugnant, when considered with other averments. Malvin v. U. S. (C. C. A.) 252 F. 449.

Indictment charging conspiracy in anticipation of involuntary bankruptcy to conceal property from trustee held not bad for inconsistency in allegations as to ownership of property. U. S. v. Baker (D. C.) 243 F. 741.

46. **Setting out or describing written instruments.**—Indictment charging conspiracy to prevent registration under Selective Draft Act May 18, 1917, post, § 2044e, held not defective, because translation of newspaper article alleged to have been printed pursuant to plan, and not an exact copy of article, was set out. U. S. v. Galleanni (D. C.) 245 F. 977.

51. **Following language of statute.**—See Morris v. U. S. (C. C. A.) 229 F. 516.

An indictment based on an alleged violation of a statute sufficiently describes the nature of the crime charged, if it follows the language of the statute, unless it is too indefinite to accurately indicate, without addition of other words, the essential elements of the alleged crime. U. S. v. Greenbaum (D. C.) 252 F. 259. And where definition of offense by statute includes generic terms, indictment in the same terms, without particulars, is insufficient. U. S. v. Bopp (D. C.) 230 F. 723.

An indictment following the statute, charging a railway mail clerk with delaying, embezzling, etc., letters in the mail held sufficient. McShann v. U. S., 231 F. 923, 146 C. C. A. 119.

An indictment for combining and engaging in a monopoly in restraint of interstate trade and commerce must give particulars and not rely simply on the words of the statute. U. S. v. Cowell (D. C.) 243 F. 730.

Indictment for violation of White Slave Act, § 3 (Comp. St. 1916, § 8814), in language of statute held sufficient. Simpson v. U. S., 245 F. 278, 157 C. C. A. 470, certiorari denied 38 S. Ct. 133, 245 U. S. 667, 62 L. Ed. 538; U. S. v. Brand (D. C.) 229 F. 847.

An indictment under Act Cong. Feb. 14, 1917, post, § 10200a, providing punishment for persons making threats to take the life of or inflict great bodily harm upon the President of the United States, which follows the language of the statute in alleging the crime charged, and informs the defendant fully of the nature thereof, and sets forth the exact language alleged to constitute the crime, is sufficiently definite. U. S. v. Jasick (D. C.) 252 F. 931. And see U. S. v. Stickrath (D. C.) 242 F. 151.

An indictment charging that defendants, in violation of the Espionage Act, conveyed false reports, with intent to interfere with the success of the military and naval forces of the United States, etc., but which did not specify the reports, or to whom they were made, but merely followed the language of the statute, held insufficient; the statute itself being general. Foster v. U. S. (C. C. A.) 253 F. 481.

An indictment charging, in the words of the Espionage Act, that defendant did make and convey false reports, etc., with intent to interfere with military and naval operations, etc., held insufficient to charge any offense. Collins v. U. S. (C. C. A.) 253 F. 609.

An indictment under Espionage Act, tit. 1, § 3, post, § 10212c, for willfully obstructing the recruiting or enlistment service, is sufficiently specific, if it charges the offense in the language of the statute. Doe v. U. S. (C. C. A.) 253 F. 903.

52. **Negativing exceptions in statutes or constitution.**—Unless a statute creating an offense so defines it that it cannot be properly described without negativing an exception, an indictment for violation thereof need not negative the exception. U. S. v. Greenbaum (D. C.) 252 F. 259. And where a statute defining an offense contains exceptions in the enacting clause, an indictment found under it must aver that defendant is not

within such exceptions. Breitmayer v. U. S. (C. C. A.) 249 F. 929.

In prosecution for violating Harrison Anti-Narcotic Act, § 2a (Comp. St. 1916, § 6287h), held, that state must negative exception in favor of dispensing of drugs by duly registered physicians to patients personally attended, and indictment failing to negative exception is defective. U. S. v. Hammers (D. C.) 241 F. 542.

Under Act Dec. 17, 1914, c. 1, §§ 1, 8 (Comp. St. 1916, §§ 6287g, 6287n), indictment for having possession of opium, etc., held not required to negative an innocent possession by alleging that the possession was for purposes of sale. U. S. v. O'Hara (D. C.) 242 F. 749.

Indictment under Selective Draft Act, § 13, post, § 2019b, as to disorderly houses near military camps, etc., need not negative the exception respecting acts punishable under the Articles of War. U. S. v. Scott (D. C.) 248 F. 361.

Indictment charging failure to register as required by the Selective Draft Law, which alleged that accused was a male between ages of 21 and 30, and was not an officer or enlisted man of the Regular Army or Navy, nor of the National Guard or Naval Militia, nor of the Officers Reserve Corps, nor of the Reserve Corps in the service of the United States, and was not in any manner exempted nor excused from registering, sufficiently negatived the exceptions in the act. Sugar v. U. S. (C. C. A.) 252 F. 74.

There being no express exception or reference to exemptions in Bankruptcy Act July 1, 1898, § 29b (Comp. St. 1916, § 9613), an indictment thereunder for concealing property need not allege the property was not exempt from execution under state laws, though section 6 (section 9590) secures to bankrupts allowance of exemptions under such laws. U. S. v. Greenbaum (D. C.) 252 F. 259.

53. Setting out rules and regulations of executive department.—Indictment charging conspiracy to violate Selective Service Act of May 18, 1917, § 13, post, § 2019b, and regulation of Secretary of War, promulgated thereunder, need not set forth regulation of Secretary, for courts will take judicial notice thereof. U. S. v. Casey (D. C.) 247 F. 362.

56. Indorsement of names of witnesses on indictment.—On trial for using mails in execution of scheme to defraud in connection with treatment of fictitious diseases, testimony of witness not named in indictment, if showing that treatment was in good faith and for actual ailment, held not prejudicial. Freeman v. U. S., 243 F. 353, 156 C. C. A. 133.

60. Variance between indictment and proof.—A defendant cannot be charged with one crime and convicted of another merely because the latter is developable out of the proof, which fails to establish the crime charged in the indictment. Hendrey v. U. S., 233 F. 5, 147 C. C. A. 75.

Where an indictment, charging conspiracy to violate Act Jan. 17, 1914 (Comp. St. 1916, § 6287q), denouncing an offense, with respect to importation of opium, which specified numerous acts as constituting the offense, charged the several acts conjunctively, conviction may be had upon proof of any one of them. Shepard v. U. S., 236 F. 73, 149 C. C. A. 283.

Under indictment under Comp. Laws Territory Alaska 1913, § 266, alleging that on July 30, 1913, defendant wantonly wasted and destroyed salmon taken in waters of Alaska, prosecution was not bound to prove commission of offense on that day. Alaska Packers' Ass'n v. U. S., 244 F. 710, 157 C. C. A. 158.

Where indictment described property generally, averring that a more particular description was to the grand jury unknown, the prosecution must show that grand jurors were in fact ignorant of a more particular description as to a substantial portion of the property, or there must be acquittal because of the variance. Feener v. U. S., 249 F. 425, 161 C. C. A. 399.

In case of offenses committable only on Sunday, if indictment alleges a definite Sunday, another or different date may be proved. U. S. v. Gaag (D. C.) 237 F. 728.

62. When and how objections may be raised in general.—Indictment for conspiracy to defraud the United States out of customs duties on imported coal by false weights held sufficient, in absence of objection before trial or to testimony or request, to limit scope of the charge. Smith v. U. S., 231 F. 25, 145 C. C. A. 213.

After plea of not guilty the only objection that can be made to the indictment in trial court is that it fails to describe various acts intended to be proved with that reasonable certainty which the law requires. Oesting v. U. S., 234 F. 304, 148 C. C. A. 206.

Where accused fails to demur, move to quash, or in arrest after verdict, he waives his right to object to form of indictment, though he may object that it does not charge an offense. Id.

Unless objections to the form of an indictment are pointed out by demurrer, or otherwise taken advantage of on trial, such objections cannot be urged after verdict, unless they affect the substantial rights of accused. Sheridan v. U. S., 236 F. 305, 149 C. C. A. 437.

Objection, made on the day the case was called for trial by motion to abate the prosecution was properly overruled as not having been made with due promptness. Benson v. U. S., 240 F. 413, 153 C. C. A. 339.

Unless information is void, objection

to verification cannot be raised for first time on appeal, unless refusal to consider it would shock judicial conscience. Objection to verification of information held technical, and waived by pleading without raising it. Simpson v. U. S., 241 F. 841, 154 C. C. A. 543.

Defects in the acknowledgment of the information are waived, if not raised by suitable objection before trial, and cannot thereafter be raised. Abbott Bros. Co. v. U. S., 242 F. 751, 155 C. C. A. 339.

A motion in arrest of judgment may be used for purpose of taking advantage of any defect in indictment, based upon knowledge obtained during or after conclusion of trial. But, affiavit by defendant held insufficient to warrant sustaining of motion in arrest of judgment, on ground that indictment was not supported by material and competent testimony. Cooper v. U. S., 247 F. 45, 159 C. C. A. 263.

Under the approved practice in the courts of the United States, questions which can as well and better be raised at the trial should not be raised by demurrer, especially in view of this section. U. S. v. Werner (D. C.) 247 F. 708.

In prosecution for conspiracy to violate Espionage Act, tit. 1, § 3, post, § 10212c, by obstructing recruiting and enlistment service of the United States by means of newspaper articles, whether the means alleged to have been adopted would have accomplished the purpose is a question of fact, which cannot be passed upon on demurrer to the indictment. U. S. v. Prieth (D. C.) 251 F. 946.

Practice of attacking an indictment, as not stating an offense, by objection to introduction of evidence, does not prevail in federal courts, and will not be permitted, except under extraordinary circumstances; but motion to quash, demurrer, or motion in arrest is proper practice. McKnight v. U. S., (C. C. A.) 252 F. 687; Grant v. U. S., (C. C. A.) 252 F. 692. The objections should be made by motion to quash demurrer, or motion in arrest of judgment, and not by objections to testimony, or by requests for instructions. Simpson v. U. S., 229 F. 940, 144 C. C. A. 222, certiorari denied 36 S. Ct. 552, 241 U. S. 668, 60 L. Ed. 1229.

An information charging defendant made an interstate shipment of drugs misbranded in violation of Food and Drugs Act June 30, 1906, § 8, as amended by Act Aug. 23, 1912 (Comp. St. 1916, § 8724), which alleged false statements were applied by defendant to the article knowingly and in wanton disregard of their falsity, held sufficient as against motion in arrest, in view of this section. Dr. J. H. McLean Medicine Co. v. U. S. (C. C. A.) 253 F. 694.

64. Motion to quash or set aside indictment.—A motion to quash an indictment on the ground that the three counts charged the same offense is properly denied, for such motion is not favored, and is addressed to the discretion of the court, while a motion to elect is the proper remedy. Wetzel v. U. S., 233 F. 984, 147 C. C. A. 658.

The question whether a person not authorized appeared before the grand jury returning the indictment may be raised by motion to quash, although plea in abatement is the proper remedy in all cases of contested fact. May v. U. S., 236 F. 495, 149 C. C. A. 547.

Assistant to Attorney General appointed for special prosecutions under Rev. St. §§ 161, 177, 348, 360, and Act June 30, 1906 (Comp. St. 1916, §§ 235, 259, 517, 535), held at least a de facto officer, so that, on motion to quash indictment, his right to appear before grand jury could not be questioned. Id.

Objections made on the day the case was called for trial by motions to quash the indictment, which stated facts sufficient to constitute the offense, was properly overruled as not having been made with due promptness. Benson v. U. S., 240 F. 413, 153 C. C. A. 339.

Motion to quash relates to defects appearing on face of indictment and should be made at or before beginning of trial. Cooper v. U. S., 247 F. 45, 159 C. C. A. 263.

On motion to quash, the allegations of an indictment are to be assumed true. U. S. v. Doremus (D. C.) 246 F. 958.

After a defendant has pleaded to the indictment, subsequently moved for a bill of particulars, and the case has been set for trial, the court will not entertain a motion to quash on grounds personally known to defendant from the first. U. S. v. Gouled (D. C.) 253 F. 242.

Cited without definite application, U. S. v. Schaefer (D. C.) 248 F. 290; U. S. v. Schafer (D. C.) 254 F. 135.

§ 1692. (R. S. § 1026.) Judgment on demurrer to an indictment.

Cited without definite application, U. S. v. Werner (D. C.) 247 F. 708.

§ 1694. (R. S. § 1028.) Copy of writ to be jailer's authority.

Delivery of warrant or mittimus.—Where petitioner was delivered by the United States marshal, as directed in the order of sentence, to the United States penitentiary in which he was sentenced to be confined, and a certified copy of the order and record of the conviction was delivered to the warden,

the prisoner was properly retained, though no warrant or mittimus was delivered. Ex parte Thurston (D. C.) 233 F. 847.

§ 1699. (R. S. § 1033.) Copy of indictment and list of jurors and witnesses to be delivered to prisoner in capital cases.

List of witnesses or jurors in general.—This section applies only to treason and capital offense, defendants who were not charged with treason and capital offenses are not entitled to list of names and addresses of all witnesses sworn by government before grand jury. U. S. v. Pierce (D. C.) 245 F. 888.

Rule of court.—It is within powers of District Court to make and enforce in criminal cases less than capital a rule prohibiting the furnishing of a list of jurors to the defendant more than two days prior to the term. Hendrikson v. U. S., 249 F. 34, 161 C. C. A. 94.

§ 1703. (Act Feb. 6, 1889, c. 113, § 6.) Writ of error in capital cases.

Security for costs.—In view of Rev. St. § 974 (Comp. St. 1916, § 1615), Judicial Code, § 128, and this section, Rev. St. § 1000 (Comp. St. 1916, §§ 1120, 1703, 1660), authorizes the taking of security for costs on writ of error in a criminal case, where the court had exercised its jurisdiction to adjudge the costs against the defendant, though the writ was not a supersedeas. American Surety Co. v. U. S., 239 F. 680, 152 C. C. A. 514.

§ 1704. (Act March 2, 1907, c. 2564.) Writs of error in criminal cases on behalf of United States in certain instances.

8. Decisions reviewable in general—Decision sustaining demurrer to indictment.—Construction of Cr. Code, § 215 (Comp. St. 1916, § 10385), relating to use of mails in a scheme to defraud, held involved in a decision of the District Court by which a demurrer to an indictment under that section was sustained so as to sustain an appeal by the United States. U. S. v. New South Farm & Home Co., 36 S. Ct. 505, 241 U. S. 64, 60 L. Ed. 890.

Decision sustaining demurrer to indictment held based on a construction of Criminal Code, § 215 (Comp. St. 1916, § 10385), as to using mails to execute a scheme to defraud, and so to allow review under this section by error to District Court. U. S. v. Comyns, 39 S. Ct. 98, 63 L. Ed. —.

9. —— Decision sustaining special plea in bar.—Judgment quashing indictment because of previous adjudication that offense was barred by limitations is one sustaining special plea in bar, within this section, the clause therein giving writ of error to United States to review decision sustaining special plea in bar, not being limited to judgments based on invalidity or construction of statute. U. S. v. Oppenheimer, 37 S. Ct. 68, 242 U. S. 85, 61 L. Ed. 161.

Cited without definite application. U. S. v. Nice, 36 S. Ct. 696, 60 L. Ed. 1192; Guerini Stone Co. v. P. J. Carlin Const. Co., 39 S. Ct. 102; U. S. v. Hill, 39 S. Ct. 143, 63 L. Ed. —.

Decisions Relating to Crimes and Criminal Procedure in General

4. Verification of information.—Objection to verification of information held technical, and waived by pleading without raising it. Simpson v. U. S., 241 F. 841, 154 C. C. A. 543.

Defects in the acknowledgment of the information are waived, if not raised by sutiable objection before trial, and cannot thereafter be raised. Abbott Bros. Co. v. U. S., 242 F. 751, 155 C. C. A. 339.

An information signed by the district attorney and supported by affidavits subjoined, held sufficient to sustain a judgment of conviction, regardless of the sufficiency of the acknowledgment. Id.

Notaries public held without authority to administer oaths in connection with criminal prosecutions, and hence information made on oath of persons whose affidavits, taken before notaries public, were annexed was defective. U. S. v. Schallinger Produce Co. (D. C.) 230 F. 290.

Information not filed by United States attorney under sanction of official oath, but upon oath of parties whose affidavits were annexed, held insufficient, unless affidavits could be considered. Id.

Proceeding against corporation for violation of criminal statute held a criminal proceeding, so that information based upon annexed affidavits taken before notaries public was insufficient. Id.

Information for violating quarantine regulations, under Act Aug. 20, 1912 (Comp. St. 1916, § 8762), on which warrant of arrest was not asked, held not to require verification, and not defective for insufficiency or informalities in annexed affidavits. U. S. v. Adams Express Co. (D. C.) 230 F. 531.

6. Inspection of minutes of grand jury.—Grand jury minutes may be in-

spected by court; but right should be exercised only on a strong showing, in furtherance of justice, or for protection of individual rights. Inspection will not be made on a showing only of incompetent evidence before grand jury; it being enough that there was any competent evidence. U. S. v. Perlman (D. C.) 247 F. 158.

Examination by the court of grand jury minutes of proceedings upon which an indictment was returned is justified only in extreme cases, where it is shown by positive allegation that the indictment was the result of fraud or corruption, or of caprice, and was not the expression of a fair judgment on the facts. U. S. v. Gouled (D. C.) 253 F. 242.

10. Withdrawal of plea of guilty.—Where judgment on plea of guilty was a nullity for want of jurisdiction, held, that court, on objection to the convict's competency as a witness, did not err in permitting him to withdraw his plea of guilty and plead not guilty. Gretsch v. U. S., 242 F. 897, 155 C. C. A. 485, certiorari denied 38 S. Ct. 12, 245 U. S. 654, 62 L. Ed. 532.

Granting leave to withdraw pleas of guilty and enter pleas of not guilty to an indictment is discretionary with trial court. Billingsley v. U. S., 249 F. 331, 161 C. C. A. 339, affirming judgment U. S. v. Billingsley (D. C.) 242 F. 330, and certiorari denied Billingsley v. U. S., 38 S. Ct. 583, 247 U. S. 523, 62 L. Ed. 1247.

12. Plea in abatement and demurrer thereto.—Plea in abatement, filed more than two years after indictment, and after offense would have been barred, held properly stricken as too late. Younge v. U. S., 242 F. 788, 155 C. C. A. 376, certiorari denied 38 S. Ct. 13, 245 U. S. 656, 62 L. Ed. 533.

The right to file a plea in abatement for irregularity in drawing the grand jury, months after the indictment was returned, is not absolute, but subject to the sound discretion of the court. Matters v. U. S., 244 F. 736, 157 C. C. A. 184.

An averment on information and belief that the grand jurors who returned an indictment had no knowledge of its contents held insufficient as a basis for a plea in abatement. U. S. v. Bopp (D. C.) 232 F. 177.

An equivocal expression, used in the plea in abatement to an indictment, is to be taken against the pleader. U. S. v. Scott (D. C.) 232 F. 192.

A plea in abatement to an indictment for disqualification of a grand juror under Gen. Laws R. I. 1909, c. 279, § 1, and amended Const. R. I. art. 2, § 2, held insufficient. Id.

A plea in abatement, filed nine months after the return of an indictment, on the ground of irregularity in the drawing of the grand jury, held insufficient, because filed too late. Moffatt v. U. S., 232 F. 522, 146 C. C. A. 480.

A plea in abatement filed after answer and motion to quash, on grounds which accused might have discovered before, comes too late. U. S. v. Rintelen (D. C.) 235 F. 787.

A plea of abatement, filed 108 days after the filing of the indictment and the arraignment, there being nothing excusing the long delay, is not timely. U. S. v. Perlman (D. C.) 247 F. 158.

14½. Continuance.—Where defendant had the services of able counsel throughout the trial, denial of a continuance on the ground of absence of additional counsel cannot be deemed an abuse of the court's discretion. Warren v. U. S. (C. C. A.) 250 F. 89.

The denial of a motion for continuance, signed only by counsel and not stating facts under oath, is proper. Id.

Where defendant was able to produce a number of character witnesses, denial of a continuance on the ground of absence of other character witnesses cannot be deemed an abuse of the court's discretion. Id.

That attorneys employed by defendant, who expected to be present and try his case, were unable to be present, does not alone make refusal of continuance error; defendant having counsel present to defend him. Bond v. U. S. (C. C. A.) 252 F. 804.

16. Use of demurrer in general.—On demurrer to an indictment, the allegations therein should be accepted as true. U. S. v. Boutin (D. C.) 251 F. 313; Knoell v. U. S., 239 F. 16, 152 C. C. A. 66, affirming judgment U. S. v. Knoell (D. C.) 230 F. 509; U. S. v. Doremus (D. C.) 246 F. 958. And a contention of counsel on demurrer to an indictment, unsupported by any facts in the record, need not be disposed of. U. S. v. Cudahy Packing Co. (D. C.) 243 F. 441.

On demurrer to an indictment charging defendant with sending through the mails nonmailable matter, the court can only decide whether the matter is so clearly innocent that the question should not be submitted to the jury. U. S. v. Klauder (D. C.) 240 F. 501.

20½. Demurrer to evidence.—A demurrer to the evidence at the close of the case for the prosecution is waived by defendant by introducing evidence in defense. Hodson v. U. S. (C. C. A.) 250 F. 421.

25½. Presence of judge.—Where case was submitted to jury, at close of session, and counsel stipulated, that clerk might take verdict when rendered as if court were in session, agreement is binding, and questions as to validity of verdict must be decided as if judge had been present and court in actual formal session. U. S. v. Bachman (D. C.) 246 F. 1009.

28. General verdict of guilty.—A charge of conspiracy to commit a crime

becomes merged in a charge of the commission of the crime when the latter is proven, and becomes of no moment when there is a general verdict of guilty, well uspported by such proofs. U. S. v. Fischer (D. C.) 245 F. 477.

A verdict must be certain in legal intendment; there being a distinction between a legal certainty and moral certainty as to what the jury in fact intended. U. S. v. Bachman (D. C.) 246 F. 1009.

29. Omission of jury to find on all counts.—See notes under § 1690.

30. Judgment where separate verdict is rendered on each count.—See notes under §§ 1690, 1691.

32. Motion to continue indictment and suspend sentence.—Federal District Court exceeds its power by suspending sentence of imprisonment indefinitely on considerations extraneous to legality of conviction. Ex parte U. S., 37 S. Ct. 72, 242 U. S. 27, 61 L. Ed. 129, L. R. A. 1917E, 1178, Ann. Cas. 1917B, 355.

33½. Sentence in general.—The court does not lose jurisdiction to impose sentence after the trial term, postponements being unconditional and for definite periods, and for a purpose incident to the administration of justice within the court's power. Miner v. U. S., 244 F. 422, 157 C. C. A. 48.

Where defendant was convicted of carrying on business of a retail liquor dealer without having paid special tax therefor as required by law and sentenced, he cannot thereafter be sentenced on the same conviction to another and different punishment. Blackman v. U. S. (C. C. A.) 250 F. 449.

A criminal statute, which fixes the penalty for its violation at imprisonment for "not less than five years," is valid to support a sentence of five years. Lee Mow Lin v. U. S. (C. C. A.) 250 F. 694.

34. Sentence and punishment on conviction of several offenses.—See notes under § 1691.

40. Motion in arrest of judgment.—A motion in arrest lies only for material errors on the face of the record, and an assignment of error complaining of the overruling of a motion in arrest on the ground that the judgment was without evidence to support it cannot be upheld, where the evidence was conflicting. Towe v. U. S., 238 F. 557, 151 C. C. A. 493.

Where indictment specifically alleged willful refusal to register under Selective Draft Act May 18, 1917, post, § 2044e, and accused pleaded guilty thereto, there could be no force in his motion in arrest of judgment. Sugar v. U. S. (C. C. A.) 252 F. 74.

A conviction on all of the counts, charging separate criminal acts in a single transaction, is not available as a ground for arrest of judgment. Orth v. U. S. (C. C. A.) 252 F. 566.

41. Rules of evidence in general.—There is no presumption in a criminal case of defendant's good character. Greer v. U. S., 38 S. Ct. 209, 245 U. S. 559, 62 L. Ed. 469, affirming judgment 240 F. 320, 153 C. C. A. 246.

Evidence should be admitted, if competent and relevant upon any issue or any phase of the case, and the party offering it need not explain the point or matter to which it is addressed, unless required to do so by the court. Moffatt v. U. S., 232 F. 522, 146 C. C. A. 480.

An experienced chemist held, under the facts shown, qualified to testify as an expert as to the therapeutic value of a medicine which he had analyzed. Samuels v. U. S., 232 F. 536, 146 C. C. A. 494.

While accused, at the beginning of the trial, is presumed to be innocent, yet whenever the proof shows beyond a reasonable doubt his guilt, then the presumption of innocence disappears from the case. Shepard v. U. S., 236 F. 73, 149 C. C. A. 283.

The presumption of innocence is not overcome by facts which are not plainly inconsistent with innocence. Wolf v. U. S., 238 F. 902, 152 C. C. A. 36.

Moral probability, however strong, cannot take the place of legal evidence, and any inference of guilt which the jury draw must be based on facts tending to show guilt. Id.

Though the jury should use the utmost caution in scrutinizing the uncorroborated testimony of an accomplice, they may render a verdict of guilty. Knoell v. U. S., 239 F. 16, 152 C. C. A. 66, affirming judgment U. S. v. Knoell (D. C.) 230 F. 509.

An indictment charging a criminal conspiracy introduced in evidence in proceedings before a United States commissioner for removal of defendant to another district for trial is itself prima facie evidence of probable cause. Witte v. Shelton, 240 F. 265, 153 C. C. A. 191.

Defendant's self-serving answer to accusatory letter held not admissible by reason of the admission of the accusatory letter which he offered in evidence. York v. U. S., 241 F. 656, 154 C. C. A. 414.

Proof of conversation in which agreement was made held not hearsay, but the best evidence of the agreement. Sparks v. U. S., 241 F. 777, 154 C. C. A. 479.

In prosecution, where accused admitted having previously seen letter and memorandum book, held, that they were properly received, where officer making arrest testified they were delivered to him by one who took accused to jail. Dean v. U. S., 246 F. 568, 158 C. C. A. 538.

Order in which evidence shall be received is largely within discretion of trial court, and defendant cannot complain that testimony as to conversation had with arresting officer was introduced before proof of corpus delicti. Gladstone v. U. S., 248 F. 117, 160 C. C. A. 257, certiorari denied 38 S. Ct. 582, 247 U. S. 521, 62 L. Ed. 1246.

Where a witness stated that he was not in the secrets of the grand jury room, cross-examination as to whether certain property generally described in indictment was produced before grand jury was properly excluded, for it would be mere inference or hearsay. Feener v. U. S., 249 F. 425, 161 C. C. A. 399.

Where question involved is defendant's intent, evidence of an act having a direct bearing on intent is admissible, though the act be a separate offense. Edwards v. U. S., 249 F. 686, 161 C. C. A. 596, certiorari denied 39 S. Ct. 7, 63 L. Ed. —.

Proof of a fact, need not be made beyond every possibility of mistake, and evidence is to be taken in a practical, reasonable way, and regard given to well-known, settled methods of business. De Moss v. U. S. (C. C. A.) 250 F. 87.

While some sort of corroboration of a confession is necessary to a conviction, rule prevails in federal courts that corroborating circumstances need not be sufficient in themselves to establish the corpus delicti, either beyond a reasonable doubt or by preponderance of proof. Daeche v. U. S. (C. C. A.) 250 F. 566.

It is elementary that every one is presumed to know the law of the land, both common and statutory, and that one's ignorance of it furnishes no exemption for criminal responsibility for his acts. Hamburg-American Steam Packet Co. v. U. S. (C. C. A.) 250 F. 747.

A defendant must be presumed to have intended the legitimate and necessary consequences of his willful and deliberate acts. Doe v. U. S. (C. C. A.) 253 F. 903.

Evidence of other offenses, and independent crimes and convictions, are incompetent to establish the guilt of an accused. Gordon v. U. S. (C. C. A.) 254 F. 53.

Unless the accused has introduced evidence of his good character, the prosecution cannot introduce evidence of his bad character and habits as part of its case. Id.

The records of a public office, as a post office, are presumptively correct. Kenney v. U. S. (C. C. A.) 254 F. 262.

Where the evidence showed the location of the offense with reference to a city, a river, and lines of railroad, the court may take judicial notice of the location of the same, and that the offense occurred in the county where prosecution was had. Bradley v. U. S. (C. C. A.) 254 F. 289.

Objection that qualified expert lacks knowledge of subject-matter of his testimony goes to its weight rather than its admissibility. U. S. v. Fischer (D. C.) 245 F. 477.

In a criminal prosecution, guilt of defendant must be established beyond reasonable doubt. U. S. v. Natura Co. (D. C.) 250 F. 925.

It is not necessary that the commission of a crime should be proved by direct evidence, and it may be proved by circumstantial evidence; that is, by inferences properly drawn from circumstances. U. S. v. Greenbaum (D. C.) 252 F. 259.

A "reasonable doubt" is such a doubt as would make a man of ordinary prudence and sensibility and decision, in determining an issue of like concern to himself, pause or hesitate in arriving at his conclusion; and that is the criterion for the jury in a criminal prosecution. U. S. v. McHugh (D. C.) 253 F. 224.

The presumption of innocence remains with defendants throughout the entire trial, and so letters written by defendants and relied on by the prosecution are presumed, in the first instance, to be innocent. U. S. v. Murphy (D. C.) 253 F. 404.

42. Argument of counsel.—Where the court when its attention was called to improper remarks of the prosecuting attorney in his opening address, fully stated to the jury that they could only consider the evidence admitted, and not statements of counsel, the remarks must be deemed to have been effectively withdrawn, though the jury were not specifically directed to them. Warren v. U. S. (C. C. A.) 250 F. 89.

In prosecution for conspiring to defraud United States by obtaining false clearances for vessels intended to coal and provision German warships on high seas, it was permissible for counsel to comment on acts of defendants in delivering to German Embassy documents and codes relative to transaction, where their counsel stated that no effort had been made to obtain possession of such papers. Hamburg-American Steam Packet Co. v. U. S. (C. C. A.) 250 F. 747.

It is improper for counsel to comment on failure to produce evidence which would have been incompetent, or on failure to call witnesses who would not have been competent. Id.

Reference by prosecuting attorney in opening argument to the crime, murder, for which defendant was serving sentence at the time of the killing of a prison guard, was unnecessary and prejudicial. Manuel v. U. S. (C. C. A.) 254 F. 272.

43. Entrapment.—A defendant cannot be convicted of a crime which he was

incited and induced to commit by a government officer for his entrapment. U. S. v. Echols (D. C.) 253 F. 862; Sam Yick v. U. S., 240 F. 60, 153 C. C. A. 96.

44. Character of accused.—The character of the defendant in a criminal case is not an issue in the case, unless the defendant chooses to make it one. Greer v. U. S., 38 S. Ct. 209, 245 U. S. 559, 62 L. Ed. 469, affirming judgment 240 F. 320, 153 C. C. A. 246.

A charge on evidence of good character held erroneous as in effect depriving accused of all benefit of such evidence. Perara v. U. S., 235 F. 515, 149 C. C. A. 61.

There is no presumption of good character of the accused. De Moss v. U. S. (C. C. A.) 250 F. 87.

Where court charged that accused's reputation for good character should be considered, together with all the other evidence in the case and if the jury should have a reasonable doubt as to accused's guilt he should be acquitted, the denial of a request that evidence of good character may alone create a reasonable doubt was not error. Warren v. U. S. (C. C. A.) 250 F. 89.

Ordinarily evidence as to character of accused is not deemed of such materiality that the refusal of a continuance for the purpose of procuring such testimony will constitute error. Id.

CHAPTER NINETEEN—LIMITATIONS

§ 1707. (R. S. § 1043.) Capital offenses.

Cited without definite application, Chicago & N. W. Ry. Co. v. Ziebarth (C. C. A.) 245 F. 334.

§ 1708. (R. S. § 1044, as amended, Act April 13, 1876, c. 56.) Offenses not capital.

15. Conspiracy.—Where, since the date named in an indictment charging conspiracy to defraud the government, overt acts showing a continuance of the conspiracy were committed within the period of limitations, the running of the statute is tolled. Stager v. U. S., 233 F. 510, 147 C. C. A. 396.

Prosecution under Pen. Code, § 215 (Comp. St. 1916, § 10385), denouncing offense of using mails in connection with scheme to defraud, is not barred though scheme originated more than three years before finding of indictment, where mails were within that time used in connection with scheme. Bowers v. U. S., 244 F. 641, 157 C. C. A. 89.

23. Pleading and proof as to time of offense.—Evidence that defendant's office was kept open up to the date of the last act alleged in furtherance of the conspiracy held admissible to show that the prosecution was not barred. Cooper v. U. S., 232 F. 81, 146 C. C. A. 273, certiorari denied 36 S. Ct. 725, 241 U. S. 675, 60 L. Ed. 1232.

Cited without definite application, Creekmore v. U. S. (C. C. A.) 237 F. 743.

§ 1712. (R. S. § 1047.) Penalties and forfeitures.

15. Penalties or forfeitures under anti-trust act.—See U. S. v. Joles (D. C.) 251 F. 417.

§ 1713. (Act June 22, 1874, c. 391, § 22.) Penalties and forfeitures under customs revenue laws.

Action on bond of importing agent.—An action by the United States on bonds given by an importing agent pursuant to Rev. St. § 2787 (Comp. St. 1916, § 5484), for failure to observe the technical requirements of that section, the duties having been paid, is one to recover a penalty or forfeiture accruing under the customs laws, and is barred in three years by this section. U. S. v. Joles (D. C.) 251 F. 417.

CHAPTER TWENTY-ONE—THE COURT OF CLAIMS—JURISDICTION, POWERS AND PROCEDURE

Act. Jan. 11, 1915, c. 7, 38 Stat. 791, amending Act March 3, 1891, c. 538, 26 Stat. 851, removes the disability of alienage in respect to claimants for Indian depredations, and provides for reinstatement of claims dismissed because of alienage.

Notes of Decisions

Validity of act.—Act March 4, 1915, § 4, in so far as affecting preexisting contracts for fees is unconstitutional. Lay v. Lay (Miss.) 79 So. 291; Black v. O'Hara, 194 S. W. 811, 175 Ky. 623; Moyers v. City of Memphis (Tenn.) 186 S. W. 105; Newman v. Moyers, 47 App. D. C. 102, Ann. Cas. 1918E, 528. But see Ralston v. Dunaway (Ark.) 184 S. W. 425.

Construction of act.—Applying the cardinal principle of statutory construction of ascertaining the legislative intent by reference to all circumstances surrounding the passage of the law and the history of the subject matter thereof, to the act of January 11, 1915 (38 Stat. 791), it is clear that the Congress intended to grant to inhabitants of the United States the same rights, and nothing more, that were given to citizens of the United States by the act of March 3, 1891 (26 Stat. 851). Rex v. U. S., 53 Ct. Cl. 320.

Motion for reinstatement.—A motion to reinstate under Act Jan. 11, 1915, should show from the evidence in the case, or the court records, that the case would have failed upon the jurisdictional issue of citizenship and that because of that fact the claimants' attorney of record did resist the defendant's motion to dismiss for want of prosecution. In re Reinstatement of Indian Depredation Cases, 50 Ct. Cl. 395.

Amendment as to parties.—Where, in a claim under Act March 3, 1891, c. 538, it appears that two separate depredations were committed by two distinct tribes, it is not allowable to make a change of parties by amending the petition so as to make both tribes joint defendants, and the plaintiff is furnished no relief by Act Jan. 11, 1915, c. 7. Coffield v. U. S., 52 Ct. Cl. 17.

Evidence.—In an action for an alleged Indian depredation the evidence will not be considered separately from related depredations, where it is shown to be so intimately identified with other depredation claims as to render proof of ownership uncertain. Otero v. U. S., 53 Ct. Cl. 168.

A judgment against Indian funds will not be awarded on uncorroborated statements in ex parte affidavits. Albright v. U. S., 53 Ct. Cl. 247.

TITLE XIV—THE ARMY

Chap.		Sec.
1.	Organization	1714
2.	Retirement	2073aa
3.	Pay and allowances	2089
4.	The Military Academy	2206
4A.	Military instruction in educational institutions	2289aa
4B.	Desertions	2297
5.	Articles of War	2308a
6.	The United States Disciplinary Barracks	2458a

CHAPTER ONE—ORGANIZATION

Sec.
1714. National forces; liability to military duty.
1715a. The Army of the United States; composition of.
1717a. Composition of the Regular Army.
1717bb. Generals and lieutenant generals.
1717bbb. Appointments from staff corps as major generals of the line.

LINE OF THE ARMY

1718a. Cavalry; provisional organization.
1731aa. Coast Artillery Corps; Army Mine Planter Service.
1738aa. Additional infantry bands.
1738aaa. Corporal buglers and buglers, first class.
1741a. Philippine Scouts; officers eligible as militia officers.
1741aa. Same; computation of period of service.
1756. Lieutenant-General; office to cease.
1756a. Aids of General.
1756b. Aids of Lieutenant-General.
1757. Aids of major and brigadier generals.

STAFF CORPS AND DEPARTMENTS

1762a. The General Staff Corps.
1762aa. Same; suspension of operation of portion of preceding section.
1775aa. The Judge Advocate General's Department; captains and first lieutenants.
1784. The Quartermaster Corps.
1784a. The Quartermaster Corps; disbursement by officers as agents of officers of Corps.
1789a. Restrictions in purchase of military supplies suspended.
1806a. Medical Department; Assistant Surgeon General.
1806b. Same; major generals and brigadier generals.

Sec.
1807aa. Medical Corps; distribution of commissioned officers.
1807aaa. Same; persons eligible for appointment as first lieutenants.
1808a. Medical Corps; promotion of first lieutenants.
1816. Medical Reserve Corps; appointment, authority, etc., and rank of officers.
1816a. Medical Reserve Corps; distribution of officers in grades.
1829a. Enlisted force of Medical Department.
1831. [Repealed and superseded.]
1832. [Repealed and superseded.]
1832b. Army Nurse Corps; composition.
1832c. Same; rules and regulations.
1832d. Same; appointment and removal.
1832e. Army Nurse Corps; pay.
1832f. Same; leaves of absence.
1832g. Same; allowances.
1833b. Dental Corps; composition.
1840. Corps of Engineers; composition of.
1842a. The Corps of Engineers.
1848. The Ordnance Department.
1856. Ordnance Department; depots.
1857. Ordnance Department; orders for supplies.
1859a. The Ordnance Department; officers accountable for public moneys.
1859b. Ordnance Department; disbursing officer to pay civilian employés.
1860. The Signal Corps.
1867cc. Signal Corps; aviation section; mileage to officers.
1867ccc. Signal Corps; mileage; officers traveling on aviation duty.
1867cccc. Same; mileage: foreign army officers traveling on aviation duty.
1867ccccc. Same; aircraft employés in District of Columbia.
1867dd. Land for aviation purposes; acquisition.

Sec.
1867dd½. Signal Corps; apportionment of appropriations for aviation purposes.
1867ddd. Same; site for aviation stations at North Island, San Diego, California.
1867dddd. Signal Corps; reservation of Government property or public lands for aviation purposes.
1867f. Signal Corps; increase.
1867g. Same; increase; temporary officers.
1867h. Same; increase; enlisted men.
1867i. Same; increase; organization.
1867j. Same; increase; general officers; temporary appointments.
1867k. Same; increase; rating of aviation officers.
1867l. Same; increase; rating of enlisted men in aviation section.
1867m. Same; increase; pay of officers and enlisted men.
1867n. Same; airships; guns; buildings and vehicles.
1867o. Same; increase; appropriation.
1867p. Signal Corps; qualifications for service in aviation service.
1868a. The chaplains.
1868b. The chaplains; chaplains at large.
1881a. The Officers' Reserve Corps.
1881aa. Same; appointment of former officers to.
1881aaa. Officers' Reserve Corps and National Army; appointment in, to certain grades in designated corps.
1881bb. Officers' Reserve Corps; recommission of certain officers.
1881cc. Officers' Reserve Corps; leaves of absence to officers and employés of United States or District of Columbia.
1881ccc. Same; restoration to positions of employés of United States or District of Columbia ordered to duty.
1881f. Same; units at educational institutions.
1881jj. Same; units at educational institutions; Act June 3, 1916, c. 134, §§ 45, 46, 56, suspended.
1881jjj. Same; units at educational institutions; temporary detail of officers to.
1881jjjj. Same; units at educational institutions; temporary detail of enlisted men to.
1881kk. The Reserve Officers' Training Corps; units at educational institutions; commutation for uniforms supplied.
1881o. Same; units at educational institutions; graduates as officers in Officers' Reserve Corps.

ENLISTMENT AND DISCHARGE OF ENLISTED MEN; ARMY RESERVE

1884. General qualifications for enlistment.
1885a. Enlistment of minors.
1886. Persons not to be enlisted.
1887. [Repealed.]
1887a. [Repealed in part.]
1888. Term of enlistment; qualifications for enlistment and re-enlistment.
1891bb. Enlistments in Regular Army; repeal; term of service; pay; discharge.
1891c. Re-enlistment of enlisted men discharged to accept commissions in National Guard.
1891d. Computation of continuous service pay of discharged enlisted men serving as officers of National Guard.
1891dd. Enlistment of men discharged to accept commissions on termination of service; computation of service for retirement and continuance service pay.
1891e. Furloughs to enlisted men.
1892. Composition of Army Reserve.
1892b. Composition of the Regular Army Reserve; assignment of members of Regular Army organizations.
1892e. The Enlisted Reserve Corps.
1892ee. The Enlisted Reserve Corps; enlistment of dental students.

PROMOTION, DETAILS TO STAFF, AND APPOINTMENTS FROM ENLISTED FORCE AND FROM CIVIL LIFE; RANK AND PRECEDENCE; MEDALS OF HONOR; CERTIFICATES OF MERIT; MILITARY BADGES; PROTECTION OF THE UNIFORM

1895. Promotions by seniority, subject to examination.
1897. Examinations for promotion.
1919a. Enlisted men; commissions; admission to officers' schools.
1920a. Appointments to fill vacancies in grade of second lieutenant.
1920aa. Same; waiver of age limit.
1920b. Original appointments to be provisional; retirement.
1943a. Medals of honor; to whom presented.
1943b. Distinguished-service crosses; to whom presented.
1943c. Distinguished-service medals; to whom presented.
1943d. Additional pay to persons awarded medals or crosses.
1943e. Bars or stars for additional acts of valor or citations.
1943f. Expenditure for medals, crosses or other devices.
1943g. Replacing lost medals, crosses or other devices.
1943h. Time limit on award of medals, crosses or other devices.
1943i. Award of medals or crosses by commanding generals.
1943j. Wearing medals or decorations awarded by allied nations on entry to military service of United States.

Sec.
1943k. Decorations awarded by allied governments to members of military forces of United States.
1943l. Award of medals and decorations to members of forces of allied nations.
1943m. Medals for members of National Guard serving in war with Spain or on Mexican border in 1916.
1949a. Protection of the uniform.
1949b. Uniform; retention and wearing on discharge.
1949c. Same; retention and wearing on discharge; persons to whom applicable.

MILITARY SUPPLIES AND STORES; PUBLIC MONEYS AND OTHER PROPERTY; TRANSPORTATION

1950a. General appropriations, Quartermaster Corps.
1952aa. Moneys from disposition of materials supplied by Engineer Department.
1952b. Proceeds from operation of public utilities; reports.
1952¼. Moneys from sale of ice, electric current and laundry work.
1962. Sales of medical supplies to civilian employés.
1972aa. Exchange of vehicles and aerial material.
1972b. Sale of excess of horses and mules.
1972bb. Sale of airplane war material.
1973. Arms and accouterments in possession of persons not soldiers.
1974a. Transportation systems in time of war.

MILITARY POSTS AND GARRISONS; BARRACKS AND QUARTERS; MOBILIZATION, ETC., STATIONS

1979a. Military posts; expenditures for.
1980aa. Army field clerks; pay and allowances.
1987a. Cultivation of lands purchased for Army.
1988aa. Instruction additional to military training.

GENERAL PROVISIONS OF ORGANIZATION

1991a. Existing laws not affected.
1991aa. Commissions to citizens of Austrian or German birth.
1991b. Increase to be made in five increments.
1991c. Immediate increase in Ordnance Department.
1991d. Limitation on number of increased officers.
1995. Civil employment prohibited.
1997aa. Detail of officer in aviation section, Signal Corps.

Sec.
2005a. Enlistment of cooks, for duration of war.
2007. Labor detail.
2016a. Assignment of officers in Field Artillery for instruction.
2016aa. Translators for Army Service Schools and School of Fire for Field Artillery, and Infantry School of Arms.
2019a. Sale of alcoholic liquor in or near camps or to officers or men.
2019b. Prostitution near cantonments prohibited.
2019c. Remains of officers, soldiers, civilian employés, and others.
2019d. Care of persons discharged from military service.

ORGANIZATION OF VOLUNTEER ARMY

2026g. Recruiting in time of war, etc.; rendezvous and depots; additional volunteer officers for recruiting duty; organization for instruction and discipline.

SELECTIVE DRAFT ACT

2044a. Organization of all increments of Regular Army; draft of National Guard and National Guard Reserves; draft of additional forces; volunteer divisions.
2044b. Voluntary enlistment or draft to maintain National Guard organizations; selective draft for other forces; persons subject to; quotas, etc.
2044c. Bounties and substitutes.
2044d. Exemptions from selective draft; local and district boards.
2044e. Registration; persons subject; failure.
2044f. Services of all departments and officers of United States and States; false registration.
2044g. Voluntary enlistments; grouping enlisted or drafted men; units.
2044gg. Assignment to service in Army, Navy or Marine Corps.
2044h. Temporary appointment of general officers; vacancies in Regular Army.
2044i. Period of appointments authorized by sections 1 and 8.
2044j. Pay, allowances, and pensions; increase of pay.
2044k. Restrictions on details of officers and enlisted men of Regular Army suspended.
2044kk. Assignment of soldiers to educational institutions for training.
2044l. Termination of services under Act.
2044m. Calling members of classes for immediate service.
2044n. Registration of persons becoming 21 since June 5, 1917; classification.

Sec.
2044o. Registration of persons subsequently becoming 21; exemptions.
2044p. Liability of registered persons to military service.
2044q. Act May 18, 1917, c. 15, applicable.
2044r. Credits for payments for rents connected with enforcement of selective service law.
2044rr. Allowance in lieu of subsistence to draft boards and employés.
2044s. Method of determining quotas for military service.
Sec.
2044t. Enlistment of men outside draft age.
2044u. Increase of drafted Army.

REGISTRATION AND DRAFTING OF ALIENS

2044¼(a). Proclamation; persons subject to.
2044¼(b). Liability to military service; exemptions.
2044¼(c). Persons subject to act.

SLAVIC LEGION

2044½. Enlistment in; training and use of Legion.

§ 1714. (Act April 22, 1898, c. 187, § 1.) National forces; liability to military duty.

Effect of statute.—See Hoskins v. Pell, 239 F. 279, 152 C. C. A. 267, L. R. A. 1917D, 1053; U. S. v. Sugarman (D. C.) 245 F. 604; Ex parte Larrucea (D. C.) 249 F. 981.

§ 1715a. (Act June 3, 1916, c. 134, § 1.) The Army of the United States; composition of.

Powers of President.—Under Const. art. 1, § 8, this section and Selective Draft Law May 18, 1917, post, § 2044a, the President may draft compulsorily into the federal service officers and enlisted man of the National Guard, and Congress had authority to confer such power. Ex parte Dostal (D. C.) 243 F. 664.

Judicial notice of acts of President.—Court will take judicial notice of acts of the President pursuant to acts and resolutions of Congress (including National Defense Act), and resolution of July 1, 1916, mustering militia of state into service of United States and ordering mobilization on Mexican border. Ex parte McMillan (Ala. App.) 74 So. 396.

§ 1717a. (Act June 3, 1916, c. 134, § 2.) Composition of the Regular Army.

Effect of section.—Selective Draft Act May 18, 1917, § 1, post, § 2044a, in terms declaring President "authorized" to raise army, held, in view of preceding words and this section, and Joint Resolution April 6, 1917, not to delegate the power vested in Congress to raise an army. U. S. v. Stephens (D. C.) 245 F. 956.

§ 1717bb. (Act Oct. 6, 1917, c. 105, § 3.) Generals and lieutenant generals.

Section eight of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen, shall be held and construed to authorize the President, in accordance with the provisions of said Act and for the period of the existing emergency only, to appoint as generals the Chief of Staff and the commander of the United States forces in France; and as lieutenant general each commander of an army or army corps organized as authorized by existing law. (40 Stat. 410.)

This section and the section next following were part of section three of Act Oct. 6, 1917, c. 105, cited above, which was an act entitled "An act to amend an act entitled 'An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September second, nineteen hundred and fourteen, and for other purposes." Act May 18, 1917, c. 15, § 8, referred to in this section, relates to the temporary appointment of general officers, etc., and is set forth post, § 2044h.

The pay of general and lieutenant general was fixed at $10,000 and $9,000 a year, respectively, with appropriate allowances, by a proviso to this section, set forth post, § 2090a.

§ 1717bbb. (Act July 9, 1918, c. 143.) Appointments from staff corps as major generals of the line.

That hereafter the President be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint any chief of a staff corps, department, or bureau of the Army who has had forty or more years of service in the Army, a major general of the line of the Army. The officers so appointed shall not exceed two, and shall be extra numbers in the list of major generals of the line. (40 Stat. 853.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

LINE OF THE ARMY

§ 1718a. (Act Oct. 6, 1917, c. 104.) Cavalry; provisional organization.

That during the present emergency the President be, and he is hereby, authorized to organize provisionally as Field Artillery or Infantry and to use as Field Artillery or Infantry during the existing emergency such regiments of Cavalry as he may designate: Provided, That immediately after the termination of the existing emergency such regiments shall be reorganized as Cavalry regiments in accordance with the prescribed organization of such regiments. (40 Stat. 398.)

This was an act entitled "An act to authorize the President to organize provisionally as Field Artillery or Infantry and to use as Field Artillery or Infantry during the existing emergency such regiments of Cavalry as he may designate," cited above.

§ 1731aa. (Act July 9, 1918, c. 143, subchapter IX.) Coast Artillery Corps; Army Mine Planter Service.

Army Mine Planter Service: Hereafter there shall be in the Coast Artillery Corps of the Regular Army a service to be known as the Army Mine Planter Service, which shall consist, for each mine planter in the service of the United States, of one master, one first mate, one second mate, one chief engineer, and one assistant engineer, who shall be warrant officers appointed by and holding their offices at the discretion of the Secretary of War, and two oilers, four firemen, four deck hands, one cook, one steward, and one assistant steward, who shall be appointed from enlisted men of the Coast Artillery Corps under such regulations as the Secretary of War may prescribe: Provided, That the Coast Artillery Corps is hereby increased by such numbers of warrant officers and enlisted men as may be necessary to constitute the force provided by this chapter: Provided further, That the annual pay of the warrant officers and enlisted men in the various grades established by this chapter shall be as follows: Masters, $1,800; first mates, $1,320; second mates, $972; chief engineers, $1,700; assistant engineers, $1,200; oilers, $432; firemen, $396; deck hands, $216; cooks, $360; steward, $540; assistant stewards, $288: and provided further, That warrant officers shall have such allowances as the Secretary of War may prescribe, and shall be retired, and shall receive longevity pay, as now provided by law for officers of the Army, and that the enlisted force herein provided for shall receive the allowances and continuous-service pay now provided by law for enlisted men of the Army: And provided further, That in computing length of service for retirement, and in computing longevity pay for warrant officers and continuous-service pay for the enlisted men authorized by this chapter, service on boats in the service of the Quartermaster Department of the Quartermaster Corps prior to the passage of this Act shall be counted: And provided further, That during the continuation of the present emer-

gency all enlisted men of the Mine Planter Service of the Army of the United States in active service whose base pay does not exceed $21 per month shall receive an increase of $15 per month; those whose base pay is $24, an increase of $12 per month; those whose base pay is $30, $33, $36, or $40, an increase of $8 per month; and those whose base pay is $45 or more, an increase of $6 per month: And provided further, That the increases of pay herein authorized shall not enter into the computation of continuous-service pay. (40 Stat. 881.)

This was a part of the Army appropriation act for the fiscal year 1919, cited above. It was preceded by the subchapter heading IX.

§ 1738aa. (Act July 9, 1918, c. 143.) Additional infantry bands.

The Secretary of War is authorized to organize for use during the present emergency twenty bands additional to those now authorized for the Army to be organized as are bands of Infantry. (40 Stat. 852.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1738aaa. (Act July 9, 1918 c. 143, subchapter XX.) Corporal buglers and buglers, first class.

There are hereby created in the Army the grades of corporal bugler, and bugler, first class; and hereafter for each battalion and squadron headquarters of units in which the grade of bugler is now authorized, there shall be one corporal bugler, and for each company, battery, troop, or organization in which the grade of bugler is now authorized there shall be one bugler, first class. (40 Stat. 893.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1741a. (Act March 30, 1918, c. 36, § 1.) Philippine Scouts; officers eligible as militia officers.

That officers of the Philippine Scouts be, and they hereby are, made eligible to appointment as officers in the militia or other locally created armed forces in the Philippine Islands which have been or shall hereafter be drafted into the service of the United States; and any such officer of the Philippine Scouts so appointed as an officer in said drafted forces shall not thereby vacate his commission in the Philippine Scouts, and in case his commission in said Philippine Scouts shall terminate while holding a commission in said drafted forces as aforesaid, he shall thereupon be eligible to reappointment as an officer of said Philippine Scouts notwithstanding his retention of a commission in said drafted forces. (40 Stat. 500.)

This section, and the section next following, were an act entitled "An act to authorize the appointment of officers of the Philippine Scouts as officers in the militia or other locally created armed forces of the Philippine Islands drafted into the service of the United States, and for other purposes," cited above.

§ 1741aa. (Act March 30, 1918, c. 36, § 2.) Same; computation of period of service.

In computing period of service for any purpose officers of the Philippine Scouts shall be credited with all time served as commissioned officers in the drafted forces mentioned in section one of this Act. (40 Stat. 501.)

See note to § 1741a, ante.

(R. S. § 1095. Superseded.)

Temporary appointments of generals were authorized by Act Oct. 6, 1917, c. 105, § 3, ante, § 1717bb.

§ 1756. (Act March 2, 1907, c. 2511.) Lieutenant-General; office to cease.

Temporary appointments of Generals and Lieutenant-Generals were authorized by Act Oct. 6. 1917, c. 105, § 3, ante, § 1717bb.

§ 1756a. (R. S. § 1096.) Aids of General.

The General may select from the Army such number of aids, not exceeding six, as he may deem necessary, who shall have, while serving on his staff, the rank of colonel of cavalry.

This section is retained here because of the temporary revival of the rank of General by § 1717bb.

§ 1756b. (R. S. § 1097, as amended, Act Feb. 27, 1877, c. 69, § 1.) Aids of Lieutenant-General.

The Lieutenant-General may select from the Army two aids and one military secretary, who shall have the rank of lieutenant-colonel of cavalry while serving on his staff. (19 Stat. 241.)

This section is retained here because of the temporary revival of the rank of Lieutenant-General, by § 1717bb.

§ 1757. (R. S. § 1098.) Aids of major and brigadier generals.

Cited without definite application,
Knox v. U. S., 52 Ct. Cl. 22.

STAFF CORPS AND DEPARTMENTS

§ 1762a. (Act June 3, 1916, c. 134, § 5, as amended, Act May 12, 1917, c. 12.) The General Staff Corps.

The General Staff Corps shall consist of one Chief of Staff, who shall be a general officer of the line and who shall take rank and precedence over all other officers of the Army; two assistants to the Chief of Staff, who shall be general officers of the line, one of whom shall be the president of the Army War College; ten colonels; twelve lieutenant colonels; thirty-two majors; and thirty-four captains, to be detailed from corresponding grades in the Army as in this section hereinafter provided. All officers detailed in the General Staff Corps shall be detailed therein for a period of four years, unless sooner relieved. While serving in the General Staff Corps, officers may be temporarily assigned to duty with any branch of the Army. Upon being relieved from duty in the General Staff Corps, officers shall return to the branch of the Army in which they hold permanent commissions, and no officer shall be eligible to a further detail in the General Staff Corps until he shall have served two years with the branch of the Army in which commissioned, except in time of actual or threatened hostilities. Section twenty-seven of the Act of Congress approved February second, nineteen hundred and one, shall apply to each position vacated by officers below the grade of general officer detailed in the General Staff Corps.

Not more than one-half of all of the officers detailed in said corps shall at any time be stationed, or assigned to or employed upon any duty, in or near the District of Columbia. All officers detailed in said corps shall be exclusively employed in the study of military problems, the preparation of plans for the national defense and the utilization of the military forces in time of war, in investigating and reporting upon the efficiency and state of preparedness of such forces for service in peace or war, or on appropriate general staff duties in connection with troops, including the National Guard, or as military attachés in foreign countries, or on other duties, not of an administrative nature, on which they can be lawfully and properly employed: Provided, That no officer shall be detailed as a member of the General Staff Corps, other than the Chief of Staff and the general officers herein provided for as assistants to the

Chief of Staff, except upon the recommendation of a board of five officers not below the rank of colonel, who shall be selected by the President or the Secretary of War, and neither the Chief of Staff nor more than two other members of the General Staff Corps, nor any officer not a member of said corps, who shall have been stationed or employed on any duty in or near the District of Columbia within one year prior to the date of convening of any such board, shall be detailed as a member thereof. No recommendation made by any such board shall, for more than one year after the making of such recommendation or at any time after the convening of another such board, unless again recommended by the new board, be valid as a basis for the detail of any officer as a member of the General Staff Corps; and no alteration whatever shall be made in any report or recommendation of any such board, either with or without the consent of members thereof, after the board shall have submitted such report or recommendation and shall have adjourned sine die: Provided further, That the organizations heretofore existing in or in connection with the office of the Chief of Staff under the designations of the mobile army division and the Coast Artillery division be, and they are hereby, abolished and shall not be reestablished. The business heretofore transacted in said divisions, except such as comes clearly within the general powers specified in and conferred upon members of the General Staff Corps by the organic Act of Congress approved February fourteenth, nineteen hundred and three, is hereby transferred as follows, to wit, to the office of the Chief of Coast Artillery, all business apportioned to that office by law or Army regulations at the time of the creation of the Coast Artillery division of the office of the Chief of Staff; to the office of The Adjutant General or other bureau or bureaus concerned, all other business; and, subject to the exercise of the supervising, coordinating, and informing powers conferred upon members of the General Staff Corps by the Act of Congress last hereinbefore cited, the business transferred by this proviso to certain bureaus or offices shall hereafter be transacted exclusively by or under the direction of the respective heads thereof; and the Chief of Coast Artillery shall be an additional member of the General Staff Corps and shall also be advisor to and informant of the Chief of Staff in respect to the business under his charge: Provided further, That hereafter members of the General Staff Corps shall be confined strictly to the discharge of the duties of the general nature of those specified for them in this section and in the organic Act of Congress last hereinbefore cited, and they shall not be permitted to assume or engage in work of an administrative nature that pertains to established bureaus or offices of the War Department, or that, being assumed or engaged in by members of the General Staff Corps, would involve impairment of the responsibility or initiative of such bureaus or offices, or would cause injurious or unnecessary duplication of or delay in the work thereof: Provided further, That all pay and allowances shall be forfeited by any superior for any period during which, by his order or his permission, or by reason of his neglect, any subordinate shall violate any of the foregoing provisions of this section: Provided further, That if any officer detailed in the General Staff Corps, or as an officer of any staff corps or department of the Army, shall be promoted to the next higher grade while so serving he may be permitted to serve out the period of his detail, and the number of officers in the organization in which he shall be serving and in the grade to which he shall have been promoted shall be increased by one for such time as he shall be an additional number in said organization and grade; but the whole

number of officers detailed to said organization shall at no time exceed the aggregate of the numbers allowed to the several grades thereof by law other than this proviso. (39 Stat. 167. 40 Stat. 46.)

The amendment of this section by Act May 12, 1917, c. 12, cited above, consists in the substitution, in the first paragraph, for the words "detailed in time of peace from major generals of the line," immediately following the words "one Chief of Staff," of the words "who shall be a general officer of the line and who shall take rank and precedence over all other officers of the Army," in the omission of the words "not above the grade of brigadier general," immediately after the words "one of whom," and in increasing the number of lieutenant colonels from ten to twelve, the number of the majors from fifteen to thirty-two, and the number of captains from seventeen to thirty-four, so as to make the paragraph read as set forth here. This amendment, however, is temporary, being only "for the period of the existing emergency." A part of this section relating to the Army War College is set forth in Comp. St. 1916, as § 1763b.

§ 1762aa. (Act May 12, 1917, c. 12.) Same; suspension of operation of portion of preceding section.

That the following language of section five of the Act of June third, nineteen hundred and sixteen, entitled "An Act for making further and more effectual provision for the national defense, and for other purposes," to wit: "Not more than one-half of all of the officers detailed in said corps shall at any time be stationed, or assigned to or employed upon any duty, in or near the District of Columbia," be amended so as to authorize the President to suspend the operation of the same during the existing emergency. (40 Stat. 73.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above. Act June 3, 1916, c. 134, § 5, referred to in this section, is set forth ante, § 1762a.

§ 1775aa. (Act July 9, 1918, c. 143.) The Judge Advocate General's Department; captains and first lieutenants.

During the existing emergency the President is authorized to appoint in the Officers' Reserve Corps and the National Army, for service in the Judge Advocate General's Department, in addition to the grades now authorized, officers of the grades of first lieutenant and captain from such citizens as he shall find to be physically, mentally, and morally qualified for appointment. (40 Stat. 853.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1784. (Act June 3, 1916, c. 134, § 9.) The Quartermaster Corps.

So much of this section as restricts the purchase and distribution of military stores and supplies to officers of the Quartermaster Corps is suspended for the period of the war with Germany, by a provision of Act July 9, 1918, c. 143, post, § 1789a.

§ 1784a. (Act May 12, 1917, c. 12.) The Quartermaster Corps; disbursements by officers as agents of officers of Corps.

Hereafter, under such regulations as may be prescribed by the Secretary of War, officers of the Quartermaster Corps accountable for public moneys may intrust such moneys to other officers for the purpose of having them make disbursements as their agents, and the officers to whom the moneys are intrusted, as well as the officers who intrust it to them, shall be held pecuniarily responsible therefor to the United States. (40 Stat. 50.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 1789a. (Act July 9, 1918, c. 143, subchapter VII.) Restrictions in purchase of military supplies suspended.

That so much of section eleven hundred and thirty-three of the Revised Statutes, and of section nine of the Act entitled "An Act for making further and more effectual provision for the national defense, and for other purposes," approved June third, nineteen hundred and sixteen, as restricts the purchase and distribution of mili-

tary stores and supplies to officers of the Quartermaster Corps, be, and the same is hereby, suspended for the period of the present war. (40 Stat. 881.)

This was a part of the Army appropriation act for the fiscal year 1919, cited above. It was preceded by the subchapter heading VII.

R. S. § 1133, see § 1789, U. S. Comp. St. 1916. Act June 3, 1916, c. 134, § 9, see § 1784, U. S. Comp. St. 1916.

§ 1806a. (Act July 9, 1918, c. 143.) Medical Department; Assistant Surgeon General.

That the Medical Department of the Regular Army be, and is hereby, increased by one Assistant Surgeon General, for service abroad during the present war, who shall have the rank of major general, and two Assistant Surgeons General, who shall have the rank of brigadier general, all of whom shall be appointed from the Medical Corps of the Regular Army. (40 Stat. 866.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1806b. (Act July 9, 1918, c. 143.) Same; major generals and brigadier generals.

The President may nominate and appoint in the Medical Department of the National Army, by and with the advice and consent of the Senate, from the Medical Reserve Corps of the Regular Army not to exceed two major generals and four brigadier generals. (40 Stat. 866.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1807aa. (Act July 9, 1918, c. 143.) Medical Corps; distribution of commissioned officers.

The commissioned officers of the Medical Corps of the Regular Army, none of whom shall have rank above that of colonel, shall be proportionately distributed in the several grades as now provided by law. (40 Stat. 866.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1807aaa. (Act June 3, 1916, c. 134, § 10, as amended, Act July 9, 1918, c. 143, subchapter XVII, § 1.) Same; persons eligible for appointment as first lieutenants.

Any person who at the time of the approval of this Act shall be and has been an officer of the Medical Reserve Corps, or contract surgeon, on active duty for twelve years subsequent to eighteen hundred and ninety-eight shall be eligible for appointment as first lieutenant in the Medical Corps, subject to examination: And provided further, That any officer so eligible who fails to pass the physical examination by reason of disability incurred in line of duty shall be retired with the pay and allowances of a first lieutenant of the Medical Corps. (40 Stat. 889.)

This section was added to Act June 3, 1916, c. 134, § 10, cited above, by Amendment of Act July 9, 1918, c. 143, also cited above.

§ 1808a. (Act Oct. 6, 1917, c. 101.) Medical Corps; promotion of first lieutenants.

During the existing emergency first lieutenants in the Medical Corps of the Regular Army and of the National Guard shall be eligible to promotion as captain upon such examination as may be prescribed by the Secretary of War. (40 Stat. 397.)

This section was part of an act entitled "An act to provide for the promotion of first lieutenants in the Regular Army and National Guard to the grade of captain, and respecting the Dental Corps of the Army and medical and dental students, and for other purposes," cited above.

§ 1816. (Act April 23, 1908, c. 150, § 7.) Medical Reserve Corps; appointment, authority, etc., and rank of officers.

Pay.—This section does not give contract surgeons any different status with respect to pay than any other persons made eligible by that act for appointment in the Medical Reserve Corps, whose members are granted longevity pay only for active service in that corps. Yemans v. U. S., 52 Ct. Cl. 288.

License and registration.—A physician commissioned as first lieutenant under this section, but not called to active duty is not excepted from requirement of Public Health Law N. Y. §§ 161, 173, as to license and registration. Haberlin v. Englehardt (Sup.) 157 N. Y. S. 839, 94 Misc. Rep. 154.

§ 1816a. (Act July 9, 1918, c. 143.) Medical Reserve Corps; distribution of officers in grades.

The commissioned officers of the Medical Reserve Corps of the Regular Army, none of whom shall have rank above that of colonel, shall be proportionately distributed in the several grades as now provided by law for the Medical Corps of the Regular Army: Provided, That nothing in this Act shall be held or construed so as to discharge any officer of the Regular Army or deprive him of a commission which he now holds therein. (40 Stat. 866.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1829a. (Act June 3, 1916, c. 134, § 10, as amended, Act July 9, 1918, c. 143, subchapter XVII, § 1.) Enlisted force of Medical Department.

The enlisted force of the Medical Department shall consist of the following personnel, who shall not be included in the effective strength of the Army nor counted as a part of the enlisted force provided by law: Master hospital sergeants, hospital sergeants, sergeants (first-class), sergeants, corporals, cooks, horseshoers, saddlers, stable sergeant[s], mechanics, privates (first-class), and privates: Provided, That master hospital sergeants shall be appointed by the Secretary of War, but no person shall be appointed master hospital sergeant until he shall have passed a satisfactory examination under such regulations as the Secretary of War may prescribe before a board of one or more medical officers as to his qualifications for the position, including knowledge of pharmacy, and demonstrated his fitness therefor by service of not less than twelve months as hospital sergeant or sergeant, first class, Medical Department, or as sergeant, first class, in the Hospital Corps now established by law; and no person shall be designated for such examination except by written authority of the Surgeon General: Provided further, That original enlistments for the Medical Department shall be made in the grade of private, and reenlistments and promotions of enlisted men therein, except as hereinbefore prescribed, and transfers thereto from the enlisted force of the line or other staff departments and corps of the Army shall be governed by such regulations as the Secretary of War may prescribe: Provided further, That the enlisted men of the Hospital Corps who are in active service at the time of the approval of this Act are hereby transferred to the corresponding grades of the Medical Department established by this Act: Provided further, That the total number of enlisted men in the Medical Department shall be approximately equal to, but not exceed, except as hereinafter provided, the equivalent of five per centum of the total enlisted strength of the Army authorized from time to time by law: Provided further, That in time of actual or threatened hostilities, the Secretary of War is hereby authorized to enlist or cause to be enlisted in the Medical Department such additional number of men as the service may require: Provided further, That the number of enlisted men in each of the several grades designated below

shall not exceed, except as hereinafter provided, the following percentages of the total authorized enlisted strength of the Medical Department, to wit: Master hospital sergeants, one-half of one per centum; hospital sergeants, one-half of one per centum; sergeants, first class, seven per centum; sergeants, eleven per centum; corporals, five per centum; and cooks, six per centum: Provided further, That the number of horseshoers, saddlers, stable sergeant[s], and mechanics in the Medical Department shall not exceed one each to each authorized ambulance company or like organization: Provided further, That in said department the number of privates, first class, shall not exceed twenty-five per centum of the number of privates: Provided further, That if by reason of a reduction by operation of law in the authorized enlisted strength of the Army aforesaid the number of noncommissioned officers of any grade in the Medical Department whose warrants were issued previously to such reduction shall for the time being exceed the percentage hereinabove specified for such grade, no promotion to such grade shall be made until the percentage of noncommissioned officers therein shall have been reduced below that authorized for such grade on the basis of the said reduced enlisted strength, nor thereafter so as to make the percentage of noncommissioned officers therein in excess of the percentage authorized on the basis of the said reduced enlisted strength; but noncommissioned officers may be reenlisted in the grades held by them previously to such reduction regardless of the percentages aforesaid; and when under this provision the number of noncommissioned officers of any grade exceeds the percentage specified, any noncommissioned officer thereof, not under charges, may be discharged on his own application: Provided further, That privates, first class, of the Medical Department shall be eligible for ratings for additional pay as follows: As dispensary assistant, $2 a month; as nurse, $3 a month; as surgical assistant, $5 a month: Provided further, That no enlisted man shall receive more than one rating for additional pay under the provisions of this section, nor shall any enlisted man receive any additional pay under such rating unless he shall have actually performed the duties for which he shall be rated. (39 Stat. 172. 40 Stat. 889.)

This section was amended by Act July 9, 1918, c. 143, cited above, by "striking out the word 'farrier' whenever it occurs in said section and substituting therefor the words 'stable sergeant.'"

§ 1831. [Repealed and superseded.]

This section (Act Feb. 2, 1901, c. 192, § 19), relating to the composition, etc., of the Nurse Corps, was repealed in part by a provision of Act July 9, 1918, c. 143, subchapter V, § 7. It was also probably entirely superseded by further provisions of said Act July 9, 1918, c. 143, subchapter V, relating to the Nurse Corps of the Army. Said repealing provision was as follows: "That section nineteen of chapter one hundred and ninety-two of Thirty-first Statutes, page seven hundred and fifty-three; chapter fifty of Thirty-seventh Statutes, page seventy-two; that part of the Act approved August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes, page five hundred and seventy-five), providing for allowances, subsistence, and medical care during illness for the Superintendent of the Nurse Corps; and that part of the Act approved March twenty-third, nineteen hundred and ten (Thirty-sixth Statutes, page two hundred and forty-nine) prescribing the pay of the superintendent and members of the Nurse Corps, be, and the same are, hereby repealed." The other provisions of said Act July 9, 1918, c. 143, superseding the unrepealed portions of this section, are set forth post, §§ 1832b–1832g. For text of this section, as originally enacted, see U. S. Comp. St. 1916, § 1831. Said repealing act also repealed a provision of Act Aug. 24, 1912, c. 391, § 1, 37 Stat. 575, which read as follows: "For pay of one Superintendent Nurse Corps, one thousand eight hundred dollars: Provided, That the superintendent shall receive such allowances of quarters, subsistence and medical care during illness as may be prescribed in regulations by the Secretary of War."

§ 1832. [Repealed and superseded.]

This section (Act March 23, 1910, c. 115), relating to the pay and allowances of the members of the Nurse Corps, was repealed by a provision of Act July 9, 1918, c. 143, subchapter V, § 7. Said repealing provision was as follows: "That section nineteen of chapter one hundred and ninety-two of Thirty-first Statutes, page seven hundred and fifty-three; chapter fifty of Thirty-seventh Statutes, page seventy-two; that part of the Act approved August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes, page five hundred and seventy-five), providing for allowances, subsistence, and medical care during illness for the Superintendent of the Nurse Corps; and that part of the Act approved March twenty-third, nineteen hundred and ten (Thirty-sixth Statutes, page two hundred and forty-nine) prescribing the pay of the superintendent and members of the Nurse Corps, be, and the same are, hereby repealed." This section was also superseded by further provisions of said Act July 9, 1918, c. 143, subchapter V, set forth post, §§ 1832b–1832g. For text of this section as originally enacted, see U. S. Comp. St. 1916, § 1832.

§ 1832b. (Act July 9, 1918, c. 143, subchapter V, § 1.) Army Nurse Corps; composition.

Army Nurse Corps: The Nurse Corps (female) of the Medical Department of the Army shall hereafter be known as the Army Nurse Corps, and shall consist of one superintendent, who shall be a graduate of a hospital-training school having a course of instruction of not less than two years; of as many chief nurses, nurses, and reserve nurses as may from time to time be needed and prescribed or ordered by the Secretary of War, and, in the discretion of the Secretary of War, of not exceeding six assistant superintendents, and, for each Army or separate military force beyond the continental limits of the United States, one director and not exceeding two assistant directors of nursing service, all of whom shall be graduates of hospital-training schools and shall have passed such professional, moral, mental, and physical examination as shall be prescribed by the Secretary of War. (40 Stat. 879.)

This section, and the five sections next following, were a part of the Army appropriation act for the fiscal year 1919, cited above. Said provisions were preceded by the subchapter heading V. See, also, §§ 1831, 1832, ante, and § 2110, post.

§ 1832c. (Act July 9, 1918, c. 143, subchapter V, § 2.) Same; rules and regulations.

Rules and regulations prescribing the duties of the members of the Army Nurse Corps shall be prescribed by the Surgeon General of the United States Army, subject to the approval of the Secretary of War. (40 Stat. 879.)

See note to § 1832b, ante.

§ 1832d. (Act July 9, 1918, c. 143, subchapter V, § 3.) Same; appointment and removal.

The superintendent shall be appointed by, and, at his discretion, be removed by, the Secretary of War; that all other members of said corps shall be appointed by, and, at his discretion, be removed by, the Surgeon General by and with the approval of the Secretary of War; but the assistant superintendents, the directors, the assistant directors, and the chief nurses shall be appointed by promotion from other members of the corps, and shall, upon being relieved from duty as such, unless removed for incompetency or misconduct, revert to the grades in the corps from which they were promoted. (40 Stat. 879.)

See note to § 1832b, ante.

§ 1832e. (Act July 9, 1918, c. 143, subchapter V, § 4, as amended, Act Feb. 28, 1919, c. 80.) Army Nurse Corps; pay.

The annual rate of pay of the members of said corps shall be as follows: Superintendent, $2,400; assistant superintendents and directors, $1,800; assistant directors, $1,500; chief nurses, $360 in

addition to the pay of a nurse; nurses, $720 for the first period of three years' service, $780 for the second period of three years' service, $840 for the third period of three years' service, $900 for the fourth period of three years' service, and $960 after twelve years' service in said corps (including in all cases time of service as contract nurse); reserve nurses, when upon active duty, will receive the same pay as nurses who have served in the corps for periods corresponding to the full period of their active service; and all members of said corps, in addition to the foregoing, the sum of $10 per month when serving beyond the continental limits of the United States (excepting Porto Rico and Hawaii). (40 Stat. 879, 1211.)

This section was amended by Act Feb. 28, 1919, c. 80, cited above. This amendment consisted in increasing the additional pay of chief nurses from $120 to $360. This amendment is effective as of and from July 9, 1918.

§ 1832f. (Act July 9, 1918, c. 143, subchapter V, § 5.) Same; leaves of absence.

Members of said Nurse Corps shall be entitled to cumulative leave of absence with pay at the rate of thirty days for each calendar year of service in said corps, not exceeding, however, one hundred and twenty days at one time, and in addition thereto sick leave not exceeding thirty days in any one calendar year in cases of illness or injury incurred in the line of duty. (40 Stat. 879.)

See note to § 1832b, ante.

§ 1832g. (Act July 9, 1918, c. 143, subchapter V, § 6.) Same; allowances.

Members of said Nurse Corps shall receive transportation and necessary expenses when traveling under orders, and such allowances of quarters and subsistence and, during illness, such medical care as may be prescribed in regulations by the Secretary of War; and when at places where no public quarters are available, commutation in lieu thereof, and of heat and light therefor at such rates and upon such conditions as are now or shall hereafter be provided by law. (40 Stat. 879.)

See note to § 1832b, ante.

§ 1833b. (Act Oct. 6, 1917, c. 101.) Dental Corps; composition.

Hereafter the Dental Corps of the Army shall consist of commissioned officers of the same grade and proportionally distributed among such grades as are now or may be hereafter provided by law for the Medical Corps, who shall have the rank, pay, promotion and allowances of officers of corresponding grades in the Medical Corps, including the right to retirement as in the case of other officers, and there shall be one dental officer for every thousand of the total strength of the Regular Army authorized from time to time by law: Provided further, That dental examining and review boards shall consist of one officer of the Medical Corps and two officers of the Dental Corps: Provided further, That immediately following the approval of this Act all dental surgeons then in active service shall be recommissioned in the Dental Corps in the grades herein authorized in the order of their seniority and without loss of pay or allowances or of relative rank in the Army: And provided further, That no dental surgeon shall be recommissioned who has not been confirmed by the Senate. (40 Stat. 397.)

This section was part of an act entitled "An act to provide for the promotion of first lieutenants in the Regular Army and National Guard to the grade of captain, and respecting the Dental Corps of the Army and medical and dental students, and for other purposes," cited above.

§ 1840. (Act Feb. 2, 1901, c. 192, § 22, as amended, Act April 23, 1904, c. 1485.) Corps of Engineers; composition of.

The legislative, executive, and judicial appropriation act for the fiscal year 1920, Act March 1, 1919, c. 86, § 1, 40 Stat. 1213, contains the following provision: "The services of skilled draftsmen, civil engineers, and such other services as the Secretary of War may deem necessary, may be employed only in the office of the Chief of Engineers, to carry into effect the various appropriations for rivers and harbors, fortifications, and surveys and preparation for and the consideration of river and harbor estimates and bills, to be paid from such appropriations: Provided, That the expenditures on this account for the fiscal year 1920 shall not exceed $50,400; the Secretary of War shall each year, in the annual estimates, report to Congress the number of persons so employed, their duties, and the amount paid to each."

§ 1842a. (Act June 3, 1916, c. 134, § 11, as amended, Act July 9, 1918, c. 143.) The Corps of Engineers.

The Corps of Engineers shall consist of one Chief of Engineers, with the rank of brigadier general; twenty-three colonels; thirty lieutenant colonels; seventy-two majors; one hundred and fifty-two captains; one hundred and forty-eight first lieutenants; seventy-nine second lieutenants; and the enlisted men hereinafter enumerated. The Engineer troops of the Corps of Engineers shall consist of one band, seven regiments, and two mounted battalions.

Each regiment of Engineers shall consist of one colonel; one lieutenant colonel; two majors; eleven captains; twelve first lieutenants; six second lieutenants; two master engineers, senior grade; one regimental sergeant major; two regimental supply sergeants; two color sergeants; one sergeant bugler; one cook; one wagoner for each authorized wagon of the field and combat train; one band; and two battalions: Provided, That the present Engineer band shall be considered as one of the bands provided for above.

Each battalion of a regiment of Engineers shall consist of one major, one captain, one battalion sergeant major; three master engineers, junior grade; and three companies. Each Engineer company (regimental) shall consist of one captain; two first lieutenants; one second lieutenant; one first sergeant; three sergeants, first class; one mess sergeant; one supply sergeant; one stable sergeant; six sergeants; twelve corporals; one horseshoer; two buglers; one saddler; two cooks; nineteen privates, first class; and fifty-nine privates: Provided, That the President may, in his discretion, increase a regiment of Engineers by two master engineers, senior grade, and two sergeants; each battalion of a regiment of Engineers by three master engineers, junior grade; and each Engineer company (regimental) by two sergeants, six corporals, one cook, twelve privates, first class, and thirty-four privates.

The Engineer band shall consist of one band leader; one assistant band leader; one first sergeant; two band sergeants; four band corporals; two musicians, first class; four musicians, second class; thirteen musicians, third class; and two cooks.

Each battalion of mounted Engineers shall consist of one major; five captains; seven first lieutenants; three second lieutenants; one master engineer, senior grade; one battalion sergeant major; one battalion supply sergeant; three master engineers, junior grade; one corporal; one wagoner for each authorized wagon of the field and combat train; and three mounted companies. Each mounted Engineer company shall consist of one captain; two first lieutenants; one second lieutenant; one first sergeant; two sergeants, first class; one mess sergeant; one supply sergeant; one stable sergeant; four sergeants; eight corporals; two horseshoers; one saddler; two cooks; two buglers; twelve privates, first class; and thirty-seven privates: Provided, That the President may, in

his discretion, increase the battalions of mounted Engineers by one master engineer, senior grade; two sergeants; and three master engineers, junior grade; and a mounted Engineer company by two sergeants; three corporals; eight privates, first class; and twenty-four privates: Provided further, That appropriate officers to command the regiments, battalions, and companies herein authorized and for duty with and as staff officers of such organizations shall be detailed from the Corps of Engineers, and shall not be in excess of the numbers in each grade enumerated in this section. The enlisted force of the Corps of Engineers and the officers serving therewith shall constitute a part of the line of the Army. (39 Stat. 173, 40 Stat. 868.)

This section was amended by Act July 9, 1918, c. 143, cited above, by making the second paragraph thereof read as set forth above. Said paragraph, as originally enacted, read as follows: "Each regiment of Engineers shall consist of one colonel; one lieutenant colonel; two majors; eleven captains; twelve first lieutenants; six second lieutenants; two master engineers, senior grade; one regimental sergeant major; two regimental supply sergeants; two color sergeants; one sergeant bugler; one cook; one wagoner for each authorized wagon of the field and combat train, and two battalions."

§ 1848. (Act June 3, 1916, c. 134, § 12.) The Ordnance Department.

The legislative, executive, and judicial appropriation act for the fiscal year 1920, Act March 1, 1919, c. 86, § 1, 40 Stat. 1213, contains the following provision: "The services of skilled draftsmen and such other services as the Secretary of War may deem necessary may be employed only in the office of the Chief of Ordnance to carry into effect the various appropriations for the armament of fortifications and for the arming and equipping of the National Guard, to be paid from such appropriations, in addition to the amount specifically appropriated for draftsmen in the Army Ordnance Bureau: Provided, That the entire expenditures for this purpose for the fiscal year 1920 shall not exceed $400,000, and the Secretary of War shall each year in the annual estimates report to Congress the number of persons so employed, their duties, and the amount paid to each."

§ 1856. (R. S. § 1165.) Ordnance Department; depots.

Cited without definite application,
Williamson v. Electric Service Supplies Co. (C. C. A.) 242 F. 873.

§ 1857. (R. S. § 1166.) Ordnance Department; orders for supplies.

Cited without definite application,
Williamson v. Electric Service Supplies Co. (C. C. A.) 242 F. 873.

§ 1859a. (Act Oct. 6, 1917, c. 79, § 1.) The Ordnance Department; officers accountable for public moneys.

During the present emergency, under such regulations as may be prescribed by the Secretary of War, officers of the Ordnance Department accountable for public moneys may intrust moneys to other officers for the purpose of having them make disbursements as their agents, and the officers to whom the money is intrusted, as well as the officers who intrust it to them, shall be held pecuniarily responsible therefor to the United States. (40 Stat. 367.)

This was a provision of the urgent deficiency appropriation act for the fiscal year 1918, cited above.

§ 1859b. (Act July 3, 1918, c. 130, § 1.) Ordnance Department; disbursing officer to pay civilian employés.

The Chief of Ordnance is authorized to appoint one of the Army officers serving in his office as disbursing officer to pay the civilian employees in the Ordnance Office authorized in this or any other appropriation Act for the fiscal year nineteen hundred and nineteen. (40 Stat. 785.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1919, cited above. It supersedes a somewhat similar provision in Act March 28, 1918, c. 28, § 1, 40 Stat. 473.

§ 1860. (Act June 3, 1916, c. 134, § 13.) The Signal Corps.

The legislative, executive, and judicial appropriation act for the fiscal year 1920, Act March 1, 1919, c. 86, § 1, 40 Stat. 1213, contains the following provision: "The services of skilled draftsmen and such other services as the Secretary of War may deem necessary may be employed only in the Signal Office to carry into effect the various appropriations for fortifications and other works of defense, and for the Signal Service of the Army, to be paid from such appropriations, in addition to the foregoing employés appropriated for in the Signal Office: Provided, That the entire expenditures for this purpose for the fiscal year 1920 shall not exceed $53,280, and the Secretary of War shall each year in the annual estimates report to Congress the number of persons so employed, their duties, and the amount paid to each."

§ 1867cc. (Act May 12, 1917, c. 12.) Signal Corps; aviation section; mileage to officers.

Mileage to officers in the aviation section, Signal Corps, traveling on duty in connection with aviation service shall be paid from the appropriation for the work in connection with which the travel is performed. (40 Stat. 43.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 1867ccc. (Act July 9, 1918, c. 143.) Signal Corps; mileage; officers traveling on aviation duty.

Hereafter mileage to officers of the Army traveling on duty in connection with aviation shall be paid from the appropriation for the work in connection with which the travel is performed. (40 Stat. 849.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1867cccc. (Act July 9, 1918, c. 143.) Same; mileage; foreign army officers traveling on aviation duty.

During the present emergency, officers and enlisted men of foreign armies attached to the United States Army as instructors or inspectors when traveling in the United States on authorized official business pertaining to aviation shall be entitled to receive, from funds appropriated by this Act, the same mileage and transportation allowances as are authorized for officers or enlisted men of the Regular Army. (40 Stat. 849.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1867ccccc. (Act July 9, 1918, c. 143.) Same; aircraft employés in District of Columbia.

During the existing emergency the head of the bureau or department charged with aircraft production be, and he is hereby, authorized to employ in the District of Columbia out of appropriations made for designing, procuring, caring for, and supplying airships, engines, and property connected therewith such services as are necessary for carrying out these purposes. (40 Stat. 850.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1867dd. (Act June 15, 1917, c. 29, § 1.) Land for aviation purposes; acquisition.

The Secretary of War is hereby authorized to acquire, by purchase, donation, or by condemnation, such land sites throughout the United States as are immediately necessary for the permanent establishment of aviation schools, aviation posts, and experimental aviation stations and proving grounds for the United States Army. (40 Stat. 187.)

This was a provision of the urgent deficiency appropriation act for the military and naval establishments on account of war expenses for the fiscal year 1917, cited above.

The language of this section was repeated in the Army appropriation act for the fiscal year 1918, Act May 12, 1917, c. 12.

Other provisions for the establishment of aviation stations, etc., are contained in Act July 24, 1917, c. 40, § 9, post, § 1867n.

§ 1867dd½. (Act July 9, 1918, c. 143.) Signal Corps; apportionment of appropriations for aviation purposes.

The President may hereafter apportion and allot the moneys herein or heretofore appropriated for aviation purposes in such manner as he may deem most advisable for the accomplishment of said purposes with the same force and effect as though such apportionment had been made by this Act. (40 Stat. 849.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1867ddd. (Act July 27, 1917, c. 42.) Same; site for aviation stations at North Island, San Diego, California.

That the President be, and he is hereby, authorized to cause possession to be taken forthwith, on behalf of the United States, for use for national defense and in connection therewith as sites for permanent aviation stations for the Army and Navy and for aviation school purposes, of the whole of North Island, in the harbor of San Diego, California, and the provisions of section three hundred and fifty-five, Revised Statutes, shall not apply to the expenditure of any appropriations for improvements thereon for aviation purposes.

The Attorney General or the claimants to the said North Island are authorized to make application for the determination and appraisement of any rights private parties may have in the said island over and beyond any rights thereto in the United States to the District Court of the United States for the Southern District of California; the proceedings to be prosecuted in accordance with the laws of the State of California relating to the condemnation of property for public use. Either party may take an appeal from the judgment of such court direct to the Supreme Court of the United States within ninety days after such judgment is rendered. Upon the final ascertainment of the value of any right, title, or interest adjudged to be in any private claimants to the said island there shall be paid into court the value of the same as so determined, together with interest thereon at the rate of six per centum per annum from date possession thereof was taken as herein authorized; and thereupon the United States shall be vested with title to said lands. The amount so paid shall be distributed by order of the court to the owner or owners of such right, title, or interest in said island as their respective interests may be determined by the court. The amount necessary to pay the awards in favor of private claimants is hereby appropriated, out of any money in the Treasury not otherwise specifically appropriated, to be disbursed under orders of the Secretary of War. (40 Stat. 247.)

This was an act entitled "An act authorizing the President to take possession, on behalf of the United States, for use as sites for permanent aviation stations for the Army and Navy and for aviation school purposes, of the whole of North Island in the harbor of San Diego, California, and for other purposes," cited above.

§ 1867dddd. (Act July 9, 1918, c. 143.) Signal Corps; reservation of Government property or public lands for aviation purposes.

By order of the President any Government property or unappropriated or reserved public lands may be reserved from entry, designated, and used for such aviation stations or fields for testing and experimental work. (40 Stat. 848.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1867f. (Act July 24, 1917, c. 40, § 1.) Signal Corps; increase.

That for and during the existing emergency, the President be, and is hereby, authorized to increase the present authorized commissioned and enlisted strength of the Signal Corps of the Army, including the Aviation Section thereof. (40 Stat. 243.)

This section and the nine sections next following were an act entitled "An act to authorize the President to increase temporarily the Signal Corps of the Army and to purchase, manufacture, maintain, repair, and operate airships, and to make appropriations therefor, and for other purposes," cited above.

§ 1867g. (Act July 24, 1917, c. 40, § 2.) Same; increase; temporary officers.

To provide the additional commissioned personnel required by this Act the President is authorized to promote, appoint, detail, or attach as temporary officers in the Signal Corps, including the Aviation Section thereof, officers of the Regular Army, National Army, or National Guard, or the Officers' Reserve Corps, or to appoint temporarily enlisted men of the Regular Army, enlisted men of the Enlisted Reserve Corps, or persons from civil life: Provided, That no person shall be so promoted, appointed, detailed, or attached until he shall have been found physically, mentally, and morally qualified under regulations prescribed by the Secretary of War: Provided further, That officers with rank not above colonel shall be appointed and commissioned by the President alone, irrespective of the rank or grade held by them on the date of the passage of this Act, and that officers above the grade of colonel shall be appointed by the President, by and with the advice and consent of the Senate, irrespective of the rank or grade held by them on the date of the passage of this Act. (40 Stat. 243.)

See note to § 1867f, ante.

§ 1867h. (Act July 24, 1917, c. 40, § 3.) Same; increase; enlisted men.

To provide the additional enlisted men required by this Act, the President is authorized to raise and maintain, by voluntary enlistment or by draft, such number of enlisted men as he may deem necessary and to embody them into organizations hereinafter provided for in section four: Provided, That the draft herein provided for shall not apply to any person under the age of twenty-one years or to any person above the age of thirty-one years: Provided further, That the grades of chauffeur, first class, and chauffeur are hereby created in the Signal Corps. The pay and allowances of a chauffeur, first class, shall be the same as a sergeant, first class, in the Signal Corps. Pay and allowances of a chauffeur shall be the same as a sergeant in the Signal Corps. All chauffeurs while serving as such shall rank with corporals of the Signal Corps and shall be subject to promotion and reduction to any other grade now authorized in the Signal Corps. (40 Stat. 243.)

See note to § 1867f, ante.

§ 1867i. (Act July 24, 1917, c. 40, § 4.) Same; increase; organization.

The President is hereby authorized to appropriately officer and organize the personnel of the Signal Corps into such number of divisions, brigades, regiments, wings, squadrons, battalions, companies, and flights as may be necessary, and to increase or decrease the number of organizations prescribed for the divisions, brigades, regiments, wings, squadrons, battalions, companies, and flights, and to prescribe such new and different organizations and personnel for divisions, brigades, regiments, wings, squadrons, battalions, companies, and flights as the efficiency of the service may require.

The President is further authorized to organize such headquar-

ters and headquarters detachments for divisions, brigades, regiments, wings, squadrons, battalions, companies, and flights as may be necessary, and to prescribe new and different organizations for such headquarters and headquarters detachments whenever the efficiency of the service may require. (40 Stat. 244.)

See note to § 1867f, ante.

§ 1867j. (Act July 24, 1917, c. 40, § 5.) Same; increase; general officers; temporary appointments.

The President, by and with the advice and consent of the Senate, is authorized to appoint for the period of the existing emergency such general officers of appropriate grades as may be necessary for staff duty and for duty with such brigades and divisions of the troops of the Signal Corps, including the Aviation Section thereof, as may be organized by the President.

Vacancies in all grades of the Regular Army, National Army, or National Guard resulting from the temporary appointment of officers thereof to higher grades shall be filled or vacated as provided for in sections eight and nine of the Act authorizing the President to increase temporarily the military establishment of the United States and approved May eighteen, nineteen hundred and seventeen. (40 Stat. 244.)

See note to § 1867f, ante.

Act May 18, 1917, c. 15, §§ 8, 9, referred to in this section, are set forth post, §§ 2044h, 2044i.

§ 1867k. (Act July 24, 1917, c. 40, § 6.) Same; increase; rating of aviation officers.

Officers detailed in or attached to the aviation section of the Signal Corps may, when qualified therefor, be rated as junior military aviators, military aviators, junior military aeronauts, and military aeronauts, but no person shall be so rated until there shall have been issued to him a certificate to the effect that he is qualified for the rating, and no certificate shall be issued to any person until an examining board, which shall be composed of two officers of experience of the aviation section of the Signal Corps and one medical officer, shall have examined him under general regulations to be prescribed by the Secretary of War and published to the Army by the War Department, and shall have reported him to be qualified for the rating. No person shall receive the rating of military aviator or military aeronaut until he shall have served creditably for three years as an aviation officer with the rating of a junior military aviator or the rating of a junior military aeronaut, except that in time of war any officer or enlisted man who specially distinguishes himself in active service may, upon recommendation of the Chief Signal Officer of the Army, be rated as a junior military aviator, military aviator, junior military aeronaut, or military aeronaut without regard to examination or to length of service: Provided, That junior military aeronauts and military aeronauts shall be entitled to the same increase in rank and pay as are now authorized by law for junior military aviators and military aviators, respectively: Provided further, That any officer attached to the aviation section of the Signal Corps for any military duty requiring him to make regular and frequent flights shall receive an increase of twenty-five per centum of the pay of his grade and length of service under his commission. (40 Stat. 244.)

See note to § 1867f, ante.

§ 1867l. (Act July 24, 1917, c. 40, § 7.) Same; increase; rating of enlisted men in aviation section.

The Secretary of War is authorized from time to time to cause such number of the enlisted men of the aviation section of the Sig-

nal Corps above the grade of corporal as he may deem necessary to be rated as aviation mechanicians or as balloon mechanicians in the manner now prescribed by law: Provided, That balloon mechanicians shall receive the same increase of pay as now prescribed by law for aviation mechanicians. (40 Stat. 245.)

See note to § 1867f, ante.

§ 1867m. (Act July 24, 1917, c. 40, § 8.) Same; increase; pay of officers and enlisted men.

All officers and enlisted men of the temporary forces of the Signal Corps, including the aviation section thereof provided for herein, shall be in all respects on the same footing as to pay, allowances, and pensions as permanent officers and enlisted men of corresponding grades and length of service in the Regular Army.

Provided, That nothing in this Act shall operate to decrease the present authorized strength of the Regular Army or National Army heretofore authorized by law. (40 Stat. 245.)

See note to § 1867f, ante.

§ 1867n. (Act July 24, 1917, c. 40, § 9.) Same; airships; guns; buildings and vehicles.

During the existing emergency authority is hereby given to the President, through the War Department, for the purchase, manufacture, maintenance, repair, and operation of airships and other ærial machines, including instruments and appliances of every sort and description necessary for the operation, construction, or equipment of all types of aircraft, including guns, armament, ammunition, and all necessary spare parts and equipment connected therewith; and all necessary buildings for equipment and personnel in the Aviation Section and for the purchase, maintenance, repair, and operation, through the Chief Signal Officer of the Army, of all motor-propelled passenger and equipment carrying vehicles which may be necessary for the Aviation Section of the Signal Corps.

And during the existing emergency authority is hereby further given for the establishment, equipment, maintenance, and operation of aviation stations, including (a) the acquisition of land, or any interest in land, with any buildings and improvements thereon, by purchase, lease, donation, condemnation, or otherwise: Provided, That by order of the President any unappropriated or reserved public lands may be reserved from entry, designated, and used for such aviation stations; (b) the improvement of such land by clearing, grading, draining, seeding, and otherwise making the same suitable for the purpose intended; (c) the construction, maintenance, and repair of permanent or temporary barracks, quarters, hospitals, mess houses, administration, instructional and recreational buildings, hangars, magazines, storehouses, sheds, shops, garages, boathouses, docks, radio stations, laboratories, observation stations, and all other buildings and structures necessary or advisable; (d) procuring and introducing water, electric light and power, telephones, telegraph, and sewerage to aviation stations and buildings and structures thereon by the extension of existing systems or the creation of new systems and their maintenance, operation and repair, installation of plumbing, electric fixtures and telephones, fire apparatus and fire alarm systems and the maintenance, operation and repair of all such systems, fixtures and apparatus; (e) construction and repair of roads, walks, sea walls, breakwaters, bridges, and wharves, dredging, filling and otherwise improving land and water sites; (f) purchase of stoves and other cooking and heating apparatus, kitchen and tableware, and furniture and equipment for kitchens, mess halls, offices, quarters, barracks, hospitals, and other buildings, screens, lockers, refrigerators, and all other

necessary equipment; (g) purchase of gasoline, oil, fuel, and all supplies of every kind and character necessary or advisable for maintenance and operation of aviation stations, including electric light and power, telephones, water supply and sewerage service; (h) purchase and manufacture and installation of all kinds of machinery, tools, material, supplies, and equipment for construction, maintenance, and repair of aircraft, buildings, and improvements at aviation stations, or property or appliances used in connection with aviation.

And also for the purchase or manufacture and issue of special clothing, wearing apparel, and similar equipment for aviation purposes.

And also for the actual and necessary expenses of officers, enlisted men, and civilian employees of the Army and authorized agents sent on special duty at home and abroad for aviation purposes, including observation and investigation of foreign military operations and organization, manufacture of aircraft, and engines, also special courses in foreign aviation schools and manufacturing establishments, to be paid upon certificates of the Secretary of War certifying that the expenditures were necessary for military purposes.

And also for vocational training, including employment of necessary civilian instructors in important trades related to aviation, purchase of tools, equipment, materials, and machines required for such training, purchase of textbooks, books of reference, scientific and professional papers, periodicals and magazines, and instruments and material for theoretical and practical instruction at aviation schools and stations, and all other means to carry out the provisions of section twenty-seven of the Act approved June third, nineteen hundred and sixteen, authorizing, in addition to the military training of soldiers while in active service, means for securing educational and vocational training of a character to increase their military efficiency and enable them to return to civil life better equipped for industrial, commercial, and general business occupations.

And also to pay and otherwise provide for such officers of the Officers' Reserve Corps of the Aviation Section of the Signal Corps and such enlisted men of the Enlisted Reserve Corps of the Aviation Section of the Signal Corps as may be called into active service and such enlisted men as may be enlisted in the Aviation Section of the Signal Corps under the provisions of section two of the Act to increase temporarily the military establishment of the United States, approved May eighteenth, nineteen hundred and seventeen, or any subsequent Act temporarily increasing the commissioned or enlisted personnel of the Aviation Section of the Signal Corps and such civilian employees as may be necessary, for the payment of their traveling and other necessary expenses when not traveling with troops: Provided, That hereafter all reserve officers and enlisted men of the Aviation Section of the Signal Corps shall be paid by Quartermaster Corps disbursing officers from funds transferred to their credit from Signal Corps appropriations.

And also for the payment of all expenses in connection with the development of suitable types of aviation engines, airplanes, and other aircraft appurtenances, including the cost of sample engines, airplanes, and appurtenances, cost of any patents and other rights therein, and costs of investigation, experimentation, and research in respect thereto.

And also for the payment of all expenses in connection with the creation, expansion, acquisition, and development of plants, fac-

tories, and establishments for the manufacture of airplanes, aircraft, engines, and appurtenances, including provision for the purchase or lease of land with the buildings thereon, construction of permanent or temporary buildings for all purposes, purchase of machinery, tools, and employment of operatives, together with all administrative expenses necessary, the purchase and supply of raw and semifinished materials and of fuel and all other things necessary for creating and extending the production of airplanes, aircraft, engines, and all appurtenances.

And also for creating, maintaining, and operating at technical schools and colleges courses of instruction for aviation students, including cost of instruction, equipment, and supplies necessary for instruction and subsistence of students while receiving such instruction.

Provided, That, subject to the approval of the Secretary of War, motor-propelled vehicles, airplanes, engines, parts thereof, and appurtenances may be exchanged in part payment for new equipment of the same or similar character to be used for the same purpose as those proposed to be exchanged.

Provided further, That during the present emergency, officers and enlisted men of foreign armies attached to the Aviation Section of the Signal Corps as instructors or inspectors when traveling in the United States on official business pertaining to the Aviation Section of the Signal Corps shall be authorized, from funds appropriated by this Act, the same mileage and transportation allowances as are authorized for officers or enlisted men of the Regular Army. (40 Stat. 245.)

See note to § 1867f, ante.

§ 1867*o*. (Act July 24, 1917, c. 40, § 10.) Same; increase; appropriation.

For the purpose of carrying this Act into effect the sum of $640,000,000 is hereby appropriated out of any funds in the Treasury not otherwise appropriated, to be available until June thirtieth, nineteen hundred and eighteen. (40 Stat. 247.)

See note to § 1867f, ante.

§ 1867p. (Act July 9, 1918, c. 143.) Signal Corps; qualifications for service in aviation service.

No person otherwise qualified for service as a cadet, pilot, military aviator, or other officer in the aviation service, shall be barred from such service by reason of not being equipped with a college education. (40 Stat. 849.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1868a. (Act June 3, 1916, c. 134, § 15, as amended Act May 12, 1917, c. 12, and Act May 25, 1918, c. 85.) The chaplains.

The President is authorized to appoint, by and with the advice and consent of the Senate, chaplains in the Army at the rate of not to exceed, including chaplains now in the service, one for each one thousand two hundred officers and men in all branches of the Military Establishment, with rank, pay, and allowances as now authorized by law: Provided, That there shall be assigned at least one chaplain for each regiment of Cavalry, Infantry, Field Artillery, and Engineers: Provided further, That the persons appointed under this Act shall be duly accredited by some religious denomination or organization and of good standing therein, under such regulations as may be prescribed by the Secretary of War: And provided further, That no person shall be appointed chaplain in the Army who on the date of appointment is more than forty-five years of age. (39 Stat. 176, 40 Stat. 72, 561.)

§ 1868b. (Act Oct. 6, 1917, c. 94.) The chaplains; chaplains at large.

The President may appoint for service during the present emergency not exceeding twenty chaplains at large for the United States Army representing religious sects not recognized in the apportionment of chaplains now recognized by law: Provided, That no person shall be eligible to such appointment unless he be at the time of his appointment a citizen of the United States. (40 Stat. 394.)

This was an act entitled "An act authorizing the appointment of chaplains at large for the United States Army," cited above.

§ 1881a. (Act June 3, 1916, c. 134, § 37, as amended, Act May 12, 1917, c. 12.) The Officers' Reserve Corps.

For the purpose of securing a reserve of officers available for service as temporary officers in the Regular Army, as provided for in this Act and in section eight of the Act approved April twenty-fifth, nineteen hundred and fourteen, as officers of the Quartermaster Corps and other staff corps and departments, as officers for recruit rendezvous and depots, and as officers of volunteers, there shall be organized, under such rules and regulations as the President may prescribe not inconsistent with the provisions of this Act, an Officers' Reserve Corps of the Regular Army. Said corps shall consist of sections corresponding to the various arms, staff corps, and departments of the Regular Army. Except as otherwise herein provided, a member of the Officers' Reserve Corps shall not be subject to call for service in time of peace, and whenever called upon for service shall not, without his consent, be so called in a lower grade than that held by him in said reserve corps.

The President alone shall be authorized to appoint and commission as reserve officers in the various sections of the Officers' Reserve Corps, in all grades up to and including that of major, such citizens as, upon examination prescribed by the President, shall be found physically, mentally, and morally qualified to hold such commissions: Provided, That the proportion of officers in any section of the Officers' Reserve Corps shall not exceed the proportion for the same grade in the corresponding arm, corps, or department of the Regular Army, except that the number commissioned in the lowest authorized grade in any section of the Officers' Reserve Corps shall not be limited.

All persons now carried as duly qualified and registered pursuant to section twenty-three of the Act of Congress approved January twenty-first, nineteen hundred and three, shall, for a period of three years after the passage of this Act, be eligible for appointment in the Officers' Reserve Corps in the section corresponding to the arm, corps, or department for which they have been found qualified, without further examination, except a physical examination, and subject to the limitations as to age and rank herein prescribed: Provided, That any person who on June third, nineteen hundred and sixteen, was carried as qualified and registered in the grade of colonel or lieutenant colonel pursuant to the provisions of the Act of January twenty-first, nineteen hundred and three, or any person holding a commission as colonel or lieutenant colonel in the National Guard of any State, Territory, or the District of Columbia on June third, nineteen hundred and sixteen, who has served satisfactorily as such in the service of the United States under the call of May ninth, nineteen hundred and sixteen, or that of June eighteenth, nineteen hundred and sixteen, may be commissioned or recommissioned in the Officers' Reserve Corps with rank for which he had been found qualified and registered, or which he held in the National Guard on June third, nineteen hundred and sixteen, or

while in the service of the United States; but when such person shall become thereafter separated from the Officers' Reserve Corps for any reason, the vacancy so caused shall not be filled and such office shall cease and determine.

No person shall, except as hereinafter provided, be appointed or reappointed a second lieutenant in the Officers' Reserve Corps after he shall have reached the age of thirty-two years, a first lieutenant after he shall have reached the age of thirty-six years, a captain after he shall have reached the age of forty years, or a major after he shall have reached the age of forty-five years. When an officer of the Reserve Corps shall reach the age limit fixed for appointment or reappointment in the grade in which commissioned he shall be honorably discharged from the service of the United States, and be entitled to retain his official title and, on occasions of ceremony, to wear the uniform of the highest grade he shall have held in the Officers' Reserve Corps: Provided, That nothing in the foregoing provisions as to the ages of officers shall apply to the appointment or reappointment of officers of the Quartermaster, Engineer, Ordnance, Signal, Judge Advocate, and Medical sections of said Reserve Corps.

One year after the passage of this Act the Medical Reserve Corps, as now constituted by law, shall cease to exist. Members thereof may be commissioned in the Officers' Reserve Corps, subject to the provisions of this Act, or may be honorably discharged from the service. The Secretary of War may, in time of peace, order first lieutenants of the medical section of the Officers' Reserve Corps, with their consent, to active duty in the service of the United States in such numbers as the public interests may require and the funds appropriated may permit, and may relieve them from such duty when their services are no longer necessary. While on such duty they shall receive the pay and allowances, including pay for periods of sickness and leaves of absence, of officers of corresponding rank and length of active service in the Regular Army.

The commissions of all officers of the Officers' Reserve Corps shall be in force for a period of five years unless sooner terminated in the discretion of the President. Such officers may be recommissioned, either in the same or higher grades, for successive periods of five years, subject to such examinations and qualifications as the President may prescribe and to the age limits prescribed herein: Provided, That officers of the Officers' Reserve Corps shall have rank therein in the various sections of said Reserve Corps according to grades and to length of service in their grades. (39 Stat. 189, 40 Stat. 73.)

This section was amended by Act May 12, 1917, c. 12, cited above, by making the second proviso, which originally read as follows: "Provided, That any person carried as qualified and registered in the grade of colonel or lieutenant colonel pursuant to the provisions of said Act on the date when this Act becomes effective may be commissioned and recommissioned in the Officers' Reserve Corps with the rank for which he has been found qualified and registered, but when such person thereafter shall become separated from the Officers' Reserve Corps for any reason the vacancy so caused shall not be filled, and such office shall cease and determine"—read as set forth here.

§ 1881aa. (Act May 12, 1917, c. 12.) Same; appointment of former officers to.

Any former officer of the Regular Army, the Volunteer Army, the Organized Militia, or the National Guard, under the age of sixty-four years and who has resigned or been honorably discharged from the service after a total commissioned service of not less than three years in either the Regular Army, the Volunteer Army, the Organized Militia, or the National Guard, may, upon

such examination and within such age limits as may be prescribed by the President, be appointed and commissioned, in the discretion of the President, in any appropriate arm, staff corps, department or section of the Officers' Reserve Corps, with rank not more than one grade higher than any previously held by the officer in either of said forces, but in no case above that of lieutenant colonel. (40 Stat. 73.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 1881aaa. (Act Oct. 6, 1917, c. 91.) Officers' Reserve Corps and National Army; appointment in, to certain grades in designated corps.

During the existing emergency the President is authorized, in addition to the grades now authorized, to appoint in the Officers' Reserve Corps and the National Army in the grades of second and first lieutenant in the Quartermaster Corps; second lieutenant in the Ordnance Corps and Signal Corps; second lieutenant, first lieutenant, and captain in The Adjutant General's Department, such citizens as shall be found physically, mentally, and morally qualified for appointment.

During the existing emergency no member of the Officers' Reserve Corps shall be discharged by reason of reaching the age limits provided in section thirty-seven of the national defense Act approved June third, nineteen hundred and sixteen. (40 Stat. 393.)

This was an act entitled "An act to authorize the issuance of Reserve Corps and National Army commissions in the lower grades of staff corps and to remove the fixed age limits requiring the discharge of Reserve Corps officers," cited above.

§ 1881bb. (Act May 12, 1917, c. 12.) Officers' Reserve Corps; recommission of certain officers.

Any officer of the Officers' Reserve Corps called for service with his consent in a lower grade than that held by him in said Reserve Corps shall, subject to such physical examination as may be prescribed, be considered eligible for recommission in such lower grade. (40 Stat. 74.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 1881cc. (Act May 12, 1917, c. 12.) Officers' Reserve Corps; leaves of absence to officers and employés of United States or District of Columbia.

All officers and employees of the United States or of the District of Columbia who shall be members of the Officers' Reserve Corps shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be ordered to duty with troops or at field exercises, or for instruction, for periods not to exceed fifteen days in any one calendar year. (40 Stat. 72.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 1881ccc. (Act May 12, 1917, c. 12.) Same; restoration to positions of employés of United States or District of Columbia ordered to duty.

Members of the Officers' Reserve Corps who are in the employ of the United States Government or of the District of Columbia and who are ordered to duty by proper authority shall, when relieved from duty, be restored to the positions held by them when ordered to duty. (40 Stat. 72.)

This was a further provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 1881f. (Act June 3, 1916, c. 134, § 42, as amended, July 9, 1918, c. 143, subchapter XVII, § 7.) Same; units at educational institutions.

The President may, upon the application of any established educational institution in the United States other than a State institution described in section forty of this Act, the authorities of which agree to establish and maintain a two years' elective or compulsory course of military training as a minimum for its physically fit male students, which course when entered upon by any student shall, as regards such student, be a prerequisite for graduation, establish and maintain at such institution one or more units of the Reserve Officers' Training Corps: Provided, That no such unit shall be established or maintained at any such institution until an officer of the Army shall have been detailed as professor of military science and tactics, nor until such institution shall maintain under military instruction at least one hundred physically fit male students: Provided further, That upon the recommendation of the professor of military science and tactics of any such institution, the authorities thereof may discharge a member of the Reserve Officers' Training Corps from such corps and from the necessity of completing the course of military training as a prerequisite to graduation. (39 Stat. 191. 40 Stat. 891.)

This section was amended by Act July 9, 1918, c. 143, subchapter XVII, § 7, cited above, by adding thereto the last proviso, as set forth above.

§ 1881jj. (Act April 17, 1918, c. 56, § 1.) Same; units at educational institutions; Act June 3, 1916, c. 134, §§ 45, 46, 56, suspended.

Sections forty-five, forty-six, and fifty-six of an Act entitled "An Act for making further and more effectual provision for the national defense, and for other purposes," approved June third, nineteen hundred and sixteen, be, and they hereby are, suspended for and during the period of the present war, but for such period only, and that upon the termination of said war said suspension shall cease and terminate and said sections shall thereupon be and become reinstated and of the same force and effect as if this suspension had not been made. (40 Stat. 531.)

This section, and the two sections next following, were part of an act entitled "An act to suspend for the period of the present war sections forty-five, forty-six, and fifty-six of an act entitled 'An act for making further and more effectual provision for the national defense, and for other purposes,' approved June third, nineteen hundred and sixteen, and for other purposes," cited above. Section 4 of said act is set forth post, § 2289aa.

§ 1881jjj. (Act April 17, 1918, c. 56, § 2.) Same; units at educational institutions; temporary detail of officers to.

That during the present war the President be, and he hereby is, authorized to detail such number of officers of the Army of the United States, either active or retired, not above the grade of colonel, as may be necessary for duty as professors and assistant professors of military science and tactics at institutions where one or more units of the Reserve Officers' Training Corps are maintained; but the total number of active officers so detailed at educational institutions shall not exceed one thousand, and no officer shall be so detailed who has not had at least one year's commissioned service in the Army of the United States. Retired officers below the grade of lieutenant colonel so detailed shall receive the full pay and allowances of their grade, and retired officers above the grade of major so detailed shall receive the same pay and allowances as a retired major would receive under like detail. (40 Stat. 531.)

See note to § 1881jj, ante.

§ 1881jjjj. (Act April 17, 1918, c. 56, § 3.) Same; units at educational institutions; temporary detail of enlisted men to.

That during the present war the President be, and he hereby is, authorized to detail for duty at institutions where one or more units of the Reserve Officers' Training Corps are maintained such number of enlisted men, either active or retired, of the Army of the United States as he may deem necessary, but the active noncommissioned officers so detailed shall have had at least one year's active service, and the total number of such active noncommissioned officers so detailed shall not exceed three thousand, and shall be additional in their respective grades to those otherwise authorized for the Army of the United States. While detailed under the provisions of this section retired noncommissioned officers of the Army of the United States shall receive active pay and allowances. (40 Stat. 532.)

See note to § 1881jj, ante.

§ 1881kk. (Act May 12, 1917, c. 12.) The Reserve Officers' Training Corps; units at educational institutions; commutation for uniforms supplied.

The Secretary of War may, in his discretion and under such regulations as he may prescribe, permit such institutions to furnish their own uniforms and receive as commutation therefor the sum allotted by the Secretary of War to such institutions for uniforms. (40 Stat. 71.)

This was a proviso accompanying an appropriation for quartermaster supplies and equipment for institutions of learning maintaining units of the Reserve Officers' Training Corps in the Army appropriation act for the fiscal year 1918, cited above.

§ 1881*o*. (Act June 3, 1916, c. 134, § 51, as amended, Act July 9, 1918, c. 143, subchapter XVII, § 8.) Same; units at educational institutions; graduates as officers in Officers' Reserve Corps.

Any physically fit male citizen of the United States, between the ages of twenty-one and twenty-seven years, who shall have graduated prior to July first, nineteen hundred and nineteen from any educational institution at which an officer of the Army was detailed as professor of military science and tactics, and who, while a student at such institution, completed courses of military training under the direction of such professor of military science and tactics substantially equivalent to those prescribed pursuant to this Act for the senior division, shall, after satisfactorily completing such additional practical military training as the Secretary of War shall prescribe, be eligible for appointment to the Officers' Reserve Corps and as a temporary additional second lieutenant in accordance with the terms of this Act. (39 Stat. 193. 40 Stat. 891.)

This section was amended by Act July 9, 1918, c. 143, subchapter XVII, § 8, cited above, by striking out, after the words, "who shall have graduated," the words "prior to the passage of this Act," and substituting therefor the words "prior to July first, nineteen hundred and nineteen."

ENLISTMENT AND DISCHARGE OF ENLISTED MEN; ARMY RESERVE

§ 1884. (R. S. § 1116.) General qualifications for enlistment.

Validity of enlistment in general.—See Hoskins v. Pell, 239 F. 279, 152 C. C. A. 267, L. R. A. 1917D, 1053.

Person, enlisting in National Guard and subsequently drafted into federal service, held not entitled to discharge, because he should have been rejected, there being no evidence that medical examiner acted through bias or hostility. Ex parte Blackington (D. C.) 245 F. 801, order affirmed Blackington v. U. S. (C. C. A.) 248 F. 124.

Despite this section, relator, having been duly certified into military service of United States under Selective Draft Act, is not entitled to discharge on ground that he was afflicted with disease which rendered discharge necessary, for that question is one for army. In re Traina (D. C.) 248 F. 1004.

§ 1885a. (Act June 3, 1916, c. 134, § 27.) Enlistment of minors.

1. Enlistment of minors.—This section, if applicable to enlistment in National Guard, does not make enlistment without consent void, but only voidable by parent. Reed v. Cushman (C. C. A.) 251 F. 872.

The military authorities cannot detain an enlisted man by virtue of his contract of enlistment, made while under military age and terminated by the election of his parents or guardian. U. S. v. Brown (D. C.) 242 F. 983.

Under this section, parent of minor under 18 years of age, who enlisted without her consent, is, in absence of other reason why he should be retained by military authorities entitled to judgment releasing such minor from control of military authorities. Ex parte Foley (D. C.) 243 F. 470.

Enlistment of minor, without written consent of parent or guardian, held not void or voidable by him, though he may be released on timely application of his parent or guardian. Ex parte Dostal (D. C.) 243 F. 664.

This section is intended for benefit of parent or guardian, and gives no privilege to minor. Ex parte Rush (D. C.) 246 F. 172.

2½. —— Parents outside of United States.—Where a minor had no parent or guardian living in the United States when he enlisted, the subsequent arrival of his mother in the United States could not have any retroactive effect upon the prior enlistment. Ex parte Dostal (D. C.) 243 F. 664.

5. —— Military service.—This section applies to enlistments of minors under 18 in the National Guard, and such enlistments may be avoided by the parents of the minors who did not consent. Hoskins v. Dickerson, 239 F. 275, 152 C. C. A. 263, L. R. A. 1917D, 1056, Ann. Cas. 1917C, 776.

Mother, who was surviving parent of boy under 18 who enlisted in the National Guard and was mustered into the service of the United States, held not entitled, under Rev. St. § 1117 as modified by this section, to secure release of minor though he misrepresented his age; the statutes being applicable only to the regular army. Ex parte Winfield (D. C.) 236 F. 552.

9. —— Effect of oath of enlistment.—A minor under 16 years who attempts to enlist does not become a soldier. Hoskins v. Pell, 239 F. 279, 152 C. C. A. 267, L. R. A. 1917D, 1053.

Where minor over 18 took federal enlistment oath, defects in original enlistment were immaterial, and his parent or guardian could not reclaim his custody or control. Ex parte Dostal (D. C.) 243 F. 664.

10. —— Ratification of enlistment.—Parent or guardian of enlisted minor held to waive statutory requirement as to written consent by acquiescing with knowledge in the minor's continuance in the service. Ex parte Dostal (D. C.) 243 F. 664.

11. —— Right to discharge as affected by pending prosecution for violation of military law.—A minor over 16 and under 18, who enlisted in the National Guard without the consent of his parents, became liable to punishment for military offenses, despite the right of his parents to avoid the enlistment. Hoskins v. Dickerson, 239 F. 275, 152 C. C. A. 263, L. R. A. 1917D, 1056, Ann. Cas. 1917C, 776.

A military tribunal held to have jurisdiction to try offender, under military age for offenses committed before father's election to terminate enlistment, though he was not taken into custody until after such election. U. S. v. Brown (D. C.) 242 F. 983.

Where minor under 18 years of age, who enlisted without consent of his parents, was, before they obtained his release on habeas corpus, arrested for military offense, right of military authorities to punish minor for military offense was not affected by whether arrest was before or after issue and service of writ. Ex parte Foley (D. C.) 243 F. 470.

Under this section, minor 17 years old, who enlisted without guardian's consent, misrepresenting his age, becomes de jure soldier, and, having committed military offense, cannot be discharged on application of his guardian until expiation of such offense. Ex parte Rush (D. C.) 246 F. 172.

12. —— Right to discharge as affected by pending prosecution for fraudulent enlistment.—Parents of minor, who enlisted without their knowledge or consent, held, under the facts, entitled to his discharge on habeas corpus, though after they demanded his discharge he was arrested for fraudulent enlistment. Ex parte Avery (D. C.) 235 F. 248.

While parent of minor under 18 years of age was entitled under National Defense Act to obtain his release where he enlisted without her consent, nevertheless military authorities had jurisdiction to try such minor in accordance with Articles of War, arts. 8, 9, 10, 12, and 54, enacted by Act June 29, 1916 (Comp. St. 1916, § 2308a), for offense of fraudulent enlistment. Ex parte Foley (D. C.) 243 F. 470.

13. —— Rights as affected by desertion.—Under this section, guardian of minor, who enlisted when under 18 without guardian's consent, cannot, more than year after enlistment, secure ward's discharge, after he deserted and was arrested to await court-martial for offense. Ex parte Rush (D. C.) 246 F. 172.

14. —— Authority and jurisdiction to discharge.—The parent or guardian of

a minor, who enlisted without his consent, is entitled to the minor's discharge on habeas corpus, unless there are pending charges against him which give a court-martial priority of jurisdiction. Ex parte Avery (D. C.) 235 F. 248.

14½. **Application for discharge.**—Only parents or guardians of minor who enlists by misrepresenting his age can secure his discharge. Ex parte Winfield (D. C.) 236 F. 552.

Application by parent or guardian of enlisted minor for his release must be made with reasonable diligence and after commission of military offense, and especially after arrest and preferment of charges, the application is too late. Ex parte Dostal (D. C.) 243 F. 664.

§ 1886. (R. S. § 1118, as amended, Act Feb. 27, 1877, c. 69, § 1.) Persons not to be enlisted.

Cited without definite application, Hoskins v. Pell, 239 F. 279, 152 C. C. A. 267, L. R. A. 1917D, 1053; Ex parte Rush (D. C.) 246 F. 172.

§ 1887. [Repealed.]

This section, which was R. S. § 1120, was repealed by a provision of Act May 12, 1917, c. 12, 40 Stat. 53.

§ 1887a. [Repealed in part.]

So much of this section (a provision of Act June 3, 1916, c. 134, § 27) as authorized the payment to postmasters of $5 for each recruit secured by them and accepted by the Army, Navy, and Marine Corps, was repealed by Act July 2, 1918, c. 117, § 11, 40 Stat. 754.

§ 1888. (Act Aug. 1, 1894, c. 179, § 2.) Term of enlistment; qualifications for enlistment and re-enlistment.

Aliens.—Enlisting alien cannot avoid his enlistment, and escape liability for service or punishment, especially as Comp. St. 1916, § 1888, is limited to enlistments in time of peace. Ex parte Dostal (D. C.) 243 F. 664.

Support of parent.—That an enlisted soldier has a mother, of whom he is the only support, does not make void his contract of enlistment. Ex parte Dostal (D. C.) 243 F. 664.

§ 1891bb. (Act Feb. 28, 1919, c. 79.) Enlistments in Regular Army; repeal; term of service; pay; discharge.

So much of sections seven and fourteen of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen, as impose restrictions upon enlistments in the Regular Army, are hereby repealed in so far as they apply to enlistments and reenlistments in the Regular Army after the date of approval of this Act: Provided, That from and after the approval of this Act, one-third of the enlistments in the Regular Army of the United States shall be for a period of one year, and the remaining two-thirds thereof shall be for the period of three years. Any person enlisting under the provisions of this Act shall not be required to serve with the reserves. The pay of the men enlisted hereunder shall be the same as that provided by the Act entitled "An act to authorize the President to increase temporarily the Military Establishment of the United States," approved May 18, 1917: Provided further, That after the expiration of one year those enlisting for the period of three years may be discharged in the discretion of the Secretary of War under such rules and regulations as may be prescribed by him after one year of service. (40 Stat. 1211.)

This section is an act entitled "An act to authorize the resumption of voluntary enlistment in the Regular Army, and for other purposes," cited above.

For Act May 18, 1917, c. 15, § 7, referred to in this section, see post, § 2044g. Section 14 of said act, also referred to in this section, suspends all laws and parts of laws in conflict with the provisions of the act during the emergency.

§ 1891c. (Act May 12, 1917, c. 12.) Reenlistment of enlisted men discharged to accept commissions in National Guard.

That the enlisted men who were discharged from the Army to accept a commission in the National Guard, or in any volunteer force

that may be authorized in the future, at the call of the President, June eighteenth, nineteen hundred and sixteen, be restored to their original status upon reenlisting in the Regular Army: Provided, That they reenlist within three months from date of muster out of the United States Service, and that in computing service for retirement and continuous service pay, service as an officer in the National Guard, or in any volunteer force that may be authorized in the future, while in the service of the United States, be counted. (40 Stat. 74.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 1891d. (Act May 12, 1917, c. 12.) Computation of continuous service pay of discharged enlisted men serving as officers of National Guard.

Hereafter any enlisted man of the Army who shall be discharged to enable him to accept a commission in the Officers' Reserve Corps, or in any National Guard or militia organization, or in any volunteer force that may be authorized in the future, and who shall enlist in the Army within three months after the termination of his connection as an officer with that corps or with any organization of the National Guard or militia, or a volunteer force, or during the continuation of his connection therewith, as an officer, shall, in computing continuous service pay now authorized by law, be entitled to credit for the period of time actually served by him prior to said discharge, and in computing service for retirement and continuous service pay, service as an officer of the National Guard, while in the service of the United States, service in any volunteer force, and service in the Officers' Reserve Corps in active service shall be counted. (40 Stat. 74.)

This was a further provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 1891dd. (Act March 30, 1918, c. 37.) Enlistment of men discharged to accept commissions on termination of service; computation of service for retirement and continuous service pay.

Any enlisted man of the Army of the United States who has heretofore been, or shall hereafter be, discharged to accept a commission in any component part of the Army of the United States, and who shall tender himself for enlistment within three months after the termination of his commissioned service, shall, subject to such examination for enlistment as is provided by law or regulation, be accepted and be restored to the grade held by him before being discharged to accept such commission; and in computing service for retirement and continuous-service pay he shall be credited with all time served with the forces of the United States, and his service shall be deemed continuous, notwithstanding the interruption thereof by the changes of status provided for herein. (40 Stat. 501.)

This was an act entitled "An act to provide for restoration to their former grades of enlisted men discharged to accept commissions, and for other purposes," cited above.

§ 1891e. (Act March 16, 1918, c. 23.) Furloughs to enlisted men.

That, whenever during the continuance of the present war in the opinion of the Secretary of War the interests of the service or the national security and defense render it necessary or desirable, the Secretary of War be, and he hereby is, authorized to grant furloughs to enlisted men of the Army of the United States with or without pay and allowances or with partial pay and allowances, and, for such periods as he may designate, to permit said enlisted men to engage in civil occupations and pursuits: Provided, That

such furloughs shall be granted only upon the voluntary application of such enlisted men under regulations to be prescribed by the Secretary of War. (40 Stat. 450.)

This was an act entitled "An act to authorize the Secretary of War to grant furloughs without pay and allowances to enlisted men of the Army of the United States," cited above.

§ 1892. (Act Aug. 24, 1912, c. 391, § 2.) Composition of Army Reserve.

Certificate of furlough.—Certificate of furlough granted to applicant for citizenship after three years' service with army, pursuant to this section, held not honorable discharge, within Articles of War, and so applicant could not be admitted to citizenship under Rev. St. 2166 (Comp. St. 1916, § 4355). In re Markun (D. C.) 232 F. 1018.

Discharge.—See notes to Comp. St. 1916, § 2308a, art. 108.

§ 1892b. (Act June 3, 1916, c. 134, § 31, as amended, Act July 9, 1918, c. 143, subchapter XVII, § 6.) Composition of the Regular Army Reserve; assignment of members to Regular Army organizations.

The President is authorized to assign members of the Regular Army Reserve as reserves to particular organizations of the Regular Army, or to organize the Regular Army Reserve, or any part thereof, into units or detachments of any arm, corps, or department in such manner as he may prescribe, and to assign to such units and detachments officers of the Regular Army or of the Officers' Reserve Corps herein provided for; and he may summon the Regular Army Reserve or any part thereof for field training for a period not exceeding fifteen days in each year, the reservists to receive from the date of their departure to place where ordered pay and allowances at the rate of their respective grades in the Regular Army, transportation, and reimbursement of cost of subsistence at such rate as may be fixed by the Secretary of War during travel from home to place where ordered and return to home, and subsistence in kind during period not in transit and while in service; and in the event of actual or threatened hostilities he may mobilize the Regular Army Reserve in such manner as he may determine, and thereafter retain it, or any part thereof, in active service for such period as he may determine the conditions demand: Provided, That all enlistments in the Regular Army, including those in the Regular Army Reserve, which are in force on the date of the outbreak of war shall continue in force for one year, unless sooner terminated by order of the Secretary of War, but nothing herein shall be construed to shorten the time of enlistment prescribed: Provided further, That subject to such regulations as the President may prescribe for their proper identification, and location, and physical condition, the members of the Regular Army Reserve shall be paid semiannually at the rate of $24 a year while in the reserve. (39 Stat. 187. 40 Stat. 890.)

This action was amended by Act July 9, 1918, c. 143, subchapter XVII, § 6, cited above, by striking out, after the words "the reservists to receive," the words "travel expenses and pay at the rate of their respective grades in the Regular Army during such periods of training," and substituting therefor the words as set forth above.

§ 1892e. (Act June 3, 1916, c. 134, § 55, as amended, Act July 9, 1918, c. 143, subchapter XVII, § 9.) The Enlisted Reserve Corps.

For the purpose of securing an additional reserve of enlisted men for military service with the Engineer, Signal, and Quartermaster Corps and the Ordnance and Medical Departments of the Regular Army, an Enlisted Reserve Corps, to consist of such number of enlisted men of such grade or grades as may be designated

by the President from time to time, is hereby authorized, such authorization to be effective on and after the first day of July, nineteen hundred and sixteen.

There may be enlisted in the grade or grades hereinbefore specified, for a period of four years, under such rules as may be prescribed by the President, citizens of the United States, or persons who have declared their intentions to become citizens of the United States, subject to such physical, educational, and practical examination as may be prescribed in said rules. For men enlisting in said grade or grades certificates of enlistment in the Enlisted Reserve Corps shall be issued by The Adjutant General of the Army, but no such man shall be enlisted in said corps unless he shall be found physically, mentally, and morally qualified to hold such certificate and unless he shall be between the ages of eighteen and forty-five years. The certificates so given shall confer upon the holders when called into active service or for purposes of instruction and training, and during the period of such active service, instruction, or training, all the authority, rights, and privileges of like grades of the Regular Army. Enlisted men of the Enlisted Reserve Corps shall take precedence in said corps according to the dates of their certificates of enlistment therein and when called into active service or when called out for purposes of instruction or training shall take precedence next below all other enlisted men of like grades in the Regular Army. And the Secretary of War is hereby authorized to issue to members of the Enlisted Reserve Corps and to persons who have participated in at least one encampment for the military instruction of citizens, conducted under the auspices of the War Department, distinctive rosettes or knots designed for wear with civilian clothing, and whenever a rosette or knot issued under the provisions of this section shall have been lost, destroyed, or rendered unfit for use without fault or neglect upon the part of the person to whom it is issued, the Secretary of War shall cause a new rosette or knot to be issued to such person without charge therefor. Any person who is not an enlisted man of the Enlisted Reserve Corps and shall not have participated in at least one encampment for the military instruction of citizens, conducted under the auspices of the War Department, and who shall wear such rosette or knot shall be guilty of misdemeanor punishable by a fine of not exceeding $300, or imprisonment not exceeding six months, or both.

The President is authorized to assign members of the Enlisted Reserve Corps as reserves to particular organizations of the Regular Army, or to organize the Enlisted Reserve Corps, or any part thereof, into units or detachments of any arm, corps, or department in such manner as he may prescribe, and to assign to such units and detachments officers of the Regular Army or of the Officers' Reserve Corps, herein provided for.

To the extent provided from time to time by appropriations the Secretary of War may order enlisted men of the Enlisted Reserve Corps to active service for purposes of instruction or training for periods not to exceed fifteen days in any one calendar year: Provided, That, with the consent of such enlisted men and within the limits of funds available for such purposes, such periods of active service may be extended for such number of enlisted men as may be deemed necessary.

Enlisted men of the Enlisted Reserve Corps shall receive the pay and allowances of their respective grades, but only when ordered into active service and from the date of their departure to place where ordered, transportation and reimbursement of cost of subsistence at such rate as may be fixed by the Secretary of War

during travel from home to place where ordered and return home and subsistence in kind during period not in transit and while in service: Provided, That said enlisted men shall not be entitled to retirement or retirement pay: Provided further, That when any enlisted man of the Enlisted Reserve Corps shall be ordered to active service for purposes of instruction or training he may be paid at any time after the date such order shall become effective for the period from the date of leaving home to date of return thereto as determined in advance, both dates inclusive, and such payment, if otherwise correct, shall pass to the credit of the disbursing officer making the same.

The uniform to be worn by enlisted men of the Enlisted Reserve Corps, except corps insignia, shall be the same as prescribed for enlisted men of the Regular Army Reserve, and that in lieu of any money allowance for clothing there shall be issued to each enlisted man of the Enlisted Reserve Corps in time of peace such articles of clothing and equipment as the President may direct: Provided, That any clothing or other equipment issued to any enlisted man of the said corps shall remain the property of the United States, and in case of loss or destruction of any article, the article so lost or destroyed shall be replaced by issue to the enlisted man and the value thereof deducted from any pay due or to become due him, unless it shall be made to appear that such loss or destruction was not due to neglect or other fault on his part: Provided further, That any clothing or other equipment issued to enlisted men of the Enlisted Reserve Corps which shall have become unserviceable through ordinary wear and tear in the service of the United States shall be received back by the United States and serviceable like articles issued in lieu thereof: Provided further, That when enlisted men of the Enlisted Reserve Corps shall be discharged or otherwise separated from the service, all arms, equipage, clothing, and other property issued to them shall be accounted for under such regulations as may be prescribed by the Secretary of War.

Any enlisted man of the Enlisted Reserve Corps ordered to active service or for purposes of instruction or training shall, from the time he is required by the terms of the order to obey the same, be subject to the laws and regulations for the government of the Army of the United States.

The Secretary of War is hereby authorized to discharge any enlisted member of the Enlisted Reserve Corps when his services shall be no longer required, or when he shall have by misconduct unfitted himself for further service in the said corps: Provided, That any enlisted man of said corps who shall be ordered upon active duty as herein provided and who shall willfully fail to comply with the terms of the order so given him shall, in addition to any other penalty to which he may be subject, forfeit his certificate of enlistment.

In time of actual or threatened hostilities the President may order the Enlisted Reserve Corps, in such numbers and at such times as may be considered necessary, to active service with the Regular Army, and while on such service members of said corps shall exercise command appropriate to their several grades and rank in the organizations to which they shall be assigned and shall be entitled to the pay and allowances of the corresponding grades in the Regular Army, with increase of pay for length of service as now allowed by law for the Regular Army: Provided, That upon a call by the President for a volunteer force the members of the Enlisted Reserve Corps may be mustered into the service of the United States as volunteers for duty with the Army in the grades held by them in the said corps, and shall be entitled to the pay and allow-

ances of the corresponding grades in the Regular Army, with increase of pay for length of service, as now provided by law for the Regular Army: And provided further, That enlisted men of the Enlisted Reserve Corps shall not acquire by virtue of issuance of certificates of enlistment to them a vested right to be mustered into the volunteer service of the United States. (39 Stat. 195. 40 Stat. 891.)

This section was amended by Act July 9, 1918, c. 143, subchapter XVII, § 9, cited above, by changing the fifth paragraph thereof to read as set forth above. As originally enacted said paragraph read as follows: "Enlisted men of the Enlisted Reserve Corps shall receive the pay and allowances of their respective grades, but only when ordered into active service, including the time required for actual travel from their homes to the places to which ordered and return to their homes: Provided, That said enlisted men shall not be entitled to retirement or retirement pay, nor shall they be entitled to pensions except for physical disability incurred in line of duty while in active service or while traveling under orders of competent authority to or from designated places of duty."

§ 1892ee. (Act Oct. 6, 1917, c. 101.) The Enlisted Reserve Corps; enlistment of dental students.

All regulations concerning the enlistment of medical students in the Enlisted Reserve Corps and their continuance in their college course while subject to call to active service, shall apply similarly to dental students. (40 Stat. 397.)

This section was part of an act entitled "An act to provide for the promotion of first lieutenants in the Regular Army and National Guard to the grade of captain, and respecting the Dental Corps of the Army and Medical and dental students, and for other purposes," cited above.

PROMOTION, DETAILS TO STAFF, AND APPOINTMENTS FROM ENLISTED FORCE AND FROM CIVIL LIFE; RANK AND PRECEDENCE; MEDALS OF HONOR; CERTIFICATES OF MERIT; MILITARY BADGES; PROTECTION OF THE UNIFORM

§ 1895. (Act Oct. 1, 1890, c. 1241, § 1.) Promotions by seniority, subject to examination.

Disqualification of senior officer.—This section does not make it obligatory upon the President to promote to a vacancy existing in the grade of lieutenant colonel the senior officer in the next lower grade, if, in his opinion, the record of the officer has been such as to indicate that he is disqualified for promotion. 30 Op. Atty. Gen. 177.

§ 1897. (Act Oct. 1, 1890, c. 1241, § 3, as amended, Act July 27, 1892, c. 269, § 1.) Examinations for promotion.

Effect of section.—See 30 Op. Atty. Gen. 177.

§ 1919a. (Act Aug. 31, 1918, c. 166, § 6.) Enlisted men; commissions; admission to officers' schools.

Soldiers, during the present emergency, regardless of age and existing law and regulations, shall be eligible to receive commissions in the Army of the United States. They shall likewise be eligible to admission to officers' schools under such rules and regulations as may be adopted for entrance to such schools, but shall not be barred therefrom or discriminated against on account of age. (40 Stat. 956.)

This was section 6 of an act entitled "An act amending the act entitled 'An act to authorize the President to increase temporarily the Military Establishment of the United States,' approved May eighteenth, nineteen hundred and seventeen," cited above.

§ 1920a. (Act June 3, 1916, c. 134, § 24, as amended, Act May 12, 1917, c. 12, and Act July 9, 1918, c. 143, subchapter XVII, § 3.) Appointments to fill vacancies in grade of second lieutenant.

Vacancies in the grade of second lieutenant, however arising, in any fiscal year shall be filled by appointment in the following or-

der: (1) Of cadets graduated from the United States Military Academy during the preceding fiscal year for whom vacancies did not become available during the fiscal year in which they were graduated; (2) under the provisions of existing law of enlisted men, including officers of Philippine Scouts, between the ages of twenty-one and thirty-four years, whose fitness for promotion shall have been determined by competitive examination; and of members, including officers, of the Organized Militia, the National Guard, or Naval Militia, between the ages of twenty-one and thirty-four years who have had at least ninety days' actual Federal military service during the calendar year nineteen hundred and sixteen, or subsequent thereto, and whose fitness for promotion shall have been determined by examination; (3) of commissioned officers of the National Guard, between the ages of twenty-one and twenty-seven years not otherwise provided for herein; (4) of members of the Officers' Reserve Corps, between the ages of twenty-one and twenty-seven years; (5) of such honor graduates, between the ages of twenty-one and twenty-seven years, of distinguished colleges as are now or may hereafter be entitled to preference by general orders of the War Department; and (6) of candidates from civil life, between the ages of twenty-one and twenty-seven years; and the President is authorized to make the necessary rules and regulations to carry these provisions into effect: Provided, That the President is hereby authorized to waive the maximum age limit prescribed by law for appointment as second lieutenant in the Regular Army in the case of any candidate for such appointment who has successfully completed or who may hereafter successfully complete the required examination for such appointment before arriving at the prescribed maximum age limit; but no appointment of any such candidate shall be made to any vacancy which did not exist upon the date he successfully completed the required examination for appointment; and persons appointed under the provisions of this proviso shall be appointed with the rank and date of rank with which they would have been appointed if their appointment had not been prevented by reason of the maximum age limit prescribed by law. (39 Stat. 182. 40 Stat. 44, 890.)

This section was again amended by Act July 9, 1918, c. 143, cited above, to read as set forth above. As amended by Act May 12, 1917, c. 12, the section read as follows: "Vacancies in the grade of second lieutenant created or caused by the increases due to this Act, in any fiscal year shall be filled by appointment in the following order: (First) Of cadets graduated from the United States Military Academy during the preceding fiscal year for whom vacancies did not become available during the fiscal year in which they graduated; (second) under the provisions of existing law of enlisted men, including officers of Philippine Scouts, between the ages of twenty-one and thirty-four years, whose fitness for promotion shall have been determined by competitive examination; and of members, including officers, of the Organized Militia, the National Guard, or Naval Militia, between the ages of twenty-one and thirty-four years who have had at least ninety days actual Federal military service under any call of the President during the calendar year nineteen hundred and sixteen, and whose fitness for promotion shall have been determined by examination; (third) of members of the Officers' Reserve Corps between the ages of twenty-one and twenty-seven years, of distinguished colleges as are now or may hereafter be entitled to preference by general orders of the War Department; and (sixth) of candidates from civil life between the ages of twenty-one and twenty-seven years; and the President is authorized to make the necessary rules and regulations to carry these provisions into effect: Provided, That any such original vacancies not so filled, and remaining at the time of graduation of any class at the United States Military Academy, may be filled by the appointment of members of that class; and all vacancies in the grade of second lieutenant not created or caused by the increases due to this Act shall be filled as provided in the Act making appropriation for the support of the Army, approved March third, nineteen hundred and eleven: Provided further, That enlisted men of the Regular Army who have completed one year's service

with an organization may become candidates for vacancies in the grade of second lieutenant created or caused by the increases due to the operation of this Act."

§ 1920aa. (Act June 3, 1916, c. 134, § 24, as amended, Act May 12, 1917, c. 12.) Same; waiver of age limit.

That the President be, and he is hereby, authorized to waive the age limit in all cases where the candidate for second lieutenant, who being within the maximum age limit at the date of examination has passed or may pass the examination, and who has become or may become ineligible, on account of age before the date of his appointment; and to appoint such candidate with rank from the same date as other candidates of like class who have been or may be appointed as the result of the same examination: Provided, That such appointment is made within one year from the date of such examination. (40 Stat. 73.)

This section was a provision of the Army appropriation act for the fiscal year 1918, cited above. It was an amendment of Act June 3, 1916, c. 134, § 24, also cited above. It was preceded in said Army appropriation act by the following clause: "That section twenty-four of the Act of June third, nineteen hundred and sixteen, entitled 'An act for making further and more effectual provision for the national defense, and for other purposes,' be amended so as to add the following proviso."

See ante, § 1920a.

§ 1920b. (Act June 3, 1916, c. 134, § 23, as amended, Act July 9, 1918, c. 143.) Original appointments to be provisional; retirement.

Hereafter all appointments of persons other than graduates of the United States Military Academy to the grade of second lieutenant in the Regular Army shall be provisional for a period of two years, at the close of which period such appointments shall be made permanent if the appointees shall have demonstrated, under such regulations as the President may prescribe, their suitability and moral, professional, and physical fitness for such permanent appointment, but should any appointee fail so to demonstrate his suitability and fitness, his appointment shall terminate; and should any officer become eligible for promotion to a vacancy in a higher grade and qualify therefor before the expiration of two years from the date of his original appointment, he shall receive a provisional appointment in such higher grade, which appointment shall be made permanent when he shall have qualified for permanent appointment upon the expiration of two years from the date of his original appointment, or shall terminate if he shall fail so to qualify.

Should any such officer during such provisional period of two years become incapable of performing the duties of his office by reason of physical incapacity resulting from an incident of service, he shall be retired from active service by the President upon the actual rank held by him at the time of retirement in the manner provided by law for the retirement of permanent officers of the Regular Army, and provisional officers retired under the provisions of this section shall be in addition to the number of the officers of the Army on the retired list now fixed by law. (39 Stat. 181. 40 Stat. 851.)

This section was amended by Act July 9, 1918, c. 143, cited above, by adding thereto the last paragraph, as set forth above.

§ 1943a. (Act July 9, 1918, c. 143.) Medals of honor; to whom presented.

That the provisions of existing law relating to the award of medals of honor to officers, noncommissioned officers, and privates of the Army be, and they hereby are, amended so that the President is authorized to present, in the name of the Congress, a medal of honor only to each person who, while an officer or enlisted man of the

Army, shall hereafter, in action involving actual conflict with an enemy, distinguish himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty. (40 Stat. 870.)

This section, and the twelve sections next following, were provisions of the Army appropriation act for the fiscal year 1919, cited above.

§ 1943b. (Act July 9, 1918, c. 143.) Distinguished-service crosses; to whom presented.

That the President be, and he is hereby, further authorized to present, but not in the name of Congress, a distinguished-service cross of appropriate design and a ribbon, together with a rosette or other device, to be worn in lieu thereof, to any person who, while serving in any capacity with the Army of the United States since the sixth day of April, nineteen hundred and seventeen, has distinguished, or who shall hereafter distinguish, himself or herself by extraordinary heroism in connection with military operations against an armed enemy. (40 Stat. 870.)

See note to § 1943a.

§ 1943c. (Act July 9, 1918, c. 143.) Distinguished-service medals; to whom presented.

That the President be, and he is hereby, further authorized to present, but not in the name of Congress, a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device, to be worn in lieu thereof, to any person who, while serving in any capacity with the Army of the United States since the sixth day of April, nineteen hundred and seventeen, has distinguished, or who hereafter shall distinguish, himself or herself by exceptionally meritorious service to the Government in a duty of great responsibility; and said distinguished-service medal shall also be issued to all enlisted men of the Army to whom the certificate of merit has been granted up to and including the date of the passage of this Act under the provisions of previously existing law, in lieu of such certificate of merit, and after the passage of this Act the award of the certificate of merit for distinguished service shall cease; and additional pay heretofore authorized by law for holders of the certificate of merit shall not be paid to them beyond the date of the award of the distinguished service medal in lieu thereof as aforesaid. (40 Stat. 870.)

See note to § 1943a.

§ 1943d. (Act July 9, 1918, c. 143.) Additional pay to persons awarded medals or crosses.

Each enlisted man of the Army to whom there has been or shall be awarded a medal of honor, a distinguished-service cross, or a distinguished-service medal shall, for each such award, be entitled to additional pay at the rate of $2 per month from the date of the distinguished act or service on which the award is based, and each bar, or other suitable device, in lieu of a medal of honor, a distinguished-service cross, or a distinguished-service medal, as hereinafter provided for, shall entitle him to further additional pay at the rate of $2 per month from the date of the distinguished act or service for which the bar is awarded, and said additional pay shall continue throughout his active service, whether such service shall or shall not be continuous; but when the award is in lieu of the certificate of merit, as provided for in section three hereof, the additional pay shall begin with the date of the award. (40 Stat. 871.)

See note to § 1943a.

§ 1943e. (Act July 9, 1918, c. 143.) Bars or stars for additional acts of valor or citations.

No more than one medal of honor or one distinguished-service cross or one distinguished-service medal shall be issued to any one person; but for each succeeding deed or act sufficient to justify the award of a medal of honor or a distinguished-service cross or a distinguished-service medal, respectively, the President may award a suitable bar, or other suitable device, to be worn as he shall direct; and for each other citation of an officer or enlisted man for gallantry in action published in orders issued from the headquarters of a force commanded by a general officer he shall be entitled to wear, as the President shall direct, a silver star three-sixteenths of an inch in diameter. (40 Stat. 871.)

See note to § 1943a.

§ 1943f. (Act July 9, 1918, c. 143.) Expenditure for medals, crosses or other devices.

That the Secretary of War be, and he is hereby, authorized to expend from the appropriations for contingent expenses of his department from time to time so much as may be necessary to defray the cost of the medals of honor, distinguished-service crosses, distinguished-service medals, bars, rosettes, and other devices hereinbefore provided for. (40 Stat. 871.)

See note to § 1943a.

§ 1943g. (Act July 9, 1918, c. 143.) Replacing lost medals, crosses or other devices.

Whenever a medal, cross, bar, ribbon, rosette, or other device presented under the provisions of this Act shall have been lost, destroyed, or rendered unfit for use, without fault or neglect on the part of the person to whom it was awarded, such medal, cross, bar, ribbon, rosette, or device shall be replaced without charge therefor. (40 Stat. 871.)

See note to § 1943a.

§ 1943h. (Act July 9, 1918, c. 143.) Time limit on award of medals, crosses or other devices.

Except as otherwise prescribed herein, no medals of honor, distinguished-service cross, distinguished-service medal, or bar or other suitable device in lieu of either of said medals or of said cross, shall be issued to any person after more than three years from the date of the act justifying the award thereof, nor unless a specific statement or report distinctly setting forth the distinguished service and suggesting or recommending official recognition thereof shall have been made at the time of the distinguished service or within two years thereafter, nor unless it shall appear from the official records in the War Department that such person has so distinguished himself as to entitle him thereto; but in case an individual who shall distinguish himself dies before the making of the award to which he may be entitled, the award may nevertheless be made and the medal or cross or the bar or other emblem or device presented, within three years from the date of the act justifying the award thereof, to such representative of the deceased as the President may designate; but no medal, cross, bar, or other device, hereinbefore authorized, shall be awarded or presented to any individual whose entire service subsequently to the time he distinguished himself shall not have been honorable; but in cases of officers and enlisted men now in the Army for whom the award of the medal of honor has been recommended in full compliance with then existing regulations but on account of services which, though insufficient fully to justify the award of the medal of honor, appear to have been such as to justify the award

of the distinguished-service cross or distinguished-service medal hereinbefore provided for, such cases may be considered and acted upon under the provisions of this Act authorizing the award of the distinguished-service cross and distinguished-service medal, notwithstanding that said services may have been rendered more than three years before said cases shall have been considered as authorized by this Act, but all consideration of and action upon any of said cases shall be based exclusively upon official records now on file in the War Department; and in the cases of officers and enlisted men now in the Army who have been mentioned in orders, now a part of official records, for extraordinary heroism or especially meritorious services, such as to justify the award of the distinguished-service cross or the distinguished-service medal hereinbefore provided for, such cases may be considered and acted on under the provisions of this Act, notwithstanding that said act or services may have been rendered more than three years before said cases shall have been considered as authorized by this Act, but all consideration of and action upon any said cases shall be based exclusively upon official records of the War Department. (40 Stat. 871.)

See note to § 1943a.

§ 1943i. (Act July 9, 1918, c. 143.) Award of medals or crosses by commanding generals.

That the President be, and he is hereby, authorized to delegate, under such conditions, regulations, and limitations as he shall prescribe, to the commanding general of a separate army or higher unit in the field, the power conferred upon him by this Act to award the medal of honor, the distinguished-service cross, and the distinguished-service medal; and he is further authorized to make from time to time any and all rules, regulations, and orders which he shall deem necessary to carry into effect the provisions of this Act and to execute the full purpose and intention thereof. (40 Stat. 872.)

See note to § 1943a.

§ 1943j. (Act July 9, 1918, c. 143.) Wearing medals or decorations awarded by allied nations on entry into military service of United States.

American citizens who have received, since August first, nineteen hundred and fourteen, decorations or medals for distinguished service in the armies or in connection with the field service of those nations engaged in war against the Imperial German Government, shall, on entering the military service of the United States, be permitted to wear such medals or decorations. (40 Stat. 872.)

See note to § 1943a.

§ 1943k. (Act July 9, 1918, c. 143.) Decorations awarded by allied governments to members of military forces of United States.

Any and all members of the military forces of the United States serving in the present war be, and they are hereby, permitted and authorized to accept during the present war or within one year thereafter, from the Government of any of the countries engaged in war with any country with which the United States is or shall be concurrently likewise engaged in war, such decorations, when tendered, as are conferred by such Government upon the members of its own military forces; and the consent of Congress required therefor by clause eight of section nine of Article I of the Constitution is hereby expressly granted: Provided, That any officer or enlisted man of the military forces of the United States is hereby authorized to accept and wear any medal or decoration heretofore bestowed by the Government of any of the nations concurrently engaged with the United States in the present war. (40 Stat. 872.)

See note to § 1943a.

§ 1943l. (Act July 9, 1918, c. 143.) Award of medals and decorations to members of forces of allied nations.

The President is authorized, under regulations to be prescribed by him, to confer such medals and decorations as may be authorized in the military service of the United States upon officers and enlisted men of the military forces of the countries concurrently engaged with the United States in the present war. (40 Stat. 872.)

See note to § 1943a.

§ 1943m. (Act July 9, 1918, c. 143.) Medals for members of National Guard serving in war with Spain or on Mexican border in 1916.

That the Secretary of War be, and he is hereby, authorized and directed to procure a bronze medal, with suitable device and ribbon, to be presented to each of the several officers and enlisted men, and families of such as may be dead, of the National Guard who, under the orders of the President of the United States, served not less than ninety days in the War with Spain, and who have received an honorable discharge from the service, and who served on the Mexican border in the years nineteen hundred and sixteen and nineteen hundred and seventeen and who are not eligible to receive the Mexican service badge heretofore authorized by the President: Provided, That such medals shall not be issued to men who have, subsequent to such service, been dishonorably discharged from the service or deserted: And provided further, That the sum of $7,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of carrying this last paragraph into effect. (40 Stat. 873.)

See note to § 1943a.

§ 1949a. (Act June 3, 1916, c. 134, § 125, as amended, Act July 9, 1918, c. 143, subchapter XVII, § 10.) Protection of the uniform.

It shall be unlawful for any person not an officer or enlisted man of the United States Army, Navy, or Marine Corps, to wear the duly prescribed uniform of the United States Army, Navy, or Marine Corps, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of the duly prescribed uniform of the United States Army, Navy, or Marine Corps: Provided, That the foregoing provision shall not be construed so as to prevent officers or enlisted men of the National Guard from wearing, in pursuance of law and regulations, the uniform lawfully prescribed to be worn by such officers or enlisted men of the National Guard; nor to prevent members of the organization known as the Boy Scouts of America, or the Naval Militia, or such other organizations as the Secretary of War may designate, from wearing their prescribed uniforms; nor to prevent persons who in time of war have served honorably as officers of the United States Army, Navy, or Marine Corps, Regular or Volunteer, and whose most recent service was terminated by an honorable discharge, muster out, or resignation, from wearing, upon occasions of ceremony, the uniform of the highest grade they have held by brevet or other commission in such Regular or Volunteer service; nor to prevent any person who has been honorably discharged from the United States Army, Navy, or Marine Corps, Regular or Volunteer, from wearing his uniform from the place of his discharge to his home, within three months after the date of such discharge; nor to prevent the members of military societies composed entirely of honorably discharged officers or enlisted men, or both, of the United States Army, Navy, or Marine Corps, Regular or Volunteer, from wearing, upon occasions of cer-

emony, the uniform duly prescribed by such societies to be worn by the members thereof; nor to prevent the instructors and members of the duly organized cadet corps of a State university, State college, or public high school offering a regular course in military instruction from wearing the uniform duly prescribed by the authorities of such university, college, or public high school for wear by the instructors and members of such cadet corps; nor to prevent the instructors and members of the duly organized cadet corps of any other institution of learning offering a regular course in military instruction, and at which an officer or enlisted man of the United States Army, Navy, or Marine Corps is lawfully detailed for duty as instructor in military science and tactics, from wearing the uniform duly prescribed by the authorities of such institution of learning for wear by the instructors and members of such cadet corps; nor to prevent civilians attendant upon a course of military or naval instruction authorized and conducted by the military or naval authorities of the United States from wearing, while in attendance upon such course of instruction, the uniform authorized and prescribed by such military or naval authorities for wear during such course of instruction; nor to prevent any person from wearing the uniform of the United States Army, Navy, or Marine Corps in any playhouse or theater or in moving-picture films while actually engaged in representing therein a military or naval character not tending to bring discredit or reproach upon the United States Army, Navy, or Marine Corps: Provided further, That the uniforms worn by officers or enlisted men of the National Guard, or by the members of the military societies or the instructors and members of the cadet corps referred to in the preceding proviso shall include some distinctive mark or insignia to be prescribed by the Secretary of War to distinguish such uniforms from the uniforms of the United States Army, Navy, and Marine Corps: And provided further, That the members of the military societies and the instructors and members of the cadet corps hereinbefore mentioned shall not wear the insignia of rank prescribed to be worn by officers of the United States Army, Navy, or Marine Corps, or any insignia of rank similar thereto.

Any person who offends against the provisions of this section shall, on conviction, be punished by a fine not exceeding $300, or by imprisonment not exceeding six months, or by both such fine and imprisonment: Provided, That hereafter, upon the discharge or furlough to the Reserve of an enlisted man, all uniform outer clothing then in his possession, except such articles as he may be permitted to wear from the place of termination of his active service to his home, as authorized by this section, will be retained for military use; and within four months after such termination of his active service he shall return all uniform clothing, which he was so permitted to retain for wear to his home, by mail, under a franked label which shall be furnished him for the purpose, and in conformity with the instructions given him at the time of such termination of his active service; and in case he shall fail to return the same within such period, and in accordance with such instructions, he shall be deemed guilty of a misdemeanor, and, upon conviction, suffer the punishment prescribed by this section: Provided further, That upon the release from Federal service of an enlisted man of the National Guard called as such into the service of the United States, all uniform outer clothing then in his possession shall be taken up and accounted for as property issued to the National Guard of the State to which the enlisted man belongs, in the manner prescribed by section sixty-seven of said Act: And provided further,

That when an enlisted man is discharged otherwise than honorably, all uniform outer clothing in his possession shall be retained for military use, and, when authorized by regulations prescribed by the Secretary of War, a suit of citizen's outer clothing to cost not exceeding $15 may be issued to such enlisted man: And provided further, That officers and members of the National Home for Disabled Volunteer Soldiers may, regardless of the preceding provisions of said Act, wear such uniforms as the Secretary of War may authorize. (39 Stat. 216, 40 Stat. 891.)

This section was amended by Act July 9, 1918, c. 143, subchapter XVII, § 10, cited above, by adding to the last paragraph thereof the matter beginning with the words "Provided, That hereafter," to the end thereof, as set forth above.

§ 1949b. (Act Feb. 28, 1919, c. 70, § 1.) Uniform; retention and wearing on discharge.

Any person who served in the United States Army, Navy, or Marine Corps in the present war may, upon honorable discharge and return to civil life, permanently retain one complete suit of outer uniform clothing, including the overcoat, and such articles of personal apparel and equipment as may be authorized, respectively, by the Secretary of War or the Secretary of the Navy, and may wear such uniform clothing after such discharge: Provided, That the uniform above referred to shall include some distinctive mark or insignia to be prescribed, respectively by the Secretary of War or the Secretary of the Navy, such mark or insignia to be issued, respectively, by the War Department or Navy Department to all enlisted personnel so discharged. The word "Navy" shall include the officers and enlisted personnel of the Coast Guard who have served with the Navy during the present war. (40 Stat. 1202.)

This section, and the section next following, are §§ 1 and 2 of an act entitled "An Act permitting any person who has served in the United States Army, Navy, or Marine Corps in the present war to retain his uniform and personal equipment, and to wear the same under certain conditions," cited above. Section 4 of said Act Feb. 28, 1919, c. 70, repeals all inconsistent acts and parts of acts.

§ 1949c. (Act Feb. 28, 1919, c. 70, § 2.) Same; retention and wearing on discharge; persons to whom applicable.

The provisions of this Act shall apply to all persons who served in the United States Army, Navy, or Marine Corps during the present war honorably discharged since April sixth, nineteen hundred and seventeen. And in cases where such clothing and uniforms have been restored to the Government on their discharge the same or similar clothing and uniform in kind and value as near as may be shall be returned and given to such soldiers, sailors, and marines. (40 Stat. 1203.)

See note to § 1949b, ante.

MILITARY SUPPLIES AND STORES; PUBLIC MONEYS AND OTHER PROPERTY; TRANSPORTATION

§ 1950a. (Act July 9, 1918, c. 143.) General appropriations, Quartermaster Corps.

All the money hereinbefore designated under the titles "Subsistence of the Army," "Regular supplies, Quartermaster Corps," "Incidental expenses, Quartermaster Corps," "Transportation of the Army and its supplies," "Water and sewers at military posts," "Clothing and camp and garrison equipage," "Horses for Cavalry, Artillery, Engineers, and so forth," "Barracks and quarters," "Military post exchanges," "Roads, walks, wharves, and drainage,"

"Barracks and quarters, Philippine Islands," "Construction and repair of hospitals," "Quarters for hospitals stewards," "Shooting galleries and ranges," "Maintenance, Army War College," "Rent of buildings, Quartermaster Corps," "Claims for damages to and loss of private property," "Vocational training," "Rifle ranges for civilian instruction," "Quartermaster supplies, equipment, and so forth, Reserve Officers' Training Corps," "Quartermaster supplies for military equipment of schools and colleges," shall be disbursed and accounted for by officers and agents of the Quartermaster Corps as "General appropriations, Quartermaster Corps," and for that purpose shall constitute one fund. (40 Stat. 865.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above. The titles designated therein are those under which appropriations are made in the act.

§ 1952aa. (Act July 9, 1918, c. 143, subchapter XX.) Moneys from disposition of materials supplied by Engineer Department.

The provision of the Act of March twenty-third, nineteen hundred and ten, making moneys arising from the disposition of serviceable quartermaster material available for the purposes of the appropriation throughout the fiscal year following that in which the disposition was affected, is hereby extended to apply to material supplied to the Army by the Engineer Department. (40 Stat. 893.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above. Act March 23, 1910, c. 115, mentioned in this section, is U. S. Comp. St. 1916, § 1952.

§ 1952b. (Act July 9, 1918, c. 143, subchapter XX.) Proceeds from operation of public utilities; reports.

In case of actual or threatened hostilities, any proceeds received from the operation of a public utility, in connection with engineer operations in the field overseas, shall be available for the purpose of such utility until the close of the fiscal year following that in which the proceeds are received, and a detailed report of such proceeds and application thereof shall be rendered to Congress on forms conforming as far as practicable to those used by American Companies in reports to the Interstate Commerce Commission. (40 Stat. 893.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1952¼. (Act Nov. 4, 1918, c. 201, § 1.) Moneys from sale of ice, electric current and laundry work.

All funds hereafter derived from the sale of ice or as receipts from the sale of electric current or laundry work under the appropriations of the Quartermaster Corps shall be deposited in the Treasury of the United States as miscellaneous receipts. (40 Stat. 1028.)

This was a provision accompanying a general appropriation for the Quartermaster Corps in the "First Deficiency Appropriation Act, 1919," cited above.

§ 1962. (Act April 23, 1904, c. 1485.) Sales of medical supplies to civilian employés.

The sale of Army stores for cash and at cost prices to employés engaged in auditing accounts of the military establishment in foreign countries is authorized by a provision of Act Sept. 24, 1917, c. 56, § 12, ante, § 420a.

§ 1972aa. (Act July 9, 1918, c. 143.) Exchange of vehicles and aerial material.

Subject to the approval of the Secretary of War, motor-propelled vehicles, airplanes, engines, parts thereof, balloons, and appurtenances may be exchanged in part payment for new equipment of

the same or similar character to be used for the same purposes as those proposed to be exchanged. (40 Stat. 849.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of May 12, 1917, c. 12, 40 Stat. 43.

§ 1972b. (Act May 12, 1917, c. 12.) Sale of excess of horses and mules.

The Secretary of War is hereby authorized upon the approval of this Act to sell for cash at either public or private sale such horses and mules as are not needed for either the Regular Army or the National Guard and the proceeds shall be turned into the United States Treasury as miscellaneous receipts. (40 Stat. 55.)

This was a further provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 1972bb. (Act Oct. 6, 1917, c. 79, § 1.) Sale of airplane war material.

The President, during the present emergency, is authorized, through the head of any department of the Government, to sell any war materials used in the construction of airplanes which may have been or may hereafter be acquired by the United States for the purpose of the Army or Navy, or for the prosecution of war, to any person, firm, or corporation, or to any foreign state or government engaged with the United States Government in the prosecution of war against a common enemy or its allies, in such manner and upon such terms, at not less than cost, as he in his discretion may deem best: Provided, That any moneys received by the United States hereunder shall become available as part of the appropriation by which said property was purchased by the United States. (40 Stat. 356.)

This was a provision of the urgent deficiency appropriation act for war expenses for the fiscal year 1918, cited above.

§ 1973. (R. S. § 1242.) Arms and accouterments in possession of persons not soldiers.

Operation and effect in general.—Evidence that a pistol was found in defendant's possession was sufficient to sustain a verdict of guilty under Rev. St. §§ 1242 and 3748 (Comp. St. 1916, §§ 1973, 6941). Boland v. U. S. (C. C. A.) 238 F. 529.

§ 1974a. (Act Aug. 29, 1916, c. 418, § 1.) Control of transportation systems in time of war.

This section, which was a provision of the Army appropriation act for the fiscal year 1917, authorized the President, in time of war, to take possession and assume control of any system of transportation, etc., for the transfer or transportation of troops, war material and equipment, etc. The President having acted under the authority conferred by this section, Act March 21, 1918, c. 25, was enacted to authorize and regulate the compensation, etc., to be paid the transportation systems taken over, and for other purposes germane to the proper operation, etc., of such systems. Said act March 21, 1918, c. 25, is set forth post, under Title XVIIA, "National Defense," as §§ 3115¾a–3115¾p thereof.

Proclamation issued under this section, dated December 26, 1917, as follows, omitting formal portions:

"And whereas it has now become necessary in the national defense to take possession and assume control of certain systems of transportation and to utilize the same, to the exclusion as far as may be necessary of other than war traffic thereon, for the transportation of troops, war material and equipment therefor, and for other needful and desirable purposes connected with the prosecution of the war;

"Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolutions and statute, and by virtue of all other powers thereto me enabling, do hereby, through Newton D. Baker, Secretary of War, take possession and assume control at 12 o'clock noon on the twenty-eighth day of December, 1917, of each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United

States and consisting of railroads, and owned or controlled systems of coastwise and inland transportation, engaged in general transportation, whether operated by steam or by electric power, including also terminals, terminal companies and terminal associations, sleeping and parlor cars, private cars and private car lines, elevators, warehouses, telegraph and telephone lines and all other equipment and appurtenances commonly used upon or operated as a part of such rail or combined rail and water systems of transportation; —to the end that such systems of transportation be utilized for the transfer and transportation of troops, war material and equipment, to the exclusion so far as may be necessary of all other traffic thereon; and that so far as such exclusive use be not necessary or desirable, such systems of transportation be operated and utilized in the performance of such other services as the national interest may require and of the usual and ordinary business and duties of common carriers.

"It is hereby directed that the possession, control, operation and utilization of such transportation systems hereby by me undertaken shall be exercised by and through William G. McAdoo, who is hereby appointed and designated Director General of Railroads. Said Director may perform the duties imposed upon him, so long and to such extent as he shall determine, through the Boards of Directors, Receivers, officers and employees of said systems of transportation. Until and except so far as said Director shall from time to time by general or special orders otherwise provide, the Boards of Directors, Receivers, officers and employees of the various transportation systems shall continue the operation thereof in the usual and ordinary course of the business of common carriers in the names of their respective companies.

"Until and except so far as said Director shall from time to time otherwise by general or special orders determine, such systems of transportation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission, and to all statutes and orders of regulating commissions of the various states in which said systems or any part thereof may be situated. But any orders, general or special, hereafter made by said Director, shall have paramount authority and be obeyed as such.

"Nothing herein shall be construed as now affecting the possession, operation and control of street electric passenger railways, including railways commonly called interurbans, whether such railways be or be not owned or controlled by such railroad companies or systems. By subsequent order and proclamation, if and when it shall be found necessary or desirable, possession, control or operation may be taken of all or any part of such street railway systems, including subways and tunnels; and by subsequent order and proclamation possession, control and operation in whole or in part may also be relinquished to the owners thereof of any part of the railroad systems or rail and water systems, possession and control of which are hereby assumed.

"The Director shall as soon as may be after having assumed such possession and control enter upon negotiations with the several companies looking to agreements for just and reasonable compensation for the possession, use and control of their respective properties on the basis of an annual guaranteed compensation, above accruing depreciation and the maintenance of their properties, equivalent, as nearly as may be, to the average of the net operating income thereof for the three year period ending June 30, 1917,—the results of such negotiations to be reported to me for such action as may be appropriate and lawful.

"But nothing herein contained, expressed or implied, or hereafter done or suffered hereunder, shall be deemed in any way to impair the rights of the stockholders, bondholders, creditors and other persons having interests in said systems of transportation or in the profits thereof, to receive just and adequate compensation for the use and control and operation of their property hereby assumed.

"Regular dividends hitherto declared, and maturing interest upon bonds, debentures and other obligations, may be paid in due course; and such regular dividends and interest may continue to be paid until and unless the said Director shall from time to time otherwise by general or special orders determine; and, subject to the approval of the Director, the various carriers may agree upon and arrange for the renewal and extension of maturing obligations.

"Except with the prior written assent of said Director, no attachment by mesne process or on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers; but suits may be brought by and against said carriers and judgments rendered as hitherto until and except so far as said Director may, by general or special orders, otherwise determine.

"From and after twelve o'clock on said twenty-eighth day of December, 1917, all transportation systems included in this order and proclamation shall conclusively be deemed within the possession and control of said Director with-

out further act or notice. But for the purpose of accounting said possession and control shall date from twelve o'clock midnight on December 31, 1917."

See, also, Proclamation under § 3115¾h, post.

Proclamation under this section:

April 11, 1918, as follows, omitting formal portions:

"Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolutions and statute, and by virtue of all other powers thereto me enabling, do hereby, through Benedict Crowell, Acting Secretary of War, take possession and assume control at 12:01 A. M. on the 13th day of April, 1918, of each and every system of transportation and the appurtenances thereof as follows, to wit: Clyde Steamship Company, a corporation of the state of Maine; Mallory Steamship Company, a corporation of the state of Maine; Merchants & Miners Transportation Company, a corporation of the state of Maryland, and Southern Steamship Company, a corporation of the state of Delaware, consisting of steamships, tugs, lighters, barges, ships, boats, and marine craft of any and every kind or description and all the tackle appurtenances to and appliances thereof, together with all wharves, docks, warehouses and other property of every kind or nature, real or chattel, owned, leased, chartered, controlled or used by said companies or either of them in conducting or in connection with said transportation systems, to the end that such systems of transportation be utilized for the transfer and transportation of troops, war material, and equipment to the exclusion so far as may be necessary of all other traffic thereon; and that so far as such exclusive use be not necessary or desirable such systems of transportation be operated and utilized in the performance of such other services as the national interest may require and of the usual and ordinary business and duties of common carriers.

"It is hereby directed that the possession, control, operation, and utilization of such transportation systems, hereby by me undertaken, shall be exercised by and through William G. McAdoo, who has been duly appointed and designated Director General of Railroads. Said Director General may perform the duties imposed upon him, so long and to such extent as he shall determine, through the boards of directors, officers, and employees of said systems of transportation. Until and except so far as said Director General shall from time to time by general or special orders otherwise provide, the boards of directors, officers, and employees of said transportation systems shall continue the operation thereof in the usual and ordinary course of the business of common carriers, in the names of their respective companies.

"Until and except so far as said Director General shall from time to time otherwise by general or special orders determine, such systems of transportation shall remain subject to all existing statutes of the United States and orders of the Interstate Commerce Commission and to all statutes and orders of regulating commissions of the various states in which said systems or any part thereof may be situated. But any orders, general or special, hereafter made by said Director General shall have paramount authority and be obeyed as such.

"The Director General shall, as soon as may be after having assumed such possession and control, enter upon negotiations with the several companies looking to agreements for just and reasonable compensation for the possession, use, and control of their respective properties and fix such just compensation as provided by law.

"But nothing herein contained, expressed or implied, or hereafter done or suffered hereunder, shall be deemed in any way to impair the rights of the stockholders, bondholders, creditors, and other persons having interests in said systems of transportation or in the profits thereof to receive just and adequate compensation for the use and control and operation of their property hereby assumed.

"That none of said carriers while under Federal control shall, without the prior approval of the President, declare or pay any dividends in excess of its regular rate of dividends during the three years ended June thirtieth, nineteen hundred and seventeen: Provided, however, that such carriers as have paid no regular dividends or no dividends during said period may, with the prior approval of the President, pay dividends at such rate as the President may determine.

"Except with the prior written assent of said Director General, no attachment by mesne process or on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers; but suits may be brought by and against said carriers and judgments rendered as hitherto until and except so far as said Director General may, by general or special orders, otherwise determine.

"From and after 12:01 a. m. on said 13th day of April, 1918, all transportation systems included in this order and proclamation shall conclusively be

deemed within the possession and control of said Director General without further act or notice."

Further proclamations, issued under this section, as follows:

July 22, 1918, taking possession and control of the transportation system of the Boston, Cape Cod and New York Canal Company.

November 16, 1918, as follows:

"Whereas the organizations for the conduct of the express business over numerous systems of transportation which have been duly placed under Federal control, and pertaining to such systems of transportation, have been consolidated into the American Railway Express Company which has been made the sole agent of the Government for conducting the express business, with the result that the entire transportation system of said Express Company has been necessarily in substance and effect placed under Federal control, and

"Whereas it is desirable, in order to administer to the best advantage the transportation business and operations of the American Railway Express System to make it specifically clear by this Proclamation that the President has the possession, use, control and operation of the entire transportation system of the American Railway Express Company,

"Now, therefore, I, Woodrow Wilson, President of the United States. under and by virtue of the powers vested in me by law do hereby, through Newton D. Baker, Secretary of War, take possession, and assume control at 12 o'clock noon on the 18th day of November, 1918, of that certain system of transportation called the American Railway Express Company and all of its appurtenances and property of every kind or nature, directly or indirectly, owned, leased, chartered, controlled, or used in the conduct of, or in connection with, its express business.

"It is hereby further directed that the possession, control, operation and utilization of said express transportation system hereby by me undertaken shall be exercised by and through William G. McAdoo, heretofore appointed Director General of Railroads, with all the powers conferred upon him by the said Proclamations of December 26, 1917, and March 29, 1918, respectively, together with all and singular the powers conferred upon the President by the Act of Congress entitled, 'An Act to Provide for the Operation of Transportation Systems while under Federal Control, for the Just Compensation of their Owners, and for Other Purposes,' approved March 21, 1918.

"The said Director General of Railroads may perform the duties hereby imposed upon him, so long and to such an extent as he shall determine, through the Board of Directors, officers and employés of the said American Railway Express Company, under the contract already made, and dated the twenty-sixth day of June, 1918, between the said Director General of Railroads and said American Railway Express Company, and until and except so far as said Director General shall from time to time by general or special orders otherwise provide, the Board of Directors, officers and employés of said Company shall continue the operation thereof in the usual and ordinary course under such contract.

"From and after 12 o'clock noon on said 18th November, 1918, the said transportation system shall conclusively be deemed within the possession and control of said Director General without further act or notice."

Notes of Decisions

Construction and operation of section in general.—The extent of the power conferred by this section to take possession and the determination of the property to be taken possession of, are questions for the court. United States Railroad Administration v. Burch (D. C.) 254 F. 140.

Effect of government control in general.—Under this section and the presidential proclamation of December 26, 1917, and despite Act March 21, 1918, post, § 3115¾a, the Director General of Railroads was not authorized to take possession of land belonging to a railroad company which was not used in its business as a carrier; hence sale of such land under execution against the railroad company will not be enjoined on suit of the Director General, the company making no objection. United States Railroad Administration v. Burch (D. C.) 254 F. 140.

In view of the presidential proclamation of December 26, 1917, whereby the President, as a war measure, under the authority of this section assumed control of the railway systems of the country, and in view of Federal Control Act March 21, 1918, post, § 3115¾a, held, that the operation of the Interstate Commerce Acts, including the Elkins Act (Comp. St. 1916, §§ 8563–8604), was not suspended. U. S. v. Metropolitan Lumber Co. (D. C.) 254 F. 335.

After President of United States had assumed control of railroad systems under this section, Act Cong. March 21, 1918 (post, §§ 3115¾a–3115¾p), providing for operation of systems then under government control and for just compensation to owners, and under section 10, of which Director General of Railroads by General Order 28 increased freight rates and prescribed

uniform passenger fare without distinguishing between interstate and intrastate commerce, conferred extraordinary executive powers necessitated by existence of war. State v. Northern Pac. Ry. Co. (N. D.) 172 N. W. 324.

Termination of hostilities under the armistice does not justify judicial interference to restrain further exercise of extraordinary executive powers conferred upon Pesident by this section and Act Cong. March 21, 1918 (post, §§ 3115¾a–3115¾p), providing for operation of railroad systems under government control, and rendered necessary by a state of war. Id.

Under this section and under President's proclamation of December 26, 1917, prima facie a cause of action under federal Employers' Liability Act April 22, 1908 (U. S. Comp. St. §§ 8657–8665), for death of an employé arising and action begun subsequent to assumption of federal control and before passage of Rail Control Act March 21, 1918 (post, §§ 3115¾a–3115¾p), became vested in plaintiff as administrator of deceased prior to passage of Rail Control Act. McGregor v. Great Northern Ry. Co. (N. D.) 172 N. W. 841.

Carrier corporations during period of federal control under this section and President's proclamation of December 26, 1917, and Rail Control Act March 21, 1918 (post, §§ 3115¾a–3115¾p), remain legal entities, capable of suing and being sued in the courts, and are champions of their own legal rights. Id.

During the period that the President as a war emergency act controls and operates the railroads there will be no attempt to enforce an order of a state Board of Railroad Commissioners, requiring railroads to construct connecting track, as the order cannot be enforced without the consent of the government. Commercial Club of City of Mitchell v. Chicago, M. & St. P. Ry. Co. (S. D.) 170 N. W. 149.

Actions.—Despite extremely broad war-making powers of Congress under Const. art. 1, § 8, held that, where President took control of railroads pursuant to this section, a railroad cannot defeat action thereafter instituted on ground that it was one against property of United States and that United States had not given its consent to be sued. Muir v. Louisville & N. R. Co. (D. C.) 247 F. 888.

Rights of action against railroad company, arising out of relation of carrier and passenger, already vested, cannot be divested by act of President in taking possession of and assuming control of railroads under this section. Id.

—— **Jurisdiction of courts.**—Actions against railroad company, instituted in state court after President by proclamation assumed control of railroads under this section, are not actions arising under Constitution or laws of United States, so as to be removable to federal courts, under Judicial Code, § 28; the presidential proclamation not having the force of law. Muir v. Louisville & N. R. Co. (D. C.) 247 F. 888.

This section, sections 3115¾j, 3115¾m, 3115¾o post, and presidential proclamations of December 26, 1918, and April 11, 1918, did not prohibit state courts from entertaining jurisdiction and proceeding to judgment in all cases against railroads as theretofore; the only purpose being to prevent states from seizing property necessary to be used in maintenance of transportation system of country for use of national government. L. N. Dantzler Lumber Co. v. Texas & P. Ry. Co. (Miss.) 80 So. 770.

A state court could entertain jurisdiction of action against a nonresident railroad wherein a debt owing defendant by railroad running through state was attached, whether or not an execution could be levied; the word "mesne," used in Act Cong. March 21, 1918, prohibiting execution or other mesne process against railroads, meaning intermediate; intervening; the middle between two extremes. Id.

Proclamation assuming control.—Despite authority of Congress to delegate to heads of executive departments and other officials right to make regulations, proclamation by which the President, acting under this section, took possession of and assumed control of railroads, has no force as law. Muir v. Louisville & N. R. Co. (D. C.) 247 F. 888.

Under this section, clause of President's proclamation of December 26, 1917, relative to governmental control of railroads, prohibiting attachment on mesne process, except with the prior written assent of the Director General, is valid; and moneys constituting traffic balances fall within its provisions. Dooley v. Pennsylvania R. Co. (D. C.) 250 F. 142.

—— **Judicial notice.**—Courts will take judicial notice of proclamation of President of December 26, 1917, declaring necessity to take possession and control of certain systems of transportation in United States, including railroads. Muir v. Louisville & N. R. Co. (D. C.) 247 F. 888.

Regulations.—Under this section and presidential proclamation of December 26, 1917, whereby the President took such possession and control, together with Act March 21, 1918, providing for the operation of transportation systems under federal control, the complete possession and control of the railroads taken by the United States impliedly included the power to fix rates, regardless of the power giv-

en by Act March 21, 1918, § 10 (Comp. St. 1918, § 3115¾j). Northern Pac. Ry. Co. v. State of North Dakota ex rel. Langer, 39 S. Ct. 502, 63 L. Ed. —.

The war power of the United States is not disputable, and therefore where Congress, under its war power, by this section authorized the President to take possession of transportation systems and the President took control of the railroads, and was by subsequent Act March 21, 1918, § 10 (post, § 3115¾j), authorized to fix rates, such rate-making power cannot be construed as limited to interstate rates, for that would be a limitation on the war powers of the United States. Id.

While this section was passed pursuant to the war power of Congress, given by Const. art. 1, § 8, held, that a railroad embargo promulgated under presidential authority, though giving preference to war material, was nothing more than a regulation incident to the proper conduct of the business of railroads, and the control which the President had assumed. U. S. v. Metropolitan Lumber Co. (D. C.) 254 F. 335.

Under Act March 21, 1918, §§ 8, 10 (post, §§ 3115¾h, 3115¾j), and despite section 9 (section 3115¾i), held, that orders of the Director General of Railroads, through whom the President assumed control of the railroads pursuant to this section, that suits against carriers while under federal control, should be brought in the county or district where the plaintiff resided at the time of the accrual of the action, were not effective to so limit that right, and, where authorized by state law, a plaintiff might sue in a district other than that in which he resided at the time of accrual of the action, upon a cause of action not arising out of the railway company's duties as a common carrier. Friesen v. Chicago, R. I. & P. Ry. Co. (D. C.) 254 F. 875.

As the Director General is the carrier since the President has taken control and possession of railroads under this section, Order No. 50 of the Director General providing for his substitution in case of actions against railroad company for causes of action arising since governmental control is warranted notwithstanding Act March 21, 1918, c. 25, § 10 (post, § 3115¾j), providing that actions or suits may be brought against such carriers, for the Director General is the carrier, being analogous to a receiver, and it is proper that he be substituted in place of the railroad company. Rutherford v. Union Pac. R. Co. (D. C.) 254 F. 880.

Under this section, President's proclamation of December 26, 1917, delegating control to Director General of Railroads, Federal Control Act, § 10 (post, § 3115¾j), and General Order No. 50 of Director General, a personal injury action commenced subsequent to General Order No. 50 on a cause of action occurring during federal operation may be maintained against Director General of Railroads. Dahn v. McAdoo (D. C.) 256 F. 549.

No process will issue on judgment against Director General which will interfere with his possession of railroad property committed to his control. Id.

The President and his agents had no power, under this section or Act March 21, 1918, §§ 1, 10, post, §§ 3115¾a, 3115¾j, to make an order whereby a right of action already existing against a railroad would be extinguished or cut off. Benjamin Moore & Co. v. Atchison, T. & S. F. Ry. Co. (Sup.) 174 N. Y. S. 60.

Orders Nos. 50 and 50a of the Director General of Railroads allow amendment of pleading by substitution of that official for the defendant carrier in actions pending at promulgation of the orders, without necessity of supplemental summons to him. Sagona v. Pullman Co. (Sup.) 174 N. Y. S. 536.

That a railroad is under federal control and operated by the Director General of Railroads does not excuse it from performing its duty to repair framework, etc., of bridge carrying an avenue over its tracks, as required by Railroad Law, § 93; and General Order No. 50, issued by the Director General, relating to actions arising after December 31, 1917, has no application. In re Morris Ave. Bridge in City of New York (Sup.) 174 N. Y. S. 682.

General Order No. 50, promulgated by the Director General of Railroads, requiring suits upon causes of actions arising subsequent to December 31, 1917, to be brought against the Director General, and authorizing his substitution for railroad company as party defendant and dismissal of action as to company, is not warranted by Rail Control Act March 21, 1918 (post, §§ 3115¾a–3115¾p), in so far as it purports to be applicable to causes of action already vested. McGregor v. Great Northern Ry. Co. (N. D.) 172 N. W. 841.

Under this section and Act March 21, 1918, § 9, post, § 3115¾i, the President's appointment of a Director General, and the Orders of the Director General Nos. 18, 18a, and 26, in effect requiring suits against carriers under federal control to be brought in the county where plaintiff resided at the time of the injury, or where the cause of action arose, and prohibiting trial of a suit brought in any other county, are valid; and since they relate only to the remedy of a person injured and desiring to sue, are not subject to the objection that they are ex post facto or retroactive. Rhodes v. Tatum (Tex. Civ. App.) 206 S. W. 114.

MILITARY POSTS AND GARRISONS; BARRACKS AND QUARTERS; MOBILIZATION, ETC., STATIONS

§ 1979a. (Act May 12, 1917, c. 12.) Military posts; expenditures for.

Hereafter no expenditure exceeding $5,000 shall be made upon any building or military post or grounds about the same without the approval of the Secretary of War, upon detailed estimates submitted to him. (40 Stat. 74.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 1980aa. (Act July 9, 1918, c. 143.) Army field clerks; pay and allowances.

During the present emergency Army field clerks shall have the same allowances and benefits as heretofore allowed by law to pay clerks, Quartermaster Corps, not including retirement: Provided, however, That the minimum or entrance pay, exclusive of said allowances, of said Army field clerks shall be $1,200 per annum: Provided further, That Army field clerks shall receive the same increase of pay for service beyond the continental limits of the United States as is now allowed by law to commissioned officers of the Army. * *

Provided, That said clerks, messengers, and laborers shall be employed and assigned by the Secretary of War to the offices and positions in which they are to serve. (40 Stat. 853.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above. The messengers and laborers referred to are those authorized by a preceding appropriation for the pay of the Army, Quartermaster Corps.

The "First Deficiency Appropriation Act, 1919," Act Nov. 4, 1918, c. 201, § 1, 40 Stat. 1028, makes an appropriation for the employment and pay of additional clerks at headquarters of the several territorial departments, territorial districts, tactical divisions and brigades, and service schools, for the year 1919, as follows:

"Fifteen at $2,000 each, seventy-five at $1,800 each, one hundred and eighty at $1,600 each, one hundred and eighty at $1,400 each, one thousand and fifty at $1,200 each.

"The appropriation for 'Pay of the Army' for the fiscal year 1919 shall be available to pay one thousand two hundred and eighty-nine field clerks at the rate of $1,200 per annum, the minimum or entrance rate fixed by the Army appropriation Act approved July 9, 1918, instead of at $1,000 per annum, the rate appropriated in the said Act."

§ 1987a. (Act Nov. 4, 1918, c. 201, § 1.) Cultivation of lands purchased for Army.

Subsistence of the Army: For subsistence of the Army, including the same objects and under the same limitations specified under this head in the Army appropriation Act for the fiscal year 1919 * *: Provided, That not to exceed $250,000 of this sum is made available for the purposes of developing agricultural activities on lands owned, purchased, or leased for the Army, and such development, together with the sale of any produce or material arising therefrom, shall be made pursuant to such regulations as may be prescribed by the Secretary of War: Provided, That all moneys received by the United States as the proceeds of such sales shall be deposited in the Treasury as a miscellaneous receipt: Provided further, That so much of the Act of July 16, 1892, as provides that no money appropriated for the support of the Army shall be expended for post gardens is suspended during the fiscal year 1919. (40 Stat. 1028.)

These were provisions of the "First Deficiency Appropriation Act, 1919," cited above.

§ 1988aa. (Act May 12, 1917, c. 12.) Instruction additional to military training.

Vocational training: For the employment of the necessary civilian instructors in the most important trades, for the purchase of carpenter's, machinist's, plumber's, mason's, electrician's, and such other tools and equipment as may be required, including machines used in connection with the trades, for the purchase of material and other supplies necessary for instruction and training purposes and the construction of such buildings needed for vocational training in agriculture for shops, storage, and shelter of machinery as may be necessary to carry out the provisions of section twenty-seven of the Act approved June third, nineteen hundred and sixteen, authorizing, in addition to the military training of soldiers while in the active service, means for securing an opportunity to study and receive instruction upon educational lines of such character as to increase their military efficiency and enable them to return to civil life better equipped for industrial, commercial, and general business occupations, part of this instruction to consist of vocational education either in agriculture or the mechanic arts, $250,000: Provided, however, That the Secretary of War may, in his discretion, in order to carry out the last provision, select one or more and not exceeding three regiments of Infantry, Cavalry, or Field Artillery to be stationed at a regimental post within the continental limits of the United States on or before July first, nineteen hundred and seventeen, and may transfer from such regiment to other organizations any enlisted man or men who do not desire educational or vocational training and instruction such as is contemplated by the concluding paragraph of section twenty-seven of the National Defense Act approved June third, nineteen hundred and sixteen, and may transfer thereto from other organizations a number of enlisted men to be selected under such rules and regulations as he may prescribe who do desire such instruction and training or may receive recruits thereto sufficient to bring the enlisted strength of the regiment up to that authorized by law. During such part of the year beginning July first, nineteen hundred and seventeen, and thereafter as the enlisted men of the regiment so selected shall not be engaged on field service or in field training they shall be under training or instruction nine hours of each day, or as near that number of hours as possible, Sundays and holidays excepted, at least three hours of each day to be devoted to military training and six hours of each day, or as nearly that as possible, to educational and vocational training and instruction such as is contemplated by the concluding paragraph of section twenty-seven of the National Defense Act. The educational and vocational training to be had under civilian instructors employed for that purpose under such rules and regulations as the Secretary of War shall prescribe: And provided further, That said civilian instructors, as well as the discipline of the said post, shall be under the jurisdiction of the military authorities, under such rules and regulations as the Secretary of War may prescribe. (40 Stat. 59.)

These were provisions of the Army appropriation act for the fiscal year 1918, cited above.

GENERAL PROVISIONS OF ORGANIZATION

§ 1991a. (Act June 3, 1916, c. 134, § 22, as amended, Act July 9, 1918, c. 143, subchapter XVII, § 2.) Existing laws not affected.

All existing laws pertaining to or affecting the United States Military Academy and civilian or military personnel on duty thereat in any capacity whatever, the officers and enlisted men on the

retired list, the detached and additional officers under the Act of Congress approved March third, nineteen hundred and eleven, recruiting parties, recruit depots and unassigned recruits, service school detachments, United States disciplinary barracks guards, disciplinary organizations, the Philippine Scouts, and Indian scouts shall continue and remain in force except as herein specifically provided otherwise: Provided, That one of the enlisted men at each main recruiting station who has been detached for duty at such station under the provisions of the Act of Congress approved February second, nineteen hundred and one, may, in the discretion of the Secretary of War, have the rank, pay, and allowances of a first sergeant of Infantry. (39 Stat. 181. 40 Stat. 889.)

This section was amended by Act July 9, 1918, c. 143, subchapter XVII, § 2, cited above, by adding thereto the proviso, as set forth above.

§ 1991aa. (Act July 9, 1918, c. 143.) Commissions to citizens of Austrian or German birth.

American citizens of Austrian or German birth, or who were born in alien enemy territory, who have passed the necessary examination and whose loyalty is unquestioned, may, in the discretion of the Commander in Chief of the Army and Navy, be commissioned in the United States Army or Navy. (40 Stat. 869.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 1991b. (Act June 3, 1916, c. 134, § 24.) Increase to be made in five increments.

The provisions of this section are probably superseded by provisions of Act May 18, 1917, c. 15, § 1, which authorize the President to immediately raise, etc., the forces provided for by this section and other sections of the National Defense Act, set forth post, § 2044a.

§ 1991c. (Act May 12, 1917, c. 12.) Immediate increase in Ordnance Department.

Section twenty-four of the national-defense Act approved June third, nineteen hundred and sixteen, is so amended as to authorize the President to organize immediately the whole of the increase in the Ordnance Department authorized by section twelve of said Act, or such part thereof as he may deem necessary. (40 Stat. 47.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

Sections 12 and 24 of the National Defense Act, referred to in this section, are §§ 12 and 24 of Act June 3, 1916, c. 134. See Comp. St. 1916, §§ 1848, 1991b.

§ 1991d. (Act May 12, 1917, c. 12.) Limitation on number of increased officers.

Of the whole number of officers of Cavalry, Field Artillery, Coast Artillery Corps, Infantry, and of Engineers serving with the enlisted force of the Corps of Engineers necessary to fill vacancies created or caused in said arms of the service by reason of the second increment, authorized in said arms by Act of Congress approved June third, nineteen hundred and sixteen, not more than one-fourth shall be appointed or promoted until, exclusive of enlisted men belonging to said arms on June thirtieth, nineteen hundred and sixteen, at least one-fourth of the second increment of enlisted men authorized for said arms by said Act shall have been enlisted; not more than one half of said whole number of officers shall be appointed or promoted until at least one-half of said increment of enlisted men shall have been enlisted; and not more than three-fourths of said whole number of officers shall be appointed or promoted until at least three-fourths of said increment of enlisted men shall have been enlisted. And all officers promoted in accordance with the terms of this proviso shall take rank, re-

spectively, from the dates on which their promotions shall have become lawful under the terms of this proviso. (40 Stat. 44.)

This was a further provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 1995. (R. S. § 1224, as amended, Act Feb. 27, 1877, c. 69, § 1.) Civil employment prohibited.

Leaves of absence.—The Secretary of War is prohibited by this section from granting leave of absence to an officer of the Engineer Corps in order that he may be employed by the Interstate Commerce Commission to assist in the valuation of properties of common carriers under the act of March 1, 1913 (Comp. St. 1916, § 8591). 30 Op. Atty. Gen. 184.

§ 1997aa. (Act May 12, 1917, c. 12.) Detail of officer in aviation section, Signal Corps.

Hereafter nothing in section twenty-five of the National Defense Act of June third, nineteen hundred and sixteen, shall be held to prevent the detail of an officer in the aviation section of the Signal Corps. (40 Stat. 43.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

Section 25 of the National Defense Act, referred to in this section is § 25 of Act June 3, 1916, c. 134. See Comp. St. 1916, § 1997a.

§ 2005a. (Act June 15, 1917, c. 29, § 1.) Enlistment of cooks; for duration of war.

The Secretary of War is authorized to enlist twelve hundred competent cooks as sergeants, first-class, Quartermaster Corps, for the duration of the war only, to be trained as cook instructors and to be employed as such. (40 Stat. 188.)

This was a provision of the urgent deficiency appropriation act for the military and naval establishments on account of war expenses for the fiscal year 1917, cited above.

§ 2007. (R. S. § 1235.) Labor detail.

Construction of section in general.—This section does not apply to the guards on duty at military prisons, where the whole company to which the soldier belongs is engaged on such duty. Schwanz v. U. S., 50 Ct. Cl. 276.

§ 2016a. (Act May 12, 1917, c. 12.) Assignment of officers in Field Artillery for instruction.

Officers in the grade of second lieutenant in the Field Artillery may be assigned, for the period of one year, to batteries stationed at the School of Fire for Field Artillery at Fort Sill, Oklahoma, for the purpose of pursuing courses of practical instruction in field artillery. (40 Stat. 41.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 2016aa. (Act July 9, 1918, c. 143.) Translators for Army Service Schools and School of Fire for Field Artillery, and Infantry School of Arms.

Not exceeding $200 per month may be used for the payment of $100 per month to a translator at the Army Service Schools, Fort Leavenworth, Kansas, and $100 per month to a translator at the School of Fire for Field Artillery, and the Infantry School of Arms, Fort Sill, Oklahoma, to be appointed by the commandants of the schools named, with the approval of the Secretary of War. (40 Stat. 846.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of Act May 12, 1917, c. 12, 40 Stat. 41.

§ 2019a. (Act May 18, 1917, c. 15, § 12.) Sale of alcoholic liquor in or near camps or to officers or men.

The President of the United States, as Commander in Chief of the Army, is authorized to make such regulations governing the prohibition of alcoholic liquors in or near military camps and to the officers and enlisted men of the Army as he may from time to time deem necessary or advisable: Provided, That no person, corporation, partnership, or association shall sell, supply, or have in his or its possession any intoxicating or spirituous liquors at any military station, cantonment, camp, fort, post, officers' or enlisted men's club, which is being used at the time for military purposes under this Act, but the Secretary of War may make regulations permitting the sale and use of intoxicating liquors for medicinal purposes. It shall be unlawful to sell any intoxicating liquor, including beer, ale, or wine, to any officer or member of the military forces while in uniform, except as herein provided. Any person, corporation, partnership, or association violating the provisions of this section of the regulations made thereunder shall, unless otherwise punishable under the Articles of War, be deemed guilty of a misdemeanor and be punished by a fine of not more than $1,000 or imprisonment for not more than twelve months, or both. (40 Stat. 82.)

This section and the section next following are sections 12 and 13 of the Selective Draft Act, cited above. The other sections of said act are set forth post, §§ 2044a–2044k.

The provisions of this section and the following section were extended to the Navy by Act Oct. 6, 1917, c. 92, post, § 2813e.

Notes of Decisions

Indictment.—An indictment charging the unlawful selling of intoxicating liquor to soldiers in uniform is sufficient, though it did not negative exceptions which Secretary of War is authorized to prescribe as to sale of liquor at any military station, etc., for medicinal purposes; it appearing that sales were made outside any military reservation, and it not being shown that any exceptions had been prescribed. Young v. U. S. (C. C. A.) 249 F. 935.

Proof.—In prosecution for sale of liquor to soldiers in uniform, where government's evidence showed sale on date other than that laid in indictment, it was proper to submit to jury question whether sale occurred on date testified to, or on some other day; jury considering testimony as to date on question of witnesses' credibility. Young v. U. S. (C. C. A.) 249 F. 935.

Cited without definite application, U. S. v. Casey (D. C.) 247 F. 362.

§ 2019b. (Act May 18, 1917, c. 15, § 13, as amended, Act July 9, 1918, c. 143, subchapter XIV.) Prostitution near cantonments prohibited.

During the present emergency it shall be unlawful, within such reasonable distance of any military camp, station, fort, post, cantonment, training or mobilization place as the Secretary of War shall determine to be needful to the efficiency and welfare of the Army, and shall designate and publish in general orders or bulletins, to engage in prostitution or to aid or abet prostitution or to procure or solicit for purposes of prostitution, or to keep or set up a house of ill fame, brothel, or bawdy house, or to receive any person for purposes of lewdness, assignation, or prostitution into any vehicle, conveyance, place, structure, or building, or to permit any person to remain for purposes of lewdness, assignation, or prostitution in any vehicle, conveyance, place, structure, or building; and any person, corporation, partnership, or association violating the provisions of this chapter shall, unless otherwise punishable under the Articles of War, be deemed guilty of a misdemeanor and be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment,

and any person subject to military law violating this chapter shall be punished as provided by the Articles of War; and the Secretary of War is hereby authorized, empowered, and directed to do everything by him deemed necessary to suppress and prevent violation thereof. (40 Stat. 83, 885.)

This section was amended by Act July 9, 1918, c. 143, subchapter XIV, cited above, to read as set forth above. As originally enacted said section read as follows: "The Secretary of War is hereby authorized, empowered, and directed during the present war to do everything by him deemed necessary to suppress and prevent the keeping or setting up of houses of ill fame, brothels, or bawdy houses within such distance as he may deem needful of any military camp, station, fort, post, cantonment, training or mobilization place and any person, corporation, partnership, or association receiving or permitting to be received for immoral purposes any person into any place, structure, or building used for the purpose of lewdness, assignation, or prostitution within such distance of said places as may be designated, or shall permit any such person to remain for immoral purposes in any such place, structure, or building as aforesaid, or who shall violate any order, rule, or regulation issued to carry out the object and purpose of this section shall unless otherwise punishable under the Articles of War, be deemed guilty of a misdemeanor and be punished by a fine of not more than $1,000, or imprisonment for not more than twelve months, or both."

Notes of Decisions

Validity.—Under Const. art. 1, § 8, rule of Secretary of War, providing that keeping or setting up of houses of ill fame, etc., within five miles of any military camp, etc., is prohibited, authorized by this section, was not invasion of police power reserved to state, therefore in excess of power of Congress. Pappens v. U. S. (C. C. A.) 252 F. 55.

This section is not invalid as invading reserved police power of states, and was not in excess of powers of Congress, under Const. art. 1, § 8. U. S. v. Casey (D. C.) 247 F. 362; U. S. v. Scott (D. C.) 248 F. 361.

This section does not delegate legislative power to Secretary of War, but empowers him to ascertain and declare the zone within which the statute shall take effect. U. S. v. Casey (D. C.) 247 F. 362; U. S. v. Scott (D. C.) 248 F. 361.

Indictment.—An indictment charging keeping or setting up a house of ill fame within five miles of any military camp, etc., though without averment of the receiving of any persons into the house for the purpose of prostitution, charges a misdemeanor, for though the offense charged is violation of an order or regulation issued by the Secretary of War, the order was made pursuant to this section, making violation of any such order a misdemeanor. Pappens v. U. S. (C. C. A.) 252 F. 55.

Terms "house of ill fame," "bawdy house," and "brothel" being synonymous, indictment charging keeping of all three resorts charges but one offense. U. S. v. Casey (D. C.) 247 F. 362.

Indictment under this section need not negative the exception respecting acts punishable under the Articles of War. U. S. v. Scott (D. C.) 248 F. 361.

Indictment charging conspiracy to violate this section and regulation of Secretary of War, promulgated thereunder, need not set forth regulation of Secretary, for courts will take judicial notice thereof. U. S. v. Casey (D. C.) 247 F. 362.

An indictment under this section was not defective, because not giving the correct date of the regulations prescribed thereunder; they being judicially noticed. U. S. v. Scott (D. C.) 248 F. 361.

Indictment charging that defendants conspired to set up or keep house of ill fame, brothel, or bawdyhouse within prohibited zone of military post, is not duplicitous, as charging several offenses; conspiracy alone being charged. U. S. v. Casey (D. C.) 247 F. 362.

Instructions.—In prosecution for violating rule of Secretary of War prohibiting keeping or setting up of house of ill fame within five miles of military fort, etc., instruction that courts will not sanction conviction of person based upon circumstances showing he was induced by officers to commit the offense, that he might be brought to punishment, sufficiently covered point in defendant's request, though coupled with explanation that, if officers received information crime was being committed secretly, it was their right to ascertain truth. Pappens v. U. S. (C. C. A.) 252 F. 55.

Conviction under state laws.—Conviction under state laws for maintaining brothel located so near military post, camp, etc., as to fall within prohibited zone prescribed by Secretary of War under this section, does not prevent conviction under such act. U. S. v. Casey (D. C.) 247 F. 362.

§ 2019c. (Act July 1, 1918, c. 113, § 1.) Remains of officers, soldiers, civilian employés, and others.

Disposition of remains of officers, soldiers, civilian employees, and so forth: For interment, or of preparation and transportation to their homes or to such national cemeteries as may be designated by proper authority, in the discretion of the Secretary of War, of the remains of officers, cadets, United States Military Academy, including acting assistant surgeons and enlisted men in active service; interment, or of preparation and transportation to their homes, of the remains of civil employees of the Army in the employ of the War Department who die abroad, in Alaska, in the Canal Zone, or on Army transports, or who die while on duty in the field or at military posts within the limits of the United States; interment of military prisoners who die at military posts; removal of remains from abandoned posts to permanent military posts or national cemeteries, including the remains of Federal soldiers, sailors, or marines, interred in fields or abandoned private and city cemeteries; and in any case where the expenses of burial or shipment of the remains of officers or enlisted men of the Army who die on the active list are borne by individuals, where such expenses would have been lawful claims against the Government, reimbursement to such individuals may be made of the amount allowed by the Government for such services out of this sum, but no reimbursement shall be made of such expenses incurred prior to July first, nineteen hundred and ten * *: Provided, That during the continuance of the present war the above provisions shall be applicable in the cases of officers and enlisted men on the retired list of the Army who have died or may hereafter die while on active duty by proper assignment. (40 Stat. 656.)

This was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 2019d. (Act July 9, 1918, c. 143, subchapter VIII.) Care of persons discharged from military service.

The President of the United States is hereby authorized and empowered to make provision for such care and treatment as he may deem advisable of persons discharged from the military or naval forces of the United States on account of physical disability who are citizens of any nation at war with a nation with which the United States is at war; but such provision shall be made only for the citizens of a nation that makes suitable provision for the care and treatment of persons discharged from the military or naval forces on account of physical disability who are citizens of the United States: Provided, That such care and treatment shall in no case exceed the care and treatment authorized by law and regulations for members of the Army and Navy of the United States discharged from the military or naval service for like cause. (40 Stat. 881.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

ORGANIZATION OF VOLUNTEER ARMY

§ 2026g. (Act April 25, 1914, c. 71, § 10.) Recruiting in time of war, etc.; rendezvous and depots; additional volunteer officers for recruiting duty; organization for instruction and discipline.

Cited without definite application, Union Pac. R. Co. v. U. S., 52 Ct. Cl. 226.

SELECTIVE DRAFT ACT

§ 2044a. (Act May 18, 1917, c. 15, § 1.) Organization of all increments of Regular Army; draft of National Guard and National Guard Reserves; draft of additional forces; volunteer divisions.

That in view of the existing emergency, which demands the raising of troops in addition to those now available, the President be, and he is hereby, authorized—

First. Immediately to raise, organize, officer, and equip all or such number of increments of the Regular Army provided by the national defense Act approved June third, nineteen hundred and sixteen, or such parts thereof as he may deem necessary; to raise all organizations of the Regular Army, including those added by such increments, to the maximum enlisted strength authorized by law. Vacancies in the Regular Army created or caused by the addition of increments as herein authorized which can not be filled by promotion may be filled by temporary appointment for the period of the emergency or until replaced by permanent appointments or by provisional appointments made under the provisions of section twenty-three of the national defense Act, approved June third, nineteen hundred and sixteen, and hereafter provisional appointments under said section may be terminated whenever it is determined, in the manner prescribed by the President, that the officer has not the suitability and fitness requisite for permanent appointment.

Second. To draft into the military service of the United States, organize, and officer, in accordance with the provisions of section one hundred and eleven of said national defense Act, so far as the provisions of said section may be applicable and not inconsistent with the terms of this Act, any or all members of the National Guard and of the National Guard Reserves, and said members so drafted into the military service of the United States shall serve therein for the period of the existing emergency unless sooner discharged: Provided, That when so drafted the organizations or units of the National Guard shall, so far as practicable, retain the State designations of their respective organizations.

Third. To raise by draft as herein provided, organize and equip an additional force of five hundred thousand enlisted men, or such part or parts thereof as he may at any time deem necessary, and to provide the necessary officers, line and staff, for said force and for organizations of the other forces hereby authorized, or by combining organizations of said other forces, by ordering members of the Officers' Reserve Corps to temporary duty in accordance with the provisions of section thirty-eight of the national defense Act approved June third, nineteen hundred and sixteen; by appointment from the Regular Army, the Officers' Reserve Corps, from those duly qualified and registered pursuant to section twenty-three of the Act of Congress approved January twenty-first, nineteen hundred and three (Thirty-second Statutes at Large, page seven hundred and seventy-five), from the members of the National Guard drafted into the service of the United States, from those who have been graduated from educational institutions at which military instruction is compulsory, or from those who have had honorable service in the Regular Army, the National Guard, or in the volunteer forces, or from the country at large; by assigning retired officers of the Regular Army to active duty with such force with their rank on the retired list and the full pay and allowances of their grade; or by the appointment of retired officers and enlisted men,

active or retired, of the Regular Army as commissioned officers in such forces: Provided, That the organization of said force shall be the same as that of the corresponding organizations of the Regular Army: Provided further, That the President is authorized to increase or decrease the number of organizations prescribed for the typical brigades, divisions, or army corps of the Regular Army, and to prescribe such new and different organizations and personnel for army corps, divisions, brigades, regiments, battalions, squadrons, companies, troops, and batteries as the efficiency of the service may require: Provided further, That the number of organizations in a regiment shall not be increased nor shall the number of regiments be decreased: Provided further, That the President in his discretion may organize, officer, and equip for each Infantry and Cavalry brigade three machine-gun companies, and for each Infantry and Cavalry division four machine-gun companies, all in addition to the machine-gun companies comprised in organizations included in such brigades and divisions: Provided further, That the President in his discretion may organize for each division one armored motor-car machine-gun company. The machine-gun companies organized under this section shall consist of such commissioned and enlisted personnel and be equipped in such manner as the President may prescribe: And provided further, That officers with rank not above that of colonel shall be appointed by the President alone, and officers above that grade by the President by and with the advice and consent of the Senate: Provided further, That the President may in his discretion recommission in the Coast Guard persons who have heretofore held commissions in the Revenue-Cutter Service or the Coast Guard and have left the service honorably, after ascertaining that they are qualified for service physically, morally, and as to age and military fitness.

Fourth. The President is further authorized, in his discretion and at such time as he may determine, to raise and begin the training of an additional force of five hundred thousand men organized, officered, and equipped, as provided for the force first mentioned in the preceding paragraph of this section.

Fifth. To raise by draft, organize, equip, and officer, as provided in the third paragraph of this section, in addition to and for each of the above forces, such recruit training units as he may deem necessary for the maintenance of such forces at the maximum strength.

Sixth. To raise, organize, officer, and maintain during the emergency such number of ammunition batteries and battalions, depot batteries and battalions, and such artillery parks, with such numbers and grades of personnel as he may deem necessary. Such organizations shall be officered in the manner provided in the third paragraph of this section, and enlisted men may be assigned to said organizations from any of the forces herein provided for or raised by selective draft as by this Act provided.

Seventh. The President is further authorized to raise and maintain by voluntary enlistment, to organize, and equip, not to exceed four infantry divisions, the officers of which shall be selected in the manner provided by paragraph three of section one of this Act: Provided, That the organization of said force shall be the same as that of the corresponding organization of the Regular Army: And provided further, That there shall be no enlistments in said force of men under twenty-five years of age at time of enlisting: And provided further, That no such volunteer force shall be accepted in any unit smaller than a division. (40 Stat. 76.)

This section and the ten sections next following are §§ 1–10 of an act entitled "An act to authorize the President to increase temporarily the Military Establishment of the United States," cited above. Sections 12 and 13

of said act are set forth ante, §§ 2019a, 2019b. Section 14 of said act repeals all inconsistent laws and parts of laws.

Proclamation issued under this section, dated July 3, 1917, as follows:

"Whereas, the United States of America and the Imperial German Government are now at war, and having in view the consequent danger of aggression by a foreign enemy upon the territory of the United States and the necessity for proper protection against possible interference with the execution of the laws of the Union by agents of the enemy, I, Woodrow Wilson, President of the United States by virtue of the authority vested in me by the Constitution and the laws of the United States and through the governors of the respective States, call into the service of the United States as of and from the dates hereinafter respectively indicated all members of the National Guard and all enlisted members of the National Guard Reserve of the following States, who are not now in the service of the United States, except members of staff corps and departments not included in the personnel of tactical organizations, and except such officers of the National Guard as have been or may be specially notified by my authority that they will not be affected by this call, to wit:

"On July 15, 1917, New York, Pennsylvania, Ohio, West Virginia, Michigan, Wisconsin, Minnesota, Iowa, North Dakota, South Dakota and Nebraska;

"On July 25, 1917, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Tennessee, Illinois, Montana, Wyoming, Idaho, Washington and Oregon.

"The members of the National Guard of the various States affected by this call will be concentrated at such places as may be designated by the War Department.

"II. And, under the authority conferred upon me by clause second of section one of the Act of Congress 'to authorize the President to increase temporarily the military establishment of the United States,' approved May 18, 1917, I do hereby draft into the military service of the United States as of and from the fifth day of August, nineteen hundred and seventeen, all members of the National Guard and all enlisted members of the National Guard Reserve of the following States, except members of staff corps and departments not included in the personnel of tactical organizations, and except such other officers of the National Guard as have been or may be specially notified by my authority that they will not be drafted, to wit:

"New York, Pennsylvania, Ohio, West Virginia, Michigan, Wisconsin, Minnesota, Iowa, North Dakota, South Dakota, Nebraska, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Tennessee, Illinois, Montana, Wyoming, Idaho, Washington, Oregon, Indiana, Kentucky, Georgia, Florida, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, Texas, Missouri, Kansas, Colorado, New Mexico, Arizona, Utah and California.

"III. All persons hereby drafted shall on and from the fifth day of August nineteen hundred and seventeen, stand discharged from the militia, and, under the terms of section 2 of the Act of May 18, 1917, be subject to the laws and regulations governing the Regular Army, except as to promotions, so far as such laws and regulations are applicable to persons whose permanent retention in the military service on the active or retired list is not contemplated by law.

"IV. The members of each company, battalion, regiment, brigade, division, or other organizations of the National Guard hereby drafted into the military service of the United States shall be embodied in organizations corresponding to those of the Regular Army. The officers not above the rank of colonel of said organizations of the National Guard who are drafted and whose offices are provided for in like organizations of the Regular Army, are hereby appointed officers in the Army of the United States in the arm, staff corps or department, and in the grades in which they now hold commission as officers of the National Guard, such appointments to be effective, subject to acceptance, on and from the fifth day of August, nineteen hundred and seventeen, and each of them, subject to such acceptance, is hereby assigned as of said date to the organization in the Army of the United States composed of those who were members of the organization of the National Guard in which at the time of draft he held a commission. The noncommissioned officers of the organizations of the National Guard the members of which are hereby drafted are hereby appointed noncommissioned officers in their present grade in the organizations of the Army composed of said members and shall in each case have the same relative rank as heretofore; and all other enlisted men are hereby confirmed in the Army of the United States in the grades and ratings held by them in the National Guard in all cases where such grades and ratings correspond to grades and ratings provided for in like organizations of the Regular Army, all such appointments of noncommissioned offi-

cers and confirmations of other enlisted men in their grades to be without prejudice to the authority of subordinate commanders in respect of promotions, reductions and changes in enlisted personnel.

"V. Each organization of the military force hereby created will, until further orders, bear the same name and designation as the former organization of the National Guard of whose members it is composed.

"VI. All necessary orders for combining the organizations created by embodying therein members of the National Guard and National Guard Reserve hereby drafted into the military service of the United States into complete tactical units will be issued by the War Department."

Proclamation under this section:

May 28, 1918, as follows, omitting formal portions:

"Now, therefore, I, Woodrow Wilson, President of the United States of America by virtue of the powers conferred upon me by the said acts of Congress, do hereby draft into the military service of the United States, to serve therein for the period of the existing emergency unless sooner discharged, as of and from the first day of June, nineteen hundred and eighteen, all members of the First and Second Regiments of Infantry of the National Guard of the territory of Hawaii and all members of the medical personnel of said National Guard lawfully attached to said regiments.

"All persons hereby drafted shall on and from the first day of June, nineteen hundred and eighteen, stand discharged from the militia, and, in accordance with the provisions of said act of May eighteenth, nineteen hundred and seventeen, shall on and from said date be subject to the laws and regulations governing the Regular Army, except as to promotions, so far as such laws and regulations are applicable to persons whose permanent retention in the military service on the active or retired list is not contemplated by existing law.

"The members of each company, battalion and regiment, and of said medical personnel attached thereto, hereby drafted into the military service of the United States shall be embodied in organizations corresponding to those of the Regular Army. The officers of said organizations and staff department who are drafted and whose offices are provided for in like organizations of the Regular Army are hereby appointed officers in the Army of the United States in the arm or department and in the grades in which they now hold commissions as officers of said National Guard, such appointments to be effective, subject to acceptance, on and from the first day of June, nineteen hundred and eighteen, and each of them, subject to such acceptance, is hereby assigned as of said date to the organization in the Army of the United States composed of those who were members of the National Guard of the territory of Hawaii. The noncommissioned officers of said organizations the members of which are hereby drafted, and all noncommissioned officers of the medical personnel of said National Guard who are hereby drafted, are hereby appointed noncommissioned officers in their present grade in the organizations of the Army composed of said members, or in the corresponding staff department thereof, and shall in each case have the same relative rank as heretofore; and all other enlisted men in said organizations are hereby confirmed in the Army of the United States in the grades and ratings held by them in the National Guard of the territory of Hawaii in all cases where such grades and ratings correspond to grades and ratings provided for in like organizations of the Regular Army, all such appointments of noncommissioned officers and confirmations of other enlisted men in their grades to be without prejudice to the authority of subordinate commanders in respect to promotions, reductions, and changes in enlisted personnel.

"Each of said regiments of said National Guard of the territory of Hawaii and each organization thereof will, until further orders, bear the same name and designation as was borne by it while a part of the National Guard of the territory of Hawaii."

Further proclamation, issued under this section, dated November 7, 1918, drafting certain coast artillery companies of the National Guard, Virginia, into the military service of the United States. And see proclamation, under § 3048a, post.

Notes of Decisions

Validity.—Selective Draft Act is in no way contrary to the letter or spirit of the Constitution, nor to any intelligent conception of free government. Sugar v. U. S. (C. C. A.) 252 F. 74.

In view of the revolutionary practice of raising armies by draft, and of the provisions found in Const. art. 2, § 2, etc., and despite Amendments 5 and 13, the Selective Service Act is valid; the government having power to raise armies by draft. U. S. v. Olson (D. C.) 253 F. 233.

Under Const. art. 1, § 8, and article 6, Congress has power to raise an army by conscription, and this act is valid. Arver v. U. S., 38 S. Ct. 159, 245 U. S. 366, Ann. Cas. 1918B, 856, 62 L. Ed.

349, L. R. A. 1918C, 361; Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280; U. S. v. Sugar (D. C.) 243 F. 423.

The provision in terms declaring President "authorized" to raise army held, in view of preceding words and section, National Defense Act June 3, 1916, § 2 (Comp. St. 1916, § 1882a), and Joint Resolution April 6, 1917, not to delegate the power vested in Congress to raise an army, but to merely commit to him execution of its scheme. Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280; U. S. v. Stephens (D. C.) 245 F. 956.

This act does not impose slavery or involuntary servitude, in violation of Const. Amend. 13. Arver v. U. S., 38 S. Ct. 159, 245 U. S. 366, 62 L. Ed. 349, L. R. A. 1918C, 361, Ann. Cas. 1918B, 856; Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280; U. S. v. Sugar (D. C.) 243 F. 423; Story v. Perkins (D. C.) 243 F. 997, judgment affirmed Jones v. Same, 38 S. Ct. 166, 245 U. S. 390, 62 L. Ed. 358; Claudius v. Davie (Cal.) 165 P. 689.

Selective Draft Act, both as respects citizens and declarant aliens, is not in violation of Const. U. S. Amend. 13, as imposing involuntary servitude. U. S. v. Bell (D. C.) 248 F. 992.

The Selective Service Act is not in violation of Const. Amend. 5, forbidding the deprivation of property without due process of law, for no one has, in a just sense, a property right in his office or employment. U. S. v. Olson (D. C.) 253 F. 233.

Under Const. art. 1, § 8, National Defense Act June 3, 1916 (Comp. St. § 1715a), and this act, the President may draft compulsorily into the federal service officers and enlisted men of the National Guard, and Congress had authority to confer such power. Ex parte Dostal (D. C.) 243 F. 664.

As Selective Draft Act is not ex post facto law as to citizens, it cannot be deemed ex post facto legislation as to aliens; for, while Congress could not affect alien's right to come into country by change thereafter in requirements of admission, nevertheless in all other respects his status after entry is same as that of citizen. U. S. v. Bell (D. C.) 248 F. 992.

Constitutionality of Conscription Act, § 1, authorizing drafting of members of national guard, a separable portion of the act, cannot be questioned by one not affected by such part. U. S. v. Sugar (D. C.) 243 F. 423.

— Drafting for foreign service.—When Congress exercises its power to call a citizen into the army without his consent, the army into which he enters is not limited to services such as those for which it is claimed the militia may only be used. Arver v. U. S., 38 S. Ct. 159, 245 U. S. 366, Ann. Cas. 1918B, 856, 62 L. Ed. 349, L. R. A. 1918C, 361; Cox v. Wood, 38 S. Ct. 421, 247 U. S. 3, 62 L. Ed. 947.

This section in view of National Defense Act, § 111 (Comp. St. 1916, § 3045), held not to call forth the militia as such, authorized by Const. art. 1, § 8, cl. 15, for certain purposes only. U. S. v. Sugar (D. C.) 243 F. 423.

The common-law right to "remain within the realm" cannot prevail against explicit provision of an act of Congress. Story v. Perkins (D. C.) 243 F. 997, judgment affirmed Jones v. Same, 38 S. Ct. 166, 245 U. S. 390, 62 L. Ed. 358.

— Delegation of authority to make rules.—See notes to section 2 of this act, post, § 2044b.

National guard.—Where petitioner, after enlistment in National Guard, became soldier of United States army, being drafted into service pursuant to National Defense Act June 3, 1916, § 111 (Comp. St. 1916, § 3045), and this section, on August 5, 1917, at which time he was examined by federal medical officers and accepted, his status is determined by draft of August 5, 1917, and irregularities at time of his previous examination and voluntary enlistment are immaterial. Blackington v. U. S., 248 F. 124, 160 C. C. A. 264, affirming order (D. C.) Ex parte Blackington, 245 F. 801.

Under National Defense Act, §§ 58, 70, 111 (Comp. St. 1916, §§ 3044, 3044i, 3045), and this act, member of National Guard, though not consenting to be mustered into federal service under presidential order, held a soldier in the United States army, and subject to military trial or punishment. Ex parte Dostal (D. C.) 243 F. 664.

Status of men of military age.—Selective Draft Act does not give persons within the draft ages any military status solely by virtue of their being within such ages, but they retain their ordinary status as civilians and citizens until it is changed through the operation of the law by their selection for service. Ex parte McDonald (D. C.) 253 F. 99; Ex parte Henry (D. C.) 253 F. 208.

Status of men in service.—An elector of Nebraska, entering military service of the United States under this act, is not in the regular army, within Const. Neb. art. 7, § 3, and may exercise the elective franchise at such places and under such conditions as may be provided by law. State v. Moorhead (Neb.) 167 N. W. 70.

Voter who at 19 left father's house in city election district and enlisted, and who left some personal effects and visited at his home after enlistment, could claim father's house as his voting resi-

dence. People ex rel. Brush v. Schum (Sup.) 168 N. Y. S. 391, 102 Misc. Rep. 143.

Offenses.—See notes to section 5 of this act, post, § 2044f.

Cited without definite application, Deason v. U. S. (C. C. A.) 254 F. 259; U. S. ex rel. Troiani v. Heyburn (D. C.) 245 F. 360; U. S. v. Mitchell (D. C.) 248 F. 997.

§ 2044b. (Act May 18, 1917, c. 15, § 2, as amended, Act July 9, 1918, c. 143, subchapter XII, § 4, and Act Aug. 31, 1918, c. 166, § 1.) Voluntary enlistment or draft to maintain National Guard organizations; selective draft for other forces; persons subject to; quotas, etc.

The enlisted men required to raise and maintain the organizations of the Regular Army and to complete and maintain the organizations embodying the members of the National Guard drafted into the service of the United States, at the maximum legal strength as by this Act provided, shall be raised by voluntary enlistment, or if and whenever the President decides that they can not effectually be so raised or maintained, then by selective draft; and all other forces hereby authorized, except as provided in the seventh paragraph of section one, shall be raised and maintained by selective draft exclusively; but this provision shall not prevent the transfer to any force of training cadres from other forces. Such draft as herein provided shall be based upon liability to military service of all male citizens and male persons residing in the United States, not alien enemies, who have declared their intention to become citizens, between the ages of eighteen and forty-five, both inclusive, and shall take place and be maintained under such regulations as the President may prescribe not inconsistent with the terms of this Act: Provided, That the President may draft such persons liable to military service in such sequence of ages and at such time or times as he may prescribe: Provided further, That a citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States, which shall operate and be held to cancel his declaration of intention to become an American citizen, and he shall forever be debarred from becoming a citizen of the United States. Quotas for the several States, Territories, and the District of Columbia, or subdivisions thereof, shall be determined in proportion to the population thereof, and credit shall be given to any State, Territory, District, or subdivision thereof, for the number of men who were in the military service of the United States as members of the National Guard on April first, nineteen hundred and seventeen, or who have since said date entered the military service of the United States from any such State, Territory, District, or subdivision, either as members of the Regular Army or the National Guard. All persons drafted into the service of the United States and all officers accepting commissions in the forces herein provided for shall, from the date of said draft or acceptance, be subject to the laws and regulations governing the Regular Army, except as to promotions, so far as such laws and regulations are applicable to persons whose permanent retention in the military service on the active or retired list is not contemplated by existing law, and those drafted shall be required to serve for the period of the existing emergency unless sooner discharged: Provided, That the President is authorized to raise and maintain by voluntary enlistment or draft, as herein provided, special and technical troops as he may deem necessary, and to embody them into organizations and to officer them as provided in the third paragraph of section one and section nine of this Act.

Organizations of the forces herein provided for, except the Regular Army and the divisions authorized in the seventh paragraph of section one, shall, as far as the interests of the service permit, be composed of men who come, and of officers who are appointed from, the same State or locality. (40 Stat. 77, 885, 955.)

This section was amended by Act July 9, 1918, c. 143, subchapter XII, § 4, cited above, by changing the second sentence of the section to read as set forth above. As originally enacted, said sentence read as follows: "Such draft as herein provided shall be based upon liability to military service of all male citizens, or male persons not alien enemies who have declared their intention to become citizens, between the ages of twenty-one and thirty years, both inclusive, and shall take place and be maintained under such regulations as the President may prescribe not inconsistent with the terms of this Act." It was again amended by Act Aug. 31, 1918, c. 166, § 1, also cited above, by again changing said second sentence to read as set forth above. As amended by said Act July 9, 1918, c. 143, subchapter XII, § 4, said sentence read as follows: "Such draft as herein provided shall be based upon liability to military service of all male citizens or male persons not alien enemies who have declared their intention to become citizens between the ages of twenty-one and thirty years, both inclusive, and shall take place and be maintained under such regulations as the President may prescribe not inconsistent with the terms of this Act: Provided, That a citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States, which shall operate and be held to cancel his declaration of intention to become an American citizen and he shall forever be debarred from becoming a citizen of the United States."

Notes of Decisions

Validity and construction in general.—Selective Draft Act cannot be declared invalid in its operation as to declarant aliens, who are still foreign subjects, on theory that it is contrary to public policy of United States to recognize right of any nation to impress into military service subjects of another nation, for courts have no power to declare law unconstitutional because it is in contravention with so-called law of nations. U. S. v. Bell (D. C.) 248 F. 992.

It is not within jurisdiction of courts to determine action of legislative or executive departments in retaining in military service Austrian alien with first papers, who after declaration of war with Austria claimed that he became enemy alien, not subject to military service under Selective Draft Act. Halpern v. Commanding Officer of National Army at Camp Upton, N. Y. (D. C.) 248 F. 1003.

The word "liability" in this section, providing that the draft "shall be based upon liability to military service," etc., is used in its ordinary sense of obligation or responsibility. Ex parte Lamachia (D. C.) 250 F. 814.

— Authority to make rules and regulations.—This section is valid, in so far as it authorized the President to make rules and regulations for its enforcement having effect of law, and is not open to attack as delegation of legislative authority. Arver v. U. S., 38 S. Ct. 159, 245 U. S. 366, Ann. Cas. 1918B, 856, 62 L. Ed. 349, L. R. A. 1918C, 361; Franke v. Murray, 248 F. 865, 160 C. C. A. 623; U. S. v. Olson (D. C.) 253 F. 233; Rhodes v. Tatum (Tex. Civ. App.) 206 S. W. 114.

Alien enemies.—Subject of Austria-Hungary, unless excused as nondeclarant alien, is not entitled to exemption because, by reason of subsequent declaration of war against Austria-Hungary, he had become alien enemy. Ex parte Blazekovic (D. C.) 248 F. 327.

Where alien Austrian, who, had first papers, was certified for military service under Selective Draft Act prior to declaration of war with Austria, he is not, as he was subject to draft at time certified, entitled to release on habeas corpus, on ground that subsequent declaration of war made him alien enemy. U. S. v. Bell (D. C.) 248 F. 1002; Halpern v. Commanding Officer of National Army at Camp Upton, N. Y. (D. C.) 248 F. 1003.

Nondeclarant aliens.—Alien, who had taken out his first papers, but had allowed seven years to elapse, and thus lost right to become at once citizen of United States, must, having remained in country, be presumed declarant alien, subject to military service, within terms of Selective Draft Act. U. S. v. Mitchell (D. C.) 248 F. 997.

Alien, who had filed declaration of intention more than seven years ago, and whose petition for admission to citizenship was denied on ground that he illegally sold intoxicating liquor, is still a declarant, within Selective Draft Act. Gazzola v. Commanding Officer of Ft. Totten, Bayside, Long Island, N. Y. (D. C.) 248 F. 1001.

Under this section, and sections 2044d, 2044e, post, a nondeclarant alien, who

did not present his claim for exemption to local or district boards and failed thereafter to apply for a reopening of his case, pursuant to regulations, and who has been certified into military service, is not entitled to exemption on writ of habeas corpus. Ex parte Hutflis (D. C.) 245 F. 798; U. S. v. Finley (D. C.) 245 F. 871; U. S. v. Bell (D. C.) 248 F. 995; Ex parte Lamachia (D. C.) 250 F. 814; Ex parte Tinkoff (D. C.) 254 F. 222.

But see Ex parte Beck (D. C.) 245 F. 967, holding that under Selective Draft Act, and in view of Pamphlet 1917, form 19, p. 18, of War Department, aliens who have not declared their intention to become citizens are not subject to draft, and cannot, where their alienage is shown, though they did not claim their exemption within time fixed, be certified into military service.

As Conscription Act provides for exemption of nondeclarant aliens, and as such aliens would prove unsatisfactory soldiers if unwilling to serve, it is against policy of law for local draft boards to attempt to include such aliens in army; it being for benefit of service that they be excluded. Ex parte Blazekovic (D. C.) 248 F. 327.

The courts will not release a nondeclarant alien, who by reason of his lack of understanding of English fails to comply with the draft law; Congress having plainly intimated therein that it will use those who are willing and those who do not comply with the statute in obtaining a discharge. Lehto v. Scott (D. C.) 251 F. 767.

See, also, notes to section 4 of this act, post, § 2044d.

Treaties exempting aliens from service.—As Conscription Act declares all laws in conflict to be suspended, treaty entered into before enactment of statute, exempting alien from military service, does not, unless he was duly exempted by act, entitle him to such exemption, for treaty, if in conflict with act, was repealed. Ex parte Blazekovic (D. C.) 248 F. 327.

Mere fact alien was exempt from military service by treaty with his government, entered into by United States before enactment of Conscription Act, does not necessarily entitle him to exemption. Summertime v. Local Board, Division No. 10 (D. C.) 248 F. 832.

A resident subject of Spain of registration age, who has declared his intention to become a citizen, held subject to the Selective Service Law, although by the treaty of April 20, 1903, he is expressly exempted from compulsory military service in the United States. Ex parte Larrucea (D. C.) 249 F. 981.

Status of drafted men.—Under this section and Articles of War, art. 2 (Comp. St. 1916, § 2308a), one certified into military service under Draft Act is, from date he was certified, subject to military law, and to punishment as deserter on account of his refusal to obey summons, and cannot escape liability because he has not taken required oath. Franke v. Murray, 248 F. 865, 160 C. C. A. 623.

See, also, notes to section 5 of this act, post, § 2044e.

Powers of local and district boards.—Under this section and sections 2044d, 2044e, post, local and district boards have jurisdiction to determine whether a registrant is an enemy alien, not subject to be drafted into military service. U. S. v. Kinkead (D. C.) 248 F. 141, order affirmed (C. C. A.) 250 F. 692.

See, also, notes to sections 4 and 5 of this act, post, §§ 2044d, 2044e.

—— **Review of decisions.**—Under this section and section 2044d, post, and the presidential regulations of June 30, 1917, decision of local boards against claim for exemption as alien held final where a full hearing was granted. Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280.

Decision of boards created under Conscription Act held reviewable if a fair hearing is denied, or if they act without or in excess of their jurisdiction, or abuse their discretion, or if the proceedings are manifestly unfair. Id.

—— **Habeas corpus proceedings.**—Writ of habeas corpus will not issue, when the investigation will in effect be an appellate review of what has been determined by some other tribunal of competent jurisdiction, as determination by the established military tribunal of liability to draft, depending on citizenship in the absence of arbitrary denial of rights. U. S. v. Heyburn (D. C.) 248 F. 360.

Under this section and sections 2044d, 2044e, post, and Rules and Regulations §§ 18, 20, relator, nondeclarant alien who did not claim exemption from military service within seven days after notification, held to have had fair hearing before local and district boards which certified him for military service and hence not entitled to habeas corpus on that ground. U. S. v. Finley (D. C.) 245 F. 871.

Release of relator, improperly certified under Selective Draft Act into military service, cannot be denied on ground that respondent, an army officer holding relator in custody, might on complying with writ be exposed to punishment for disobedience of orders of superiors; respondent's remedy being by appeal. Ex parte Beck (D. C.) 245 F. 967.

Declarant alien, certified into military service under Selective Draft Act may by habeas corpus raise question of propriety of his certification. U. S. v. Bell (D. C.) 248 F. 992.

Although under section 79, rule 1, subd. F, Rules and Regulations of the Selective Service Act a nondeclarant

alien should be placed in class V—F, which exempts from service, in view of section 100, providing for correction of questionnaires, and section 101, enjoining local boards to satisfy themselves that a registrant claiming exemption as an alien is not a citizen, the burden of proof rests on complainant in habeas corpus to prove his alienage beyond a reasonable doubt. United States ex rel. Kotzen v. Local Exemption Board No. 157 of City of New York (D. C.) 252 F. 245.

Cited without definite application, U. S. v. Miller (D. C.) 249 F. 985.

§ 2044c. (Act May 18, 1917, c. 15, § 3.) Bounties and substitutes.

No bounty shall be paid to induce any person to enlist in the military service of the United States; and no person liable to military service shall hereafter be permitted or allowed to furnish a substitute for such service; nor shall any substitute be received, enlisted, or enrolled in the military service of the United States; and no such person shall be permitted to escape such service or to be discharged therefrom prior to the expiration of his term of service by the payment of money or any other valuable thing whatsoever as consideration for his release from military service or liability thereto. (40 Stat. 78.)

See note to § 2044a.

§ 2044d. (Act May 18, 1917, c. 15, § 4, as amended, Act Aug. 31, 1918, c. 166, § 2.) Exemptions from selective draft; local and district boards.

The Vice President of the United States, the officers, legislative, executive, and judicial, of the United States and of the several States, Territories, and the District of Columbia, regular or duly ordained ministers of religion, students who at the time of the approval of this Act are preparing for the ministry in recognized theological or divinity schools, and all persons in the military and naval service of the United States shall be exempt from the selective draft herein prescribed; and nothing in this Act contained shall be construed to require or compel any person to serve in any of the forces herein provided for who is found to be a member of any well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organizations, but no person so exempted shall be exempted from service in any capacity that the President shall declare to be noncombatant; and the President is hereby authorized to exclude or discharge from said selective draft and from the draft under the second paragraph of section one hereof, or to draft for partial military service only from those liable to draft as in this Act provided, persons of the following classes: County and municipal officials; custom-house clerks; persons employed by the United States in the transmission of the mails; artificers and workmen employed in the armories, arsenals, and navy yards of the United States, and such other persons employed in the service of the United States as the President may designate; pilots; mariners actually employed in the sea service of any citizen or merchant within the United States; persons engaged in industries, occupations, or employments, including agriculture, found to be necessary to the maintenance of the Military Establishment or the effective operation of the military forces or the maintenance of national interest during the emergency; those in a status with respect to persons dependent upon them for support which renders their exclusion or discharge advisable; and those found to be physically or morally deficient. No exemption or exclusion shall continue when a cause therefor no longer exists: Provided, That notwithstanding the exemptions enumerated here-

in, each State, Territory, and the District of Columbia shall be required to supply its quota in the proportion that its population bears to the total population of the United States.

The President is hereby authorized, in his discretion, to create and establish throughout the several States and subdivisions thereof and in the Territories and the District of Columbia local boards, and where, in his discretion, practicable and desirable, there shall be created and established one such local board in each county or similar subdivision in each State, and one for approximately each thirty thousand of population in each city of thirty thousand population or over, according to the last census taken or estimates furnished by the Bureau of Census of the Department of Commerce. Such boards shall be appointed by the President, and shall consist of three or more members, none of whom shall be connected with the Military Establishment, to be chosen from among the local authorities of such subdivisions or from other citizens residing in the subdivision or area in which the respective boards will have jurisdiction under the rules and regulations prescribed by the President. Such boards shall have power within their respective jurisdictions to hear and determine, subject to review as hereinafter provided, all questions of exemption under this Act, and all questions of or claims for including or discharging individuals or classes of individuals from the selective draft, which shall be made under rules and regulations prescribed by the President, except any and every question or claim for including or excluding or discharging persons or classes of persons from the selective draft under the provisions of this Act authorizing the President to exclude or discharge from the selective draft "Persons engaged in industries, occupations, or employments, including agriculture, found to be necessary to the maintenance of the Military Establishment, or the effective operation of the military forces, or the maintenance of national interest during the emergency.

The President is hereby authorized to establish additional boards, one in each Federal judicial district of the United States, consisting of such number of citizens, not connected with the Military Establishment, as the President may determine, who shall be appointed by the President. The President is hereby authorized, in his discretion, to establish more than one such board in any Federal judicial district of the United States, or to establish one such board having jurisdiction of an area extending into more than one Federal judicial district.

Such district boards shall review on appeal and affirm, modify, or reverse any decision of any local board having jurisdiction in the area in which any such district board has jurisdiction under the rules and regulations prescribed by the President. Such district boards shall have exclusive original jurisdiction within their respective areas to hear and determine all questions or claims for including or excluding or discharging persons or classes of persons from the selective draft, under the provisions of this Act, not included within the original jurisdiction of such local boards.

The decisions of such district boards shall be final except that, in accordance with such rules and regulations as the President may prescribe, he may affirm, modify or reverse any such decision.

Any vacancy in any such local board or district board shall be filled by the President, and any member of any such local board or district board may be removed and another appointed in his place by the President, whenever he considers that the interest of the nation demands it.

The President shall make rules and regulations governing the organization and procedure of such local boards and district

boards, and providing for and governing appeals from such local boards to such district boards, and reviews of the decisions of any local board by the district board having jurisdiction, and determining and prescribing the several areas in which the respective local boards and district boards shall have jurisdiction, and all other rules and regulations necessary to carry out the terms and provisions of this section, and shall provide for the issuance of certificates of exemption, or partial or limited exemptions, and for a system to exclude and discharge individuals from selective draft. (40 Stat. 78, 955.)

This section was amended by Act Aug. 31, 1918, c. 166, § 2, cited above, by making the provision, "persons engaged in industries including agriculture, found to be necessary to the maintenance of the Military Establishment or the effective operation of the military forces or the maintenance of national interest during the emergency," wherever it occurred in the section, read as set forth above.

Act Nov. 21, 1918, c. 212, 40 Stat. 1045, entitled "An Act to enable the Secretary of Agriculture to carry out, during the fiscal year ending June thirtieth, nineteen hundred and nineteen, the purposes of the Act entitled 'An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products,' and for other purposes," making appropriations to carry out the provisions of Act Aug. 10, 1917, c. 52, 40 Stat. 273, provides that no part of the money therein appropriated shall be used in paying salary or expenses of any man who, on account of employment in which he is or may be engaged under the provisions of the act, has been certified by the Secretary of Agriculture or by any other official of the Department of Agriculture for deferred classification, or by action of any other Federal official or authority has been or may be placed in a deferred classification under Act May 18, 1917, c. 15, 40 Stat. 76, or any act amendatory thereof.

Notes of Decisions

Validity.—See, also, notes to section 1 of this act, ante, § 2044a.

This section does not deny due process of law to one seeking exemption as an alien. Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280.

While, under Selective Draft Act, questions of exemption on account of membership in religious sect opposed to war are for determination of local and district boards, and their finding cannot be reviewed by courts, unless they were without jurisdiction, or denied fair hearing, registrants are not deprived of due process of law. Franke v. Murray, 248 F. 865, 160 C. C. A. 623.

Nondeclarant alien, although by terms of Conscription Act exempt from service, is not denied due process of law because required to present and secure his exemption through exemption boards provided for. Ex parte Blazekovic (D. C.) 248 F. 327.

This section is not void as conferring judicial power on administrative officers. Arver v. U. S., 38 S. Ct. 159, 245 U. S. 366, 62 L. Ed. 349, L. R. A. 1918C, 361, Ann. Cas. 1918B, 856. Nor as delegating to the President legislative authority. U. S. v. Sugar (D. C.) 243 F. 423.

The boards which this section authorizes the President to create are not "courts," creation of which Const. art. 3, § 1, vests in Congress. U. S. v. Stephens (D. C.) 245 F. 956.

This section is not a "law respecting an establishment of religion, or prohibiting the free exercise thereof," inhibited by Const. Amend. 1. Arver v. U. S., 38 S. Ct. 159, 245 U. S. 366, 62 L. Ed. 349, L. R. A. 1918C, 361, Ann. Cas. 1918B, 856; U. S. v. Stephens (D. C.) 245 F. 956.

—— **Separable provisions.**—Were provision exempting clergy and divinity students unconstitutional, it, while falling, would not affect the rest of the act, clearly separable therefrom. U. S. v. Stephens (D. C.) 245 F. 956.

If provision of this section for exempting persons serving in any capacity that President declares noncombatant, contemplated involuntary servitude, in contravention of Const. Amend. 13, it, being separable, would not affect other provisions. Id.

Regulations.—The regulations prescribed by the President under this section for ascertaining the status of persons selected thereunder, and their right to exemption will be taken judicial cognizance of by the courts, and have the force of law. U. S. v. Miller (D. C.) 249 F. 986.

Draft boards and members thereof.—The boards which this section authorizes the President to create are not "courts." U. S. v. Stephens (D. C.) 245 F. 956.

A member of a local draft board is an "officer of the United States," or a person acting on behalf of the United States in an official function, within the meaning of Criminal Code, § 39 (Comp. St. 1916, § 10203), making it an offense

to give or offer a bribe to any such officer or person. U. S. v. Bordonaro (D. C.) 253 F. 477.

Exemptions.—Registrant, whose questionnaire showed his ministerial work ended shortly after registration and before filing the questionnaire, held not entitled to deferred classification under the regulations defining an "ordained or regular minister" as a person who has been ordained, etc., or one who as his customary vocation preaches, etc. Ex parte Short (D. C.) 253 F. 839.

Under this section dependency is not a matter of which the courts can take judicial cognizance. Ex parte Dostal (D. C.) 243 F. 664.

A "dependent" is a person who is not self-sustaining and relies on another for support, and under the Selective Service Act and regulations, providing for exemptions to registrants having dependent parents, the exemption should not be granted if the parent is able to maintain himself, either from property which he owns or from his labor. U. S. v. McHugh (D. C.) 253 F. 224.

Under section 72, rule 5, of the presidential regulations for enforcement of Selective Service Law May 18, 1917, where the circumstances are such as to induce a belief that the marriage of a registrant was for the primary purpose of evading military service, he has the burden of showing to the draft board that such was not the case. Boitano v. District Board, Northern Dist. No. 3, Sacramento, Cal. (D. C.) 250 F. 812.

The marriage of a person subject to selective draft, after his registration, cannot defeat the government's right to his services. Ex parte Tinkoff (D. C.) 254 F. 222.

Person enlisting in the army and subsequently purchasing his release held not exempt from draft under this section or independent of it. Ex parte Cohen (D. C.) 245 F. 667.

—— **Aliens.**—Under this section and section 2044e, post, nondeclarant aliens are not automatically excluded from selective draft, but, being required to register, must present and obtain their exemptions through boards provided to determine questions of exemption. Ex parte Hutflis (D. C.) 245 F. 798; U. S. v. Finley (D. C.) 245 F. 871; Ex parte Blazekovic (D. C.) 248 F. 327.

That Conscription Act, which provides for exemption of nondeclarant aliens, requires them to present their claim for exemption to exemption boards created by President pursuant to act, does not deprive such aliens of treaty rights securing them against liability for military service. Ex parte Blazekovic (D. C.) 248 F. 327.

A nondeclarant alien, who did not present his claim for exemption to local or district boards and failed thereafter to apply for a reopening of his case, pursuant to regulations, and who has been certified into military service, is not entitled to exemption on writ of habeas corpus. U. S. v. Bell (D. C.) 248 F. 995.

Neither the draft board nor the court in habeas corpus proceedings can base action in favor of alien claimants to exemption on alleged ignorance of facts or law. Ex parte Tinkoff (D. C.) 254 F. 222.

See, also, notes to section 1 of this act, ante, § 2044a.

Classification.—One subject to the Selective Draft Act, who had been fully pardoned after being convicted of a felony, should not be placed in a deferred classification pursuant to section 21 of the original regulations or section 79 of those of November 8, 1917. U. S. v. Commanding Officer of 78th Division, U. S. A. (D. C.) 252 F. 314.

A man inducted into the service under the Selective Draft Act, but who was a few days afterward discharged through error, held properly classified in the same position he occupied before the error was committed. Ex parte Fischer (D. C.) 253 F. 159.

Proceedings before local and district boards.—Special tribunals, such as local and district boards created by the Selective Draft Act, are quasi judicial bodies of inferior and limited jurisdiction, and have authority to hear and determine only such matters as the law directs. Ex parte Beck (D. C.) 245 F. 967.

Members of local draft board have no authority to waive any of the provisions of Selective Draft Act, or regulations made thereunder. U. S. v. Finley (D. C.) 245 F. 871.

In view of the regulations thereunder, Selective Service Act, § 4, declaring that local boards shall have power to determine all questions including or discharging individuals, does not confer on such boards the power to determine whether an individual subject to the act failed to register. Ex parte Fuston (D. C.) 253 F. 90.

Under Selective Draft Act, §§ 2, 4, 5, local and district boards have jurisdiction to determine whether a registrant is an enemy alien, not subject to be drafted into military service. U. S. v. Kinkead (D. C.) 248 F. 141, order affirmed (C. C. A.) 250 F. 692.

Proceedings on an alien's claim for exemption under the Selective Draft Act are analogous to proceedings before boards of immigration, and the applicants have an unquestionable right to a fair hearing. Ex parte Hutflis (D. C.) 245 F. 798.

As a local board provided for by the Selective Service Act is a public body, exercising quasi judicial functions in passing on the right of exemption, a court of chancery has no jurisdiction to interfere with such a board's exercise

of its function. Bonifaci v. Thompson (D. C.) 252 F. 878.

Where relator was duly certified into military service by local and district boards in accordance with Selective Draft Act, he cannot obtain release because he had convinced adjutant general of his state that examination by medical officers of local board had not been sufficient, for, while Regulations, § 27, gives Governor, acting through adjutant general supervision of execution of selective draft, determination of exemption boards is final, save for appeal to the President. U. S. v. Commanding Officer of Seventy-Seventh Division of National Army of United States at Camp Upton, Yaphank, Long Island, N. Y. (D. C.) 248 F. 1005.

— **Evidence.**—Where a drafted person, claiming exemption from military service on the ground of alienage, is summoned before the exemption board under section 101 of rules and Regulations of Selective Service, to testify on the exemption claim, the summons is notice to claimant to present all the evidence he has in support of his claim. United States ex rel. Kotzen v. Local Exemption Board No. 157 of City of New York (D. C.) 252 F. 245.

In view of the regulations promulgated by the President under the Selective Service Act, local boards provided for by the act have the widest possible latitude for the purpose of informing themselves of the truth or falsity of statements made by registrants, and such boards are not in any way restricted to what would be competent legal evidence in any judicial proceeding. Brown v. Spelman (D. C.) 254 F. 215.

— **Rehearing or reopening case.**—Both the local and district draft boards, within their respective jurisdictions, retain their power to hear and determine matters pertaining to a registrant until the hour specified in the notice of the local board when he is required to report for service; and where after notice by a local board to a registrant to report for service, but before the time arrived he was given deferred classification by the district board on industrial grounds, he could not lawfully be arrested and imprisoned by the local board for failure to report. Ex parte McDonald (D. C.) 253 F. 99.

After certifying relator to local board for military service for failure to claim exemption, district board has lost jurisdiction and cannot find that his alienage was not established. Ex parte Beck (D. C.) 245 F. 967.

Where a drafted person claimed exemption from military service on the ground of alienage, and upon being summoned, under section 100, to prove his claim of exemption, failed to establish it, the duty to reopen the case rested in the sound discretion of the exemption board. U. S. ex rel. Kotzen v. Local Exemption Board No. 157 of City of New York (D. C.) 252 F. 245.

While the action of the local board becomes final against a registrant under the Selective Draft Act unless appealed from in five days, a local board, having given a registrant a classification to which his questionnaire showed he was not entitled, may correct the error some months later. Ex parte Short (D. C.) 253 F. 839.

The denial of a rehearing on a claim for draft exemption by a district board is not arbitrary action. Ex parte Tinkoff (D. C.) 254 F. 222.

Review by courts.—This section creates independent tribunals to carry out the act, over which the civil courts exercise no supervisory power. Ex parte Hutflis (D. C.) 245 F. 798.

Determination by local and district boards provided for by Selective Draft Act of questions of exemption is conclusive, and cannot be reviewed by the courts, unless the boards were without jurisdiction or a fair hearing was denied. Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280; Franke v. Murray, 248 F. 865, 160 C. C. A. 623; U. S. v. Kinkead (D. C.) 248 F. 141, order affirmed 250 F. 692, 162 C. C. A. 654; U. S. v. Mitchell (D. C.) 248 F. 997; Boitano v. District Board, Northern Dist. No. 3, Sacramento, Cal. (D. C.) 250 F. 812; Ex parte Platt (D. C.) 253 F. 413.

Decisions of boards created under Conscription Act are reviewable if a fair hearing is denied, or if they act without or in excess of their jurisdiction, or abuse their discretion, or if the proceedings are manifestly unfair. Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280; Ex parte Blazekovic (D. C.) 248 F. 327; Ex parte Romano (D. C.) 251 F. 762.

The determination of a local draft board in a case where it has authority to act is final, unless appealed to the district board or the President. Ex parte Platt (D. C.) 253 F. 413.

The courts are bound to respect the determination of local and district draft boards on all matters within their respective jurisdiction, and have no power to revise their decisions, where their jurisdiction has been lawfully exercised; but the courts may determine to what effect the boards have acted. Ex parte McDonald (D. C.) 253 F. 99.

Whether persons certified into National Army under Selective Draft Act meet physical and medical requirements is solely question for exemption boards provided for, and not the courts. In re Traina (D. C.) 248 F. 1004.

Where petition for habeas corpus and certiorari against local board, under Conscription Act does not show petitioner has complied with requirements of act and regulations, or ever presented to local and district boards reason

of ignorance assigned in District Court for failure to do so, relief asked against refusal of boards to exempt him as alien must be denied. Summertime v. Local Board, Division No. 10 (D. C.) 248 F. 832.

Nondeclarant alien, who did not claim exemption from military service within seven days after notification, held to have had fair hearing before local and district boards, which certified him for military service. U. S. v. Finley (D. C.) 245 F. 871.

Under Selective Draft Act, questions of exemption on account of membership in religious sect opposed to war are for determination of local and district boards, and their finding cannot be reviewed by courts, unless they were without jurisdiction, or denied fair hearing, registrants are not deprived of due process of law. Franke v. Murray, 248 F. 865, 160 C. C. A. 623.

Under this section, decision of district board affirming that of local board which denied relator's claim to exemption on ground that he was an alien enemy and had not become a citizen by virtue of his father's naturalization cannot be disturbed by courts where appeal to district board was fairly heard and determined. U. S. v. Kinkead (C. C. A.) 250 F. 692.

A nondeclarant alien, who claimed exemption and was not subject to service under the Selective Draft Act, held not to have been given a fair hearing by the draft boards which inducted him into military service. Ex parte Romano (D. C.) 251 F. 762.

A United States District Court has no jurisdiction to review on habeas corpus action of a local or district draft board, acting under the Selective Service Act, in calling to service an alien, who has waived his claims for exemption and been duly classified for military service under the rules to class 1. Ex parte Beales (D. C.) 252 F. 177.

It is not the province of the United States District Court to pass judgment upon what constitutes sufficient evidence to satisfy exemption boards of the alienage of a registrant claiming exemption from military service, unless the board has acted arbitrarily or illegally. United States ex rel. Kotzen v. Local Exemption Board No. 157 of City of New York (D. C.) 252 F. 245.

A decision of the local and district boards provided for by the Selective Draft Act, denying a deferred classification to relator, who had been convicted of felony, but pardoned, will not be disturbed by the court on petition for habeas corpus, upon the ground that the pardon was conditional, where there was no showing before the boards that the pardon was other than unconditional; for the pardon having been treated as unconditional, there was evidence upon which the boards' conclusion could be supported. U. S. v. Commanding Officer of 78th Division U. S. A. (D. C.) 252 F. 314.

The civil courts can grant relief from orders of local and district boards provided for by the Selective Draft Act only where such boards have acted without or in excess of their jurisdiction, or the proceedings have been unfair, or show an abuse of discretion; hence, where the boards, in disposing of registrant's claim that he was over the age prescribed in the act and that his name should be stricken from the list, followed the regulations, etc., no relief could be granted by the courts. Brown v. Spelman (D. C.) 254 F. 215.

Habeas corpus.—Person denied full and fair hearing on claim of exemption under the Conscription Act may, if restrained of his liberty, sue out a writ of habeas corpus. Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280.

In view of provisions for notice in Rules and Regulations, § 14, and as Conscription Act declares that decision of exemption boards shall be final, nondeclarant alien who not having claimed exemption, was certified into service by boards, is not entitled to habeas corpus on ground he was denied fair hearing, there being no showing that boards did not give him notice required. Ex parte Blazekovic (D. C.) 248 F. 327.

Habeas corpus is appropriate remedy to test whether quasi judicial body, as exemption boards created by Selective Draft Act, are acting without scope of their jurisdiction. U. S. v. Mitchell (D. C.) 248 F. 997.

Action of local or district board on claim for exemption under Selective Draft Act may be reviewed by habeas corpus, where board abuses its power or exercises it arbitrarily. Ex parte Hutflis (D. C.) 245 F. 798.

Where registrant under Selective Draft Law is certified into military service, decisions of examining boards as to his physical condition cannot be reviewed on habeas corpus; hence one so certified cannot, where he refused to undergo operation as directed by military authorities for cure of pre-existing trouble, obtain his discharge under habeas corpus. De Genaro v. Johnson (D. C.) 249 F. 504.

Where a drafted person, claiming exemption as an alien, by mistake waived exemption in his questionnaire, he had a remedy by appeal to the local board for correction, under Selective Service Rules, § 99, and where, after notice of his classification under section 100, he, through ignorance, allowed himself to be inducted into service, he still has a remedy under section 139, by appeal to the commanding officer of the mobilization camp, and is not entitled to relief by habeas corpus. Ex parte Kusweski (D. C.) 251 F. 977.

The failure of a registrant, denied exemption by the local board, to appeal to the district board, is a bar to relief by habeas corpus. Ex parte Tinkoff (D. C.) 254 F. 222.

The court in a habeas corpus proceeding cannot relieve against a merely erroneous decision of a draft board. Id.

Where petitioner, who was certified into service under Conscription Act, was not, having failed to comply with rules and regulations as to claim for exemption, absolutely entitled to relief on account of his alienage, issuance of habeas corpus to secure release rests in sound discretion of trial court; and where he did not file petition until nearly two months after his commanding officer denied his application for relief, and he had not presented his claim for exemption in accordance with rules and regulations governing draft, it is not abuse of discretion to deny his application. Ex parte Blazekovic (D. C.) 248 F. 327.

—— **Proceedings.**—On habeas corpus to obtain discharge from compulsory military service, on ground that relator was enemy alien, evidence held to support finding by local and district draft boards that relator, by reason of naturalization of his father, had become citizen, and hence question cannot be reviewed.—U. S. Kinkead (D. C.) 248 F. 141, order affirmed 250 F. 692, 162 C. C. A. 654.

One petitioning for habeas corpus to secure release from military service, into which he was certified under Conscription Act must affirmatively show he is entitled to such writ, and on hearing will be able to make at least prima facie case, or petition will be dismissed. Ex parte Blazekovic (D. C.) 248 F. 327.

Petition against local and district draft boards for habeas corpus and certiorari to nullify decision that petitioner, nondeclarant alien, is not entitled to exemption from Conscription Act must be denied, in absence of allegations petitioner has been deprived of fair hearing, that board had grossly abused discretion, etc. Summertime v. Local Board, Division No. 10 (D. C.) 248 F. 832.

Injunction.—Person denied fair hearing on claim of exemption under Conscription Act is not entitled to an injunction, there being a full and adequate remedy at law for the enforcement of personal rights. Angelus v. Sullivan, 246 F. 54, 158 C. C. A. 280.

Judicial Code, § 24, subd. 14 [Comp. St. 1916, § 991(14)] gives a federal court no jurisdiction over a bill to enjoin a local board and adjutant general from inducting complainant into military service under the Selective Service Act, on the ground that interruption of complainant's employment would deprive him of a property right, for complainant has in no just sense a property right in his employment. Bonifaci v. Thompson (D. C.) 252 F. 878.

Certiorari.—Certiorari will not issue to review the action of local and district draft boards in making determination as to deferred classification under executive regulations promulgated under the Selective Service Act, for the act creates a system for executive enforcement, and proceedings of the draft boards, as to those within scope of the act, are not in the same category as those of quasi judicial tribunals. In re Kitzerow (D. C.) 252 F. 865.

Certiorari, which, under Rev. St. § 716 (Comp. St. 1916, § 1239), a federal court may issue wherever appropriate, will not be issued to review classification by a local board under the Selective Service Act, because it is an executive body, because there is no power in the court to substitute its opinion on a question of fact for that of the board, and because there is remedy by habeas corpus, which is not a discretionary writ, as is certiorari. U. S. v. Rauch (D. C.) 253 F. 814.

Effect of improper certification by local and district boards.—Where certification of relator into military service was improper under Selective Draft Act, relator being entitled to exemption as nondeclarant alien, he is, having been arrested as a deserter and held for trial by court-martial, entitled to habeas corpus to secure his release. Ex parte Beck (D. C.) 245 F. 967.

Where a nondeclarant alien, who was not subject to military service, and who claimed his exemption, was inducted into service by the draft boards, without a fair hearing, their action is not void, though irregular, and hence, the alien having failed to report, the military authorities have jurisdiction to hold him for desertion. Ex parte Romano (D. C.) 251 F. 762.

§ 2044e. (Act May 18, 1917, c. 15, § 5, as amended, Act Aug. 31, 1918, c. 166, § 3.) Registration; persons subject; failure.

All male persons between the ages of eighteen and forty-five, both inclusive, shall be subject to registration in accordance with regulations to be prescribed by the President, and, upon proclamation by the President or other public notice given by him or by his direction stating the time or times and place or places of any such registration, it shall be the duty of all persons of the designated ages, except officers and enlisted men of the Regular Army; offi-

cers and enlisted men of the National Guard while in the service of the United States; officers of the Officers' Reserve Corps and enlisted men in the Enlisted Reserve Corps while in the service of the United States; officers and enlisted men of the Navy and Marine Corps; officers and enlisted and enrolled men of the Naval Reserve Force and Marine Corps Reserve while in the service of the United States; officers commissioned in the Army of the United States under the provisions of this Act; persons who, prior to any day set for registration by the President hereunder, have registered under the terms of this Act or under the terms of the resolution entitled "Joint resolution providing for the registration for military service of all male persons citizens of the United States and all male persons residing in the United States who have, since the fifth day of June, nineteen hundred and seventeen, and on or before the day set for the registration by proclamation by the President, attained the age of twenty-one years, in accordance with such rules and regulations as the President may prescribe under the terms of the Act approved May eighteenth, nineteen hundred and seventeen, entitled 'An Act to authorize the President to increase temporarily the Military Establishment of the United States,'" approved May twentieth, nineteen hundred and eighteen, whether called for service or not, and diplomatic representatives, technical attachés of foreign embassies and legations, consuls general, consuls, vice consuls, and consular agents of foreign countries, residing in the United States, who are not citizens of the United States to present themselves for and submit to registration under the provisions of this Act; and every such person shall be deemed to have notice of the requirements of this Act, upon the publication of any such proclamation or any such other public notice as aforesaid given by the President or by his direction; and any person who shall willfully fail or refuse to present himself for registration or to submit thereto as herein provided shall be guilty of a misdemeanor and shall, upon conviction in a district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year and shall thereupon be duly registered: Provided, That in the call of the docket precedence shall be given, in courts trying the same, to the trial of criminal proceedings under this Act: Provided further, That persons shall be subject to registration as herein provided who shall have attained their eighteenth birthday and who shall not have attained their forty-sixth birthday on or before the day set for the registration in any such proclamation by the President or any such other public notice given by him or by his direction, and all persons so registered shall be and remain subject to draft into the forces hereby authorized unless exempted or excused therefrom as in this Act provided: Provided further, That the President may at such intervals as he may desire from time to time require all male persons who have attained the age of eighteen years since the last preceding date of registration and on or before the next date set for registration by proclamation by the President, except such persons as are exempt from registration hereunder, to register in the same manner and subject to the same requirements and liabilities as those previously registered under the terms hereof: And provided further, That in the case of temporary absence from actual place of legal residence of any person liable to registration as provided herein, such registration may be made by mail under regulations to be prescribed by the President: And provided further, That men registered under the provisions of this Act who have served in the Navy of the United States shall, upon their own application, be permitted to reenlist in

the naval or marine service of the United States with and by the approval of the Secretary of the Navy. (40 Stat. 80, 955.)

This section was amended by Act Aug. 31, 1918, c. 166, § 3, cited above, to read as set forth above. As originally enacted said section read as follows: "All male persons between the ages of twenty-one and thirty, both inclusive, shall be subject to registration in accordance with regulations to be prescribed by the President; and upon proclamation by the President or other public notice given by him or by his direction stating the time and place of such registration it shall be the duty of all persons of the designated ages, except officers and enlisted men of the Regular Army, the Navy, and the National Guard and Naval Militia while in the service of the United States, to present themselves for and submit to registration under the provisions of this Act; and every such person shall be deemed to have notice of the requirements of this Act upon the publication of said proclamation or other notice as aforesaid given by the President or by his direction; and any person who shall willfully fail or refuse to present himself for registration or to submit thereto as herein provided, shall be guilty of a misdemeanor and shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year, and shall thereupon be duly registered: Provided, That in the call of the docket precedence shall be given, in courts trying the same, to the trial of criminal proceedings under this Act: Provided further, That persons shall be subject to registration as herein provided who shall have attained their twenty-first birthday and who shall not have attained their thirty-first birthday on or before the day set for the registration and all persons so registered shall be and remain subject to draft into the forces hereby authorized, unless exempted or excused therefrom as in this Act provided: Provided further, That in the case of temporary absence from actual place of legal residence of any person liable to registration as provided herein such registration may be made by mail under regulations to be prescribed by the President."

Proclamations issued under this section:

May 18, 1917, for registration in the United States, the territories, and the District of Columbia.

May 26, 1917, relating to registration in the United States, the territories, and the District of Columbia.

June 27, 1917, for registration in Porto Rico.

June 30, 1917, for registration in Alaska.

July 2, 1917, for registration in Hawaii.

Further proclamations, issued under this section, as amended:

August 31, 1918, relating to registration in the United States, the territories, and the District of Columbia.

September 18, 1918, for registration in Alaska.

October 7, 1918, for registration in Hawaii.

October 10, 1918, for registration in Porto Rico.

Notes of Decisions

Construction of section in general.—Under Const. art. 1, § 8, Act April 22, 1898 (Comp. St. 1916, § 1714), and this act, persons registering and receiving serial numbers under the last-mentioned act, held within Act June 15, 1917, § 3, post, § 10212c, as to attempting to cause insubordination, etc. U. S. v. Sugarman (D. C.) 245 F. 604.

The enforcement of Selective Service Act has been intrusted to the War Department, and the correction of questionnaires, in the absence of fraud, is not for the courts. Ex parte Kusweski (D. C.) 251 F. 977.

Under this section, a local board, authorized to determine questions of exemption, has no jurisdiction to investigate on its own motion the question of the age of a person who had not registered and place him on the draft list, though he asserted he was not within the age limits prescribed. Ex parte Fuston (D. C.) 253 F. 90.

Under this section, and the regulations thereunder, which require persons subject to registration who were absent from the United States on registration day to register within five days after their return, such a person cannot avoid the duty by again leaving the United States before the expiration of the five days. U. S. v. Scott (D. C.) 253 F. 281.

Neither the Selective Service Act nor the regulations prescribed by the President required registrants to remain in their permanent homes and actual places of legal residence until drafted into military service, so that it was not a violation of Criminal Code, § 19 (Comp. St. 1916, § 10183), denouncing conspiracy to injure, etc., any citizen in the exercise of any right secured by the Constitution or laws of the United States for defendants to conspire to deport from Arizona citizens of the United States some of whom had registered under the Selective Service Act. U. S. v. Wheeler (D. C.) 254 F. 611.

Validity.—Selective Draft Act is not unconstitutional as conferring legislative power upon the President, notwith-

standing the presidential proclamation of the same date, issued as directed by this section of the act, which required registration of citizens specified therein; such proclamation having been designed to give notice of, and explain the act, but not to have the force of a law. Sugar v. U. S. (C. C. A.) 252 F. 74.

See, also, notes to sections 1, 2 of this act, ante, §§ 2044a, 2044b.

Registration.—An officer or enlisted man of a National Guard unit, not called into federal service until after the day fixed by presidential proclamation for registration in accordance with this section, does not fall within provision excepting officers and enlisted men of the National Guard in service of the United States from registration. Breitmayer v. U. S. (C. C. A.) 249 F. 929.

Where petitioners, who failed to register in accordance with this section, were thereafter registered and notified to report for military service, the late registration was authorized; regulations issued under act expressly providing therefor. Ex parte Dunn (D. C.) 250 F. 871.

Congress and the President, acting through the War Department, have not required that an alien shall be subject to military duty, although such person must register, where required by Selective Service Rules, § 53, and be classified as provided by rule 12, unless the right of exemption is waived. Ex parte Kusweski (D. C.) 251 F. 977.

See, also, notes to section 2 of this act, ante, § 2044b.

Selection for service.—The date of the drawing under Selective Draft Act is a historical fact, of which the court takes judicial notice without proof. U. S. v. Sugarman (D. C.) 245 F. 604.

Under this section, one prosecuted for nonregistration is not during pendency of prosecution exempt from military service, but may be registered and forthwith called for service. Ex parte Dunn (D. C.) 250 F. 871.

A person of draft age and registered, but who had pleaded guilty to a felony under the law of the state, and was in custody awaiting sentence, was not, while having such status, subject to call for service. Ex parte Henry (D. C.) 253 F. 208.

Status of persons selected for service.—Under National Conscription, petitioner, who was arrested under an indictment charging petit larceny, held not entitled to be discharged from imprisonment by state authorities, though he was ordered, before his conviction and sentence, by local draft board to report for transportation to a mobilization camp. Ex parte Calloway (D. C.) 246 F. 263.

Under this section, failure of one prosecuted for nonregistration to respond during pendency of prosecution to call for service will make him a deserter, punishable under military law. Ex parte Dunn (D. C.) 250 F. 871.

Offenses.—Aiding, abetting, etc., violations of this section, held an offense, in view of Criminal Code, § 332 (Comp. St. 1916, § 10506), though at common law there could be no accessory to a misdemeanor. Ruthenberg v. U. S., 38 S. Ct. 168, 245 U. S. 480, 62 L. Ed. 414.

Conspiracy to prevent persons subject to registration for selective draft under this section from registering, held a conspiracy to defraud the United States, within Criminal Code, § 37, and punishable as such. U. S. v. Galleanni (D. C.) 245 F. 977.

Where petitioners, who had been registered during pendency of prosecution against them for failure to register as required by this section, failed to respond to call to report for service, and thus became deserters, question whether they could first be tried under military or civil law of United States is a matter to be settled between respective departments of the government, and petitioners cannot defeat sentence of court-martial based on their desertion because of pendency of prosecution against them for civil offense. Ex parte Dunn (D. C.) 250 F. 871.

In a prosecution for conspiracy to violate this section, the common design is the essence of the charge, and proof that the alleged conspirators knowingly worked together for a common illegal purpose will establish a conspiracy; it not being necessary to show a formal explicit agreement or undertaking. U. S. v. McHugh (D. C.) 253 F. 224.

Indictment.—Indictment for aiding, abetting, etc., person in failing to register, held sufficient, without alleging that he was a citizen or person, not an alien enemy, who had declared his intention of becoming a citizen, in view of section 5. Ruthenberg v. U. S., 38 S. Ct. 168, 245 U. S. 480, 62 L. Ed. 414.

In view of Rev. St. § 1025 (Comp. St. 1916, § 1691), an inaccurate statement as to the voting precinct in which defendant resided, contained in an indictment charging failure to register as required by the Selective Draft Act, must, in view of the usual knowledge prevailing as to such locations, be disregarded. Breitmayer v. U. S. (C. C. A.) 249 F. 929.

Indictment charging failure to register as required by the Selective Draft Law, which alleged that accused was a male between ages of 21 and 30, and was not an officer or enlisted man of the Regular Army or Navy, nor of the National Guard or Naval Militia, nor of the Officers' Reserve Corps, nor of the Reserve Corps in the service of the United States, and was not in any manner exempted nor excused from

registering, sufficiently negatived the exceptions in the act. The indictment need not allege the age of accused, nor negative accused's bad health, though inability, through sickness, to register, might disprove willful refusal to register. Sugar v. U. S. (C. C. A.) 252 F. 74.

An indictment alleging a failure to register as required by the Selective Service Act, etc., is not faulty because failing to set out in full the President's proclamation as to registration, where the statement with reference to the proclamation was sufficient to furnish the defendant notice and information required for every purpose. U. S. v. Olson (D. C.) 253 F. 233.

—— **Conspiracy.**—Indictment charging that defendants conspired to commit an offense against and to defraud the United States in violation of Penal Code, § 37 (Comp. St. 1916, § 10201), and to unlawfully and willfully aid and counsel unknown persons to refuse to register under the Selective Draft Act, did not charge two distinct offenses, no facts being alleged to show a conspiracy to defraud the United States, so that the allegation as to fraud was surplusage. Sugar v. U. S. (C. C. A.) 252 F. 79.

Indictment charging that defendants conspired to interfere with registration under this section, by publication of newspaper counseling persons not to register, sufficiently charged a public offense, notwithstanding section 2044f, post, was the basis of the offense charged, the act and not the sections being important, in view of Rev. St. United States, § 1025 (Comp. St. 1916, § 1691), preventing indictments from being deemed insufficient unless the defect tends to the prejudice of defendant. Id.

Indictment for conspiracy to violate Espionage Act, tit. 1, § 3, post, § 10212c, charging conspiracy subsequent to June 15, 1917, to induce persons liable to service under Selective Service Act to refuse to submit to registration, held to charge a conspiracy to induce persons who failed to register at time set by President's proclamation not to register under this section, making provision for subsequent registration. U. S. v. Prieth (D. C.) 251 F. 946.

Trial.—Socialists, on trial for violations of Selective Draft Law, were not entitled, in examining jurors, to inquire whether they distinguished between Socialists and anarchists. Ruthenberg v. U. S., 38 S. Ct. 168, 245 U. S. 480, 62 L. Ed. 414.

In a prosecution for willful failure and refusal to present himself for, or to submit to, registration, as required by this section and the presidential proclamation thereunder, evidence held sufficient to establish the corpus delicti, showing defendant was within draft age, and not a member of the National Guard in the service of the United States, and failed to register in the precinct where he permanently resided. Breitmayer v. U. S. (C. C. A.) 249 F. 929.

It must be presumed that the grand jurors were cognizant of the fact that the day originally set for registration of persons subject to draft was June 5, 1917. U. S. v. Prieth (D. C.) 251 F. 946.

In a prosecution for conspiracy to violate the Selective Service Act, where it was asserted that a registrant and his father falsely represented that the father was dependent on the registrant, the jury cannot consider whether the father was guilty of misapplication of funds in his possession which he claimed did not belong to him, but were trust funds. U. S. v. McHugh (D. C.) 253 F. 224.

—— **Admissibility of evidence.**—In prosecution for failing to register, baptismal records, certified copy of application for pension, and application for homestead executed by defendant's mother, wherein she set out his age, are admissible in evidence, and the baptismal record having been made by Roman Catholic priest, it was competent for priest to testify as to tenets of his faith concerning baptism of infants. Phelan v. U. S., 249 F. 43, 161 C. C. A. 103.

In prosecution for failure to register, where defendant was indicted under the name by which he was known, instead of his real name, it was not error, and certainly was not prejudicial, to admit evidence identifying defendant with person named in a birth certificate, which it was claimed was issued on the occasion of defendant's birth. Breitmayer v. U. S. (C. C. A.) 249 F. 929.

As Act Mich. June 20, 1905 (Pub. Acts 1905, No. 330), providing that original birth certificates taken thereunder shall be transmitted to the secretary of state, was prospective, and made no provision as to records of births in custody of county clerks under Act Mich. March 27, 1867 (Pub. Acts 1867, No. 194), certified copy of birth record in county clerk's custody is, under general rules, admissible in evidence. Id.

In a prosecution for conspiracy to obstruct the draft, minutes of meetings of an executive committee kept by one of defendants, a committee member, showing passage of resolutions pursuant to which the other defendant caused circulars to be printed and mailed to persons drafted, held admissible against both defendants. U. S. v. Schenck (D. C.) 253 F. 212.

In a prosecution for conspiracy to violate Selective Service Act, by falsely claiming exemption on the ground that registrant's father was dependent on him for support, the jury could determine the physical condition of the father from their observation of him while on the stand, etc., and his physi-

cal infirmities need not be established by medical expert testimony. U. S. v. McHugh (D. C.) 253 F. 224.

Arrest of judgment.—On motion to arrest judgment notwithstanding plea of guilty, Criminal Code, § 332 (Comp. St. 1916, § 10506), providing that whoever aids, counsels, or procures the commission of an act is a principal, has no effect favorable to one indicted jointly with others for conspiracy in violation of Penal Code, § 37 (Comp. St. 1916, § 10201), to obstruct registration under the Selective Draft Act May 18, 1917. Sugar v. U. S. (C. C. A.) 252 F. 79.

Cited without definite application, Beptall v. U. S. (C. C. A.) 254 F. 294; Ex parte Hutflis (D. C.) 245 F. 798; U. S. v. Finley (D. C.) 245 F. 871; U. S. v. Kinkead (D. C.) 248 F. 141, order affirmed (C. C. A.) 250 F. 692; Ex parte Blazekovic (D. C.) 248 F. 327; Summertime v. Local Board, Division No. 10 (D. C.) 248 F. 832; U. S. v. Bell (D. C.) 248 F. 995; U. S. v. Mitchell (D. C.) 248 F. 997; Ex parte Lamachia (D. C.) 250 F. 814.

§ 2044f. (Act May 18, 1917, c. 15, § 6.) Services of all departments and officers of United States and States; false registration.

The President is hereby authorized to utilize the service of any or all departments and any or all officers or agents of the United States and of the several States, Territories, and the District of Columbia, and subdivisions thereof, in the execution of this Act, and all officers and agents of the United States and of the several States, Territories, and subdivisions thereof, and of the District of Columbia, and all persons designated or appointed under regulations, prescribed by the President whether such appointments are made by the President himself or by the governor or other officer of any State or Territory to perform any duty in the execution of this Act, are hereby required to perform such duty as the President shall order or direct, and all such officers and agents and persons so designated or appointed shall hereby have full authority for all acts done by them in the execution of this Act by the direction of the President. Correspondence in the execution of this Act may be carried in penalty envelopes bearing the frank of the War Department. Any person charged as herein provided with the duty of carrying into effect any of the provisions of this Act or the regulations made or directions given thereunder who shall fail or neglect to perform such duty; and any person charged with such duty or having and exercising any authority under said Act, regulations, or directions, who shall knowingly make or be a party to the making of any false or incorrect registration, physical examination, exemption, enlistment, enrollment, or muster; and any person who shall make or be a party to the making of any false statement or certificate as to the fitness or liability of himself or any other person for service under the provisions of this Act, or regulations made by the President thereunder, or otherwise evades or aids another to evade the requirements of this Act or of said regulations, or who, in any manner, shall fail or neglect fully to perform any duty required of him in the execution of this Act, shall, if not subject to military law, be guilty of a misdemeanor, and upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year, or, if subject to military law, shall be tried by court-martial and suffer such punishment as a court-martial may direct. (40 Stat. 80.)

See note to § 2044a.

Notes of Decisions

Operation and effect of section in general.—Articles of War, art. 2 (Comp. St. 1916, § 2308a), defining persons subject to military law, is not repealed by this section. Franke v. Murray, 248 F. 865, 160 C. C. A. 623.

While a criminal statute should be strictly construed, the construction should not rob it of force and vigor to accomplish the purpose for which it was enacted and intended. U. S. v. Blakeman (D. C.) 251 F. 306.

Since this section speaks of "enlistment" in connection with the compul-

sory service therein provided for, and section 7, post, § 2044g, speaks of "voluntary enlistment," an intention is shown to use the term "enlistment" in a broad and comprehensive sense. U. S. v. Prieth (D. C.) 251 F. 946.

Punishment by court martial.—Provision of this section, that it shall be a misdemeanor to violate any provision of act or regulations made thereunder, does not preclude punishment under military law by one subject thereto because he was duly certified into the service; section itself expressly excepting those subject to military law. Franke v. Murray, 248 F. 865, 160 C. C. A. 623.

Offenses.—Conspiracy to resist raising of army by conscription held conspiracy to resist authority of the United States, though Selective Draft Act had not then been passed. U. S. v. Bryant (D. C.) 245 F. 682.

The making of a notarial certificate falsely reciting that doctors, whose statements were filed in support of a claim for exemption from military service, appeared before the notary, falls within the scope of the section, even though the statements by the doctors were not in themselves false. U. S. v. Blakeman (D. C.) 251 F. 306.

Indictment.—Indictment charging that defendants conspired to interfere with registration under Selective Draft Act May 18, 1917, § 5, by publication of newspaper counseling persons not to register, sufficiently charged a public offense, notwithstanding this section was also the basis of the offense charged, the act and not the sections being important, in view of Rev. St. United States, § 1025 (Comp. St. 1916, § 1691), preventing indictments from being deemed insufficient unless the defect tends to the prejudice of defendant. Sugar v. U. S. (C. C. A.) 252 F. 79, affirming U. S. v. Sugar (D. C.) 243 F. 423.

Under Criminal Code, § 332 (Comp. St. 1916, § 10506), indictment charging defendants with aiding, abetting, counseling, commanding, or procuring violation of Conscription Act must allege specifically that act had been violated to charge an offense. U. S. v. Sugar (D. C.) 243 F. 423.

Indictment under Act June 15, 1917, § 3, post, § 10212c, for urging and advising persons registered under Act May 18, 1917, not to report for military service, held sufficient. U. S. v. Sugarman (D. C.) 245 F. 604.

An indictment charged in count 1, that defendant, having been subject to registration under Selective Service Law and duly registered thereunder, shortly afterward transferred property worth more than $25,000 and producing a yearly income of $1,700, in trust for the term of ten years, the principal and income to be invested and reinvested during the term, except $480 a year, which was to be applied to the payment of interest on a mortgage on defendant's residence; that having been selected for service, defendant claimed exemption and made and presented to the local board an affidavit that his wife was dependent upon him for support; that he had no property, except a small amount listed and his residence, subject to a purchase-money mortgage for $6,000, and no source of income, except the earnings from his law practice; that by means of such affidavit defendant secured exemption, and thereby evaded the requirements of the act, and failed and neglected to perform a duty required of him by said act. Count 2 charged that such affidavit constituted a false statement "as to fitness and liability" of defendant for service, in violation of section 6 of the act; and count 3 that it constituted the crime of perjury, under section 125 of the Criminal Code (Comp. St. 1916, § 10295). Held, that all three counts were good as against a demurrer. U. S. v. Miller (D. C.) 249 F. 985.

Indictment charging making of false notarial certificate as to unfitness and liability of another person for military service, is insufficient to charge offense of making false statement or certificate as to fitness or liability of another person to military service denounced by this section; the words "fitness" and "unfitness" not meaning the same thing, although a statement as to the fitness of one for military service might include facts as to "unfitness." U. S. v. Blakeman (D. C.) 251 F. 306.

—— **Duplicity.**—Where a notary appended false certificates to statements by several physicians, which were intended to be used in connection with a claim for exemption from military service, the false certification of each statement was a separate offense under the Selective Service Act, and the several offenses could not be charged in a single count of the indictment. U. S. v. Blakeman (D. C.) 251 F. 306.

§ 2044g. (Act May 18, 1917, c. 15, § 7, as amended, Act July 9, 1918, c. 143, subchapter XIII.) Voluntary enlistments; grouping enlisted or drafted men; units.

The qualifications and conditions for voluntary enlistment as herein provided shall be the same as those prescribed by existing law for enlistments in the Regular Army, except that recruits for service in the staff corps and departments may be accepted who

are between the ages of forty-one and fifty-five years, both inclusive, at the time of their enlistment, and that all other recruits must be between the ages of eighteen and forty years, both inclusive, at the time of their enlistment; and such enlistment shall be for the period of the existing emergency unless sooner discharged. All enlistments, including those in the Regular Army Reserve, which are in force on the date of the approval of this Act and which would terminate during the emergency shall continue in force during the emergency unless sooner discharged; but nothing herein contained shall be construed to shorten the period of any existing enlistment: Provided, That all persons enlisted or drafted under any of the provisions of this Act shall as far as practicable be grouped into units by States and the political subdivisions of the same: Provided further, That all persons who have enlisted since April first, nineteen hundred and seventeen, either in the Regular Army or in the National Guard, and all persons who have enlisted in the National Guard since June third, nineteen hundred and sixteen, upon their application, shall be discharged upon the termination of the existing emergency.

The President may provide for the discharge of any or all enlisted men whose status with respect to dependents renders such discharge advisable; and he may also authorize the employment on any active duty of retired enlisted men of the Regular Army, either with their rank on the retired list or in higher enlisted grades, and such retired enlisted men shall receive the full pay and allowances of the grades in which they are actively employed. (40 Stat. 81, 885.)

This section was amended by Act July 9, 1918, c. 143, subchapter XIII, cited above, by changing the first sentence of the section to read as set forth above. As originally enacted, said sentence read as follows: "The qualifications and conditions for voluntary enlistment as herein provided shall be the same as those prescribed by existing law for enlistments in the Regular Army, except that recruits must be between the ages of eighteen and forty years, both inclusive, at the time of their enlistment; and such enlistments shall be for the period of the emergency unless sooner discharged."

So much of this section as imposes restrictions upon enlistments in the Regular Army is repealed by Act Feb. 28, 1919, c. 79, ante, § 1891bb.

Notes of Decisions

Operation and effect of section in general.—Since Selective Service Act, § 6, ante, § 2044f, speaks of "enlistment" in connection with the compulsory service therein provided for, and this section speaks of "voluntary enlistment," an intention is shown to use the term "enlistment" in a broad and comprehensive sense. U. S. v. Prieth (D. C.) 251 F. 946.

§ 2044gg. (Act Aug. 31, 1918, c. 166, § 4.) Assignment to service in Army, Navy or Marine Corps.

All men rendered available for induction into the military service of the United States through registration or draft heretofore or hereafter made pursuant to law, shall be liable to service in the Army or the Navy or the Marine Corps, and shall be allotted to the Army, the Navy, and the Marine Corps under regulations to be prescribed by the President: Provided, That all persons drafted and allotted to the Navy or the Marine Corps in pursuance hereof shall, from the date of allotment, be subject to the laws and regulations governing the Navy and the Marine Corps, respectively. (40 Stat. 956.)

This section, and the section next following, were sections 4 and 7 of an act entitled "An act amending the act entitled 'An act to authorize the President to increase temporarily the Military Establishment of the United States,' approved May eighteenth, nineteen hundred and seventeen," cited above. Section 1 of said act amends § 2044b; section 2 amends § 2044d; section 3 amends § 2044e; section 5 is set forth ante, as § 243a; section 6 is set forth ante, as § 1919a; section 8 is set forth post, as § 4588a; and section 9 is set forth post, as § 2123a.

§ 2044h. (Act May 18, 1917, c. 15, § 8, as amended, Act April 20, 1918, c. 61.) Temporary appointment of general officers; vacancies in Regular Army.

The President, by and with the advice and consent of the Senate, is authorized to appoint for the period of the existing emergency such general officers of appropriate grades as may be necessary for duty with brigades, divisions, and higher units in which the forces provided for herein may be organized by the President, and general officers of appropriate grade for the several Coast Artillery districts. In so far as such appointments may be made from any of the forces herein provided for, the appointees may be selected irrespective of the grades held by them in such forces. Vacancies in the grades of the Regular Army resulting from the appointment of officers thereof to higher grades in the forces other than the Regular Army herein provided for shall be filled by temporary promotions and appointments in the manner prescribed by section one hundred and fourteen of the national defense Act, approved June third, nineteen hundred and sixteen, except that such promotions and appointments may be made by the President alone when such vacancies are in grades not above that of colonel; and officers appointed under the provisions of this Act to higher grades in the forces other than the Regular Army herein provided for shall not vacate their permanent commissions or be prejudiced in their relative or lineal standing in the Regular Army. (40 Stat. 81, 534.)

The amendment consisted in changing the last sentence to read as set forth above.

See note to § 2044a.

The appointment of two generals and a certain number of lieutenant generals under the provisions of this section was authorized by a provision of Act Oct. 6, 1917, c. 105, § 3, ante, § 1717bb.

Vacancies in all grades of the Regular Army, National Army, or National Guard, resulting from the temporary appointment of officers thereof to higher grades in the Signal Corps, etc., are to be filled as provided by this section and section nine of this act, post, § 2044i, by a provision of Act July 24, 1917, c. 40, § 5, ante, § 1867j.

§ 2044i. (Act May 18, 1917, c. 15, § 9.) Period of appointments authorized by sections 1 and 8.

The appointments authorized and made as provided by the second, third, fourth, fifth, sixth, and seventh paragraphs of section one and by section eight of this Act, and the temporary appointments in the Regular Army authorized by the first paragraph of section one of this Act, shall be for the period of the emergency, unless sooner terminated by discharge or otherwise. The President is hereby authorized to discharge any officer from the office held by him under such appointment for any cause which, in the judgment of the President, would promote the public service; and the general commanding any division and higher tactical organization or territorial department is authorized to appoint from time to time military boards of not less than three nor more than five officers of the forces herein provided for to examine into and report upon the capacity, qualification, conduct, and efficiency of any commissioned officer within his command other than officers of the Regular Army holding permanent or provisional commissions therein. Each member of such board shall be superior in rank to the officer whose qualifications are to be inquired into, and if the report of such board be adverse to the continuance of any such officer and be approved by the President, such officer shall be discharged from the service at the discretion of the President with one month's pay and allowances. (40 Stat. 82.)

See notes to §§ 2044a, 2044h.

§ 2044j. (Act May 18, 1917, c. 15, § 10.) Pay, allowances, and pensions; increase of pay.

All officers and enlisted men of the forces herein provided for

other than the Regular Army shall be in all respects on the same footing as to pay, allowances, and pensions as officers and enlisted men of corresponding grades and length of service in the Regular Army; and commencing June one, nineteen hundred and seventeen, and continuing until the termination of the emergency, all enlisted men of the Army of the United States in active service whose base pay does not exceed $21 per month shall receive an increase of $15 per month; those whose base pay is $24, an increase of $12 per month; those whose base pay is $30, $36, or $40, an increase of $8 per month; and those whose base pay is $45 or more, an increase of $6 per month: Provided, That the increases of pay herein authorized shall not enter into the computation of continuous-service pay. (40 Stat. 82.)

See note to § 2044a.

The pay of certain enlisted men is dealt with by § 2144a, post.

§ 2044k. (Act May 18, 1917, c. 15, § 11.) Restrictions on details of officers and enlisted men of Regular Army suspended.

All existing restrictions upon the detail, detachment, and employment of officers and enlisted men of the Regular Army are hereby suspended for the period of the present emergency. (40 Stat. 82.)

See note to § 2044a.

§ 2044kk. (Act Aug. 31, 1918, c. 166, § 7.) Assignment of soldiers to educational institutions for training.

The Secretary of War is authorized to assign to educational institutions, for special and technical training, soldiers who enter the military service under the provisions of this Act in such numbers and under such regulations as he may prescribe; and is authorized to contract with such educational institutions for the subsistence, quarters, and military and academic instruction of such soldiers. (40 Stat. 957.)

See note to § 2044gg, ante.

Appropriations for the Quartermaster Corps in the "First Deficiency Appropriation Act, 1919," Act Nov. 4, 1918, c. 201, § 1, 40 Stat. 1020, are made available for the expenses of carrying out the provisions of this section, by a provision of said act.

§ 2044*l*. (Act June 15, 1917, c. 29, § 4.) Termination of services under Act.

The service of all persons selected by draft and all enlistments under the provisions of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen, shall be for the period of the war, unless sooner terminated by discharge or otherwise. Whenever said war shall cease by the conclusion of peace between the United States and its enemies in the present war, the President shall so declare by a public proclamation to that effect, and within four months after the date of said proclamation or as soon thereafter as it may be practicable to transport the forces then serving without the United States to their home station, the provisions of said Act, in so far as they authorize compulsory service by selective draft or otherwise, shall cease to be of force and effect. (40 Stat. 217.)

This section was § 4 of the urgent deficiency appropriation act for the military and naval establishments on account of war expenses for the fiscal year 1917, cited above.

§ 2044m. (Res. May 16, 1918, c. 76.) Calling members of classes for immediate service.

If under any regulations heretofore or hereafter prescribed by the President persons registered and liable for military service under the terms of the Act of Congress approved May eighteenth, nineteen hundred and seventeen, entitled "An Act to authorize the President to increase temporarily the Military Establishment of

the United States," are placed in classes for the purpose of determining their relative liability for military service, no provision of said Act shall prevent the President from calling for immediate military service under regulations heretofore or hereafter prescribed by the President all or part of the persons in any class or classes except those exempt from draft under the provisions of said Act, in proportion to the total number of persons placed in such class or classes in the various subdivisions of the States, Territories, and the District of Columbia designated by the President under the terms of said Act; or from calling into immediate military service persons classed as skilled experts in industry or agriculture, however classified or wherever residing. (40 Stat. 554.)

This section was a resolution entitled a "Joint resolution providing for the calling into military service of certain classes of persons registered and liable for military service under the terms of the act of Congress approved May eighteenth, nineteen hundred and seventeen, entitled 'An act to authorize the President to increase temporarily the military establishment of the United States,'" cited above.

§ 2044n. (Res. May 20, 1918, c. 79, § 1.) Registration of persons becoming 21 since June 5, 1917; classification.

During the present emergency all male persons, citizens of the United States and all male persons residing in the United States, who have, since the fifth day of June, nineteen hundred and seventeen, and on or before the day set for the registration by proclamation by the President, attained the age of twenty-one years, shall be subject to registration in accordance with regulations to be prescribed by the President, and that upon proclamation by the President, stating the time and place of such registration, it shall be the duty of all such persons, except such persons as are exempt from registration under the Act of May eighteenth, nineteen hundred and seventeen, and any Act or Acts amendatory thereof, to present themselves for and submit to registration under the provisions of said Act approved May eighteenth, nineteen hundred and seventeen, and they shall be registered in the same manner and subject to the same requirements and liabilities as those previously registered under the terms of said Act: Provided, That those persons registered under the provisions of this Act shall be placed at the bottom of the list of those liable for military service, in the several classes to which they are assigned, under such rules and regulations as the President may prescribe. (40 Stat. 557.)

This section, and the three sections next following, were a resolution entitled a "Joint resolution for the registration for military service of all male persons citizens of the United States and all male persons residing in the United States who have, since the fifth day of June, nineteen hundred and seventeen, and on or before the day set for the registration by proclamation by the President, attained the age of twenty-one years, in accordance with such rules and regulations as the President may prescribe under the terms of the act approved May eighteenth, nineteen hundred and seventeen, entitled 'An act to authorize the President to increase temporarily the military establishment of the United States,'" cited above.

Proclamation under this section:

May 20, 1918, as follows, omitting formal portions:

"Now, therefore, I, Woodrow Wilson, President of the United States, do call upon the governor of each of the several states, the Board of Commissioners of the District of Columbia, and all members of local boards and agents thereof appointed under the provisions of said act of Congress approved May 18, 1917, to perform certain duties in the execution of the foregoing law, which duties will be communicated to them directly in the regulations prescribed under the terms of said public resolution.

"And I do further proclaim and give notice to every person subject to registration in the several states, and in the District of Columbia, in accordance with the above law, that the time and place of such registration

shall be between 7 a. m. and 9 p. m. on the 5th day of June, 1918, at the office of the local board having jurisdiction of the area wherein he permanently resides, or at such other place as shall be designated by public notice by such local board.

"All male persons, either citizens of the United States or residing in the several states, or in the District of Columbia, who have, since the 5th day of June, 1917, and on or before the 5th day of June, 1918, attained their twenty-first birthday, are required to register in accordance with the above law and the regulations prescribed thereunder: Provided, however, That the following persons are hereby exempted from registration: Officers and enlisted men of the Regular Army, the Navy, the Marine Corps, and the National Guard and Naval Militia while in the service of the United States, and officers in the Officers' Reserve Corps and enlisted men in the Enlisted Reserve Corps while in active service.

"A day for registration in the territories of Alaska, Hawaii, and Porto Rico will be named in a later proclamation.

"As required by the regulations, every local board having jurisdiction in a city of 30,000 population or over will promptly cause the mayor thereof to be notified of the place or places designated for registration; every local board having jurisdiction in a county, parish, or similar unit will promptly cause the clerk thereof to be notified of the place or places designated for registration, and every local board having jurisdiction in a state or territory the area of which is divided into divisions for the administration of the act approved May 18, 1917, will promptly cause the clerks of the townships within its division to be notified of the place or places designated for registration.

"And I do call upon every mayor, county clerk, or township clerk receiving such notification to have a list of said places of registration posted, and do charge him with the duty of having all persons making inquiry informed of the place or places at which they may register.

"Any person who, on account of sickness, will be unable to present himself for registration may apply on or before the day of registration at the office of any local board for instructions as to how he may register by agent.

"Any person who expects to be absent on the day designated for registration from the jurisdiction of the board in which he permanently resides may register by mail, but his registration card must reach the local board having jurisdiction of the area wherein he permanently resides by the day herein named for registration. Any such person should apply as soon as practicable at the office of a local board for instructions as to how he may register by mail.

"Any person who has no permanent residence must register at the place designated for registration by the local board having jurisdiction of the area wherein he may be on the day herein named for registration.

"Any person who, on account of absence at sea, or on account of absence without the territorial limits of the United States, may be unable to comply with the regulations pertaining to absentees shall, within five days after reaching the first United States port, register with his proper local board or as provided in the regulations for other absentees."

Further proclamations, issued under this section:

June 11, 1918, providing for registration in Porto Rico.

June 17, 1918, for registration in Alaska.

June 18, 1918, for registration in Hawaii.

August 13, 1918, for the registration of persons becoming 21 years of age since June 5, 1918, and on or before Aug. 24, 1918.

§ 2044*o*. (Res. May 20, 1918, c. 79, § 2.) Registration of persons subsequently becoming 21; exemptions.

After the day set under section one hereof for the registration by proclamation by the President at such intervals as the President may from time to time prescribe, the President may require that all male persons, citizens of the United States and all male persons residing in the United States, who have attained the age of twenty-one years since the last preceding date of registration and on or before the next day set for the registration by proclamation by the President, except such persons as are exempt from registration under the Act of May eighteenth, nineteen hundred and seventeen, and any Act or Acts amendatory thereof, shall be registered in the same manner and subject to the same requirements and liabilities as those previously registered under the terms of said Act: Provided, That students who are preparing

for the ministry in recognized theological or divinity schools, and students who are preparing for the practice of medicine and surgery in recognized medical schools, at the time of the approval of this Act shall be exempt from the selective draft prescribed in the Act of May eighteenth, nineteen hundred and seventeen. (40 Stat. 558.)

See note to § 2044n, ante.

§ 2044p. (Res. May 20, 1918, c. 79, § 3.) Liability of registered persons to military service.

All such persons when registered shall be liable to military service and to draft under the terms of said Act approved May eighteenth, nineteen hundred and seventeen, under such regulations as the President may prescribe not inconsistent with the terms of said Act. (40 Stat. 558.)

See note to § 2044n, ante.

§ 2044q. (Res. May 20, 1918, c. 79, § 4.) Act May 18, 1917, c. 15, applicable.

All such persons shall be subject to the terms and provisions and liabilities of said Act approved May eighteenth, nineteen hundred and seventeen, in all respects as if they had been registered under the terms of said Act, and every such person shall be deemed to have notice of the requirements of said Act and of this joint resolution upon the publication of any such proclamation by the President. (40 Stat. 558.)

See note to § 2044n, ante.

§ 2044r. (Act July 9, 1918, c. 143.) Credits for payments for rents connected with enforcement of selective service law.

All payments made by disbursing officers appointed in connection with the execution of the selective service law for rents unsupported by a lease may be passed to their credit by the accounting officers of the Treasury if otherwise correct. (40 Stat. 851.)

This was a provision of the army appropriation act for the fiscal year 1919, cited above.

§ 2044rr. (Act Nov. 4, 1918, c. 201, § 1.) Allowance in lieu of subsistence to draft boards and employés.

For all expenses necessary in the registration of persons available for military service and in the selection of certain such persons and their draft into the military service * *: Provided, That per diem allowances in lieu of subsistence not exceeding $4 may be paid to those employees authorized to travel, and to members of the boards when in attendance upon board meetings at too great a distance from their homes to enable them to live there. (40 Stat. 1027.)

This was a provision of the "First Deficiency Appropriation Act, 1919," cited above.

§ 2044s. (Act July 9, 1918, c. 143, subchapter XI.) Method of determining quotas for military service.

In the determination of quotas for the several States, Territories, and the District of Columbia, or subdivisions thereof, to be raised for military service under the terms of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen, the provisions of the joint resolution approved May sixteenth, nineteen hundred and eighteen, providing for the calling into military service of certain classes of persons registered and liable for military service under the said Act, shall apply to any or all forces heretofore or hereafter raised under the provisions of said Act for any State, Territory, District, or subdivision thereof,

from and after the time when such State, Territory, District, or subdivision thereof has completed or completes its quota of forces called and furnished under the President's proclamation dated July twelfth, nineteen hundred and seventeen. (40 Stat. 883.)

This was a part of the army appropriation act for the fiscal year 1919, cited above.

§ 2044t. (Act July 9, 1918, c. 143, subchapter XX.) Enlistment of men outside draft age.

That during the present war the President be, and he is hereby, authorized to enlist for service in the offices of the War Department or under its control or on detached service under its jurisdiction men outside the draft ages, and for the same purpose to draft men within such ages, who have been disqualified by minor physical defects for active service in the Army; to establish regulations under which such enlistments may be made, and to fix the pay and allowances of men so enlisted or drafted, which said pay and allowances shall not exceed those of enlisted men of the Regular Army. (40 Stat. 894.)

This was a provision of the army appropriation act for the fiscal year 1919, cited above.

§ 2044u. (Act July 9, 1918, c. 143, subchapter XXI.) Increase of drafted Army.

The authority conferred upon the President by the Act approved May eighteenth, nineteen hundred and seventeen, entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," is hereby extended so as to authorize him during each fiscal year to raise by draft as provided in said Act and Acts amendatory thereof the maximum number of men which may be organized, equipped, trained, and used during such year for the prosecution of the present war until the same shall have been brought to a successful conclusion. (40 Stat. 894.)

This was a provision of the army appropriation act for the fiscal year 1919, cited above.

REGISTRATION AND DRAFTING OF ALIENS

§ 2044¼(a). (Act July 9, 1918, c. 143, subchapter XII, § 1.) Proclamation; persons subject to.

The President may by proclamation set a day or days and place or places for the registration for military service of male aliens within designated ages residing within the United States who are citizens or subjects of a foreign country with whose Government the United States has concluded or hereafter concludes a convention or agreement in accordance with the terms of which its citizens or subjects within designated ages, residing within the United States, become under certain conditions liable to be drafted into the military service of the United States; that upon proclamation by the President stating the time and place of such registration it shall be the duty of any such alien, unless exempted from registration by the terms of the President's proclamation, to present himself for and submit to registration under the provisions of the Act approved May eighteenth, nineteen hundred and seventeen, entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," and all amendments thereto, and he shall thereupon be registered in the same manner as those previously registered under the terms of said Act; and every such alien shall be deemed to have notice of the requirements of said Act and this joint resolution upon the publication by the President of any such proclamation, and any such alien who shall willfully fail or refuse to present himself for registration or

to submit thereto shall be subject to all the provisions and liable to all the penalties provided in said Act or any amendment thereto. (40 Stat. 884.)

This section, and the two sections next following, were a part of the army appropriation act for the fiscal year 1919, cited above.

§ 2044¼(b). (Act July 9, 1918, c. 143, subchapter XII, § 2.) Liability to military service; exemptions.

Any such alien, when registered, shall be and remain liable to military service in the forces of the United States and subject to draft under the provisions of said convention or agreement and of said Act and all amendments thereto, and subject to such regulations as the President may have prescribed or may prescribe under the terms thereof, unless during the period specified in the convention or agreement concluded with the country whereof he is a citizen or subject and designated in the President's proclamation, he shall have enlisted or enrolled in the military forces of his own country or returned to his own country for the purpose of enlisting or enrolling in its military forces, or unless the country whereof he is a citizen or subject, through its diplomatic representatives, in accordance with the terms of the convention or agreement concluded between the United States and such foreign country, shall issue to such alien a certificate of exemption from military service. (40 Stat. 884.)

See note to § 2044¼(a).

§ 2044¼(c). (Act July 9, 1918, c. 143, subchapter XII, § 3.) Persons subject to act.

Any such alien, after the expiration of the time fixed by the President's proclamation within which he may enlist or enroll in the military forces of his own country, return to his own country for the purpose of military service, or be exempted through the diplomatic representative of the country whereof he is a citizen or subject, shall be and remain subject in all respects to the terms, provisions, liabilities, and penalties of said Act and all amendments thereto, except as modified by the terms of the convention or agreement concluded between the United States and the country whereof such alien is a citizen or subject, and shall be subject to such regulations as the President may have prescribed or may prescribe under the terms of said Act. (40 Stat. 884.)

See note to § 2044¼ (a).

SLAVIC LEGION

§ 2044½. (Act July 9, 1918, c. 143.) Enlistment in; training and use of Legion.

Under such regulations as the President may prescribe, a force of volunteer troops in such unit or units as he may direct may be raised to be composed of Jugo-Slavs, Czecho Slovaks, and Ruthenians (Ukranians) belonging to the oppressed races of the Austro-Hungarian or German Empire resident in the United States but not citizens thereof nor subject to the draft. Such force shall be known as the Slavic Legion or by such other description as the President may prescribe. No man shall be enlisted in it until he has furnished satisfactory evidence that he will faithfully and loyally serve the cause of the United States and that he desires to fight the Imperial governments of Germany and Austria-Hungary, and the allies thereof. The force so raised and duly sworn into the service may be equipped, maintained, and trained with our own troops or separately as the President may direct and thereafter may be transported to such field of action as the President may direct to be used against the common enemy in connection with our

own troops or with those of any nation associated with the United States in the present war; and the several items of expense involved in the equipment, maintenance, training, and transportation of such force may be paid from the respective appropriations herein made or from any subsequent appropriations for the same. (40 Stat. 868.)

This was a provision of the Army appropriation act for the fiscal year 1919 cited above.

CHAPTER TWO—RETIREMENT

Sec.
2073aa. Transfer to active list; certain officers transferred to retired list.
2075b. Assignment of retired officers to duty; service in corps of engineers.
2077a. Retired officers in active duty.
2078. Assignment to active duty.
2078a. Same; acting quartermasters.
2080a. Assignment of retired officers to active duty; rank, pay, and allowances.

§ 2073aa. (Act Feb. 23, 1917, c. 116.) Transfer to active list; certain officers transferred to retired list.

That hereafter the President be, and he is hereby, authorized, within one year of the approval of this Act, by and with the advice and consent of the Senate, to transfer, upon application, to the active list of the Army any officer under fifty years of age who may have been transferred heretofore from the active to the retired list of the Army under the Act to provide for recognizing the services of certain officers of the Army, Navy, and Public Health Service for their services in connection with the construction of the Panama Canal, and for other purposes, approved March fourth, nineteen hundred and fifteen: Provided, That such officers shall take rank at the foot of the respective grades which they held at the time of their retirement and shall be carried as an additional number in the grade to which he may be transferred or at any time thereafter promoted, and shall be promoted on the same date as the officer next above him in rank, and shall be commissioned in the arm or department of the Army from which he was retired: Provided further, That such officer shall stand a satisfactory medical examination, and when promoted shall stand the medical and professional examinations provided for by law: And provided further, That any officer transferred to the active list under this Act shall not again be entitled to the benefits of the Panama Canal Act described above, except when retired for age or for physical disability incurred in the line of duty. (39 Stat. 937.)

This was an act entitled "An act authorizing transfer of certain retired Army officers to the active list," cited above.

§ 2075b. (Res. June 15, 1917, c. 31.) Assignment of retired officers to duty; service in corps of engineers.

When retired officers of the Army, any portion of whose active service was in the Corps of Engineers, are called back into active service they shall be eligible to fill any position required by law to be filled by an officer of the Corps of Engineers. (40 Stat. 231.)

This was a resolution entitled "Joint Resolution relating to the service of certain retired officers of the Army," cited above.

§ 2077a. (Act July 9, 1918, c. 143, subchapter XX.) Retired officers in active duty.

When any retired officer of the Army is, in the discretion of the President, employed on active duty and assigned to duty in an arm, corps, department, or organization, he shall, for all purposes, except promotion, be considered an officer of such arm, corps, de-

partment, or organization while so serving, and shall be an extra number therein. (40 Stat. 893.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 2078. (Act April 23, 1904, c. 1485.) Assignment to active duty.

Officer of marine corps.—Despite R. S. § 1622 (Comp. St. 1916, § 2949), a retired officer of the Marine Corps is subject to the jurisdiction of the Navy and the Secretary of the Navy exercised his authority properly under Act Aug. 22, 1912 (Comp. St. 1916, § 2653), when he assigned such officer to duty as post quartermaster. Jonas v. U. S., 50 Ct. Cl. 281.

§ 2078a. (Act May 12, 1917, c. 12.) Same; acting quartermasters.

Assignments which have been, or may hereafter be made, of retired officers of the Army to active duty as acting quartermasters shall be regarded as assignments to staff duties not involving service with troops within the meaning of the Act of Congress approved April twenty-third, nineteen hundred and four. (40 Stat. 48.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 2080a. (Act June 3, 1916, c. 134, § 24, as amended, Act July 9, 1918, c. 143, subchapter XVII, § 4.) Assignment of retired officers to active duty; rank, pay and allowances.

Hereafter any retired officer, who has been or shall be detailed on active duty, shall receive the rank, pay, and allowances of the grade, not above that of colonel, that he would have attained in due course of promotion if he had remained on the active list for a period beyond the date of his retirement equal to the total amount of time during which he has been detailed on active duty since his retirement. (39 Stat. 183. 40 Stat. 890.)

This section was amended by Act July 9, 1918, c. 143, subchapter XXVII, § 4, cited above by substituting for the word "major" the word "colonel" as set forth above.

Notes of Decisions

Construction and operation in general.—Congress by this act gave to retired officers of the army detailed on active duty the longevity pay which would accrue to them by reason of their added active service after retirement, which pay they could not theretofore receive by reason of Act March 2, 1903 (Comp. St. 1916, § 2139). Jonas v. U. S., 53 Ct. Cl. 254.

CHAPTER THREE—PAY AND ALLOWANCES

Sec.
2089. Rates of pay.
2090a. Rates of pay; generals and lieutenant generals.
2090b. Rank, pay and allowances; chiefs of staff corps, departments or bureaus.
2091a. Pay of officers and men other than of Regular Army.
2092. Mounts for officers below grade of major required to be mounted.
2099. Service pay.
2101a. Service pay; detail to active duty of retired officer included.
2104. Pay during absence.
2110. [Repealed and superseded.]
2118aa. Quarters; commutation; persons entitled to.
2118bb. Quarters; commutation; officers on active duty; commutation for heat and light.
2118d. Housing of officers serving in the Canal Zone.
Sec.
2123a. Uniforms, accouterments, and equipment furnished at cost.
2126a. Travel expenses; enlisted men under competent orders.
2126b. Travel expenses; enlisted men incident to entry on or relief from active duty.
2132a. Mileage; officers of Ordnance Department.
2136a. Transportation of private mounts of officers, and reimbursement for charges thereon.
2136aa. Transportation of mounts of deceased officers.
2136b. Transportation of mounts of officers ordered for duty to Alaska or overseas.
2136c. Transportation of baggage of deceased civilian employés.
2139. Officers on retired list; length of service pay.
2144. Pay of enlisted men.

Sec.
2144a. Pay of certain enlisted men.
2146. Additional pay.
2158. Extra duty.
2159. Rates of extra-duty pay.
2161a. Extra duty pay; United States disciplinary barracks guard.
2162aa. Pay and allowances during captivity.
2164. Travel allowances on discharge.
2165a. Allowance to officer or enlisted man on discharge or placing on reserve list.
2169, 2170. [Superseded.]
2170a. Allotments of pay.
2205a. Valuation of foreign moneys paid out by disbursing officers.

§ 2089. (R. S. § 1261.) Rates of pay.

Cited without definite application,
Knox v. U. S., 52 Ct. Cl. 22.

§ 2090a. (Act Oct. 6, 1917, c. 105, § 3.) Rates of pay; generals and lieutenant generals.

The pay of the grades of general and lieutenant general shall be $10,000 and $9,000 a year, respectively, with allowances appropriate to said grades as determined by the Secretary of War. (40 Stat. 411.)

This was a proviso to section 3 of Act Oct. 6, 1917, c. 105, cited above. The preceding part of the section, authorizing the appointment of generals and lieutenant generals, is set forth, ante, § 1717bb.

§ 2090b. (Act Oct. 6, 1917, c. 105, § 3.) Rank, pay and allowances; chiefs of staff corps, departments or bureaus.

Hereafter, the chief of any existing staff corps, department, or bureau, except as is otherwise provided for the Chief of Staff, shall have the rank, pay, and allowances of major general. (40 Stat. 411.)

See note to § 1717bb, ante.

§ 2091a. (Act July 9, 1918, c. 143.) Pay of officers and men other than of Regular Army.

Officers and enlisted men of the forces of the Army of the United States other than the Regular Army who have had service in the National Guard and Organized Militia of any State, Territory, or District, but who have entered the service in the forces of the Army of the United States, otherwise than through draft under the provisions of section one hundred and eleven of the Act of June third, nineteen hundred and sixteen, known as the national defense Act, shall be upon the same footing as to pay and allowance as the members of said forces who were drafted under the provisions of said section. (40 Stat. 875.)

This section was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 2092. (Act May 11, 1908, c. 163.) Mounts for officers below grade of major required to be mounted.

Cited without definite application,
Andrews v. U. S., 52 Ct. Cl. 373.

§ 2099. (R. S. § 1262.) Service pay.

Officers included.—A contract surgeon is not an officer, within this section or Act June 30, 1882, c. 254 (Comp. St. 1916, § 2101), granting longevity pay. Yemans v. U. S., 52 Ct. Cl. 388.

§ 2101a. (Act May 12, 1917, c. 12.) Service pay; detail to active duty of retired officer included.

Hereafter any retired officer of the Army who has been detailed to active duty, and who has since his retirement, served on active detail shall be entitled to increases of longevity pay to be computed as provided by existing statute for the computation of longevity

pay, for the time of his service before retirement and on active detail since his retirement. (40 Stat. 48.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 2104. (R. S. § 1265.) Pay during absence.

Absence with leave.—The right of an army officer to half pay while on leave of absence, as conferred by this section, cannot be defeated by the affixing of a condition to the leave of absence that the leave shall be without pay, and such officer is not bound by acceptance of a leave of absence without protest against the affixing of the condition. U. S. v. Andrews, 36 S. Ct. 349, 240 U. S. 90, 60 L. Ed. 541, affirming judgment Andrews v. U. S., 49 Ct. Cl. 391.

Absence without leave.—The absence of an army officer, based on a leave of absence to which was affixed a condition, contrary to this section, that the leave should be without pay, cannot be treated as absent without leave so as not to be entitled to pay. U. S. v. Andrews, 36 S. Ct. 349, 240 U. S. 90, 60 L. Ed. 541, affirming judgment Andrews v. U. S., 49 Ct. Cl. 391.

§ 2110. [Repealed and superseded.]

This section (Act March 4, 1912, c. 50), relating to leaves of absence to members of the Nurse Corps, was repealed by a provision of Act July 9, 1918, c. 143, subchapter V, § 7. Said repealing provision was as follows: "That section nineteen of chapter one hundred and ninety-two of Thirty-first Statutes, page seven hundred and fifty-three; chapter fifty of Thirty-seventh Statutes, page seventy-two; that part of the Act approved August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes, page five hundred and seventy-five), providing for allowances, subsistence, and medical care during illness for the Superintendent of the Nurse Corps; and that part of the Act approved March twenty-third, nineteen hundred and ten (Thirty-sixth Statutes, page two hundred and forty-nine) prescribing the pay of the superintendent and members of the Nurse Corps, be, and the same are, hereby repealed."

This section was also superseded by further provisions of said Act July 9, 1918, c. 143, subchapter V, set forth ante, §§ 1832b–1832g. For text of this section, as originally enacted, see U. S. Comp. St. 1916, § 2110.

§ 2118aa. (Act Nov. 4, 1918, c. 201, § 1.) Quarters; commutation; persons entitled to.

For commutation of quarters and of heat and light to commissioned officers, members of the Nurse Corps, and enlisted men on duty at places where no public quarters are available, including enlisted men of the Regular Army Reserves and retired enlisted men when ordered to active duty, and for every commissioned officer of the Army of the United States on duty in the field or on active duty without the territorial jurisdiction of the United States who maintains a place of abode for a wife, child, or dependent parent, for whom no public quarters are available. * * (40 Stat. 1028.)

This was a provision of the "First Deficiency Appropriation Act, 1919," cited above. Prior Army appropriation acts have contained a similar provision.

§ 2118bb. (Act April 16, 1918, c. 53.) Quarters; commutation; officers on active duty; commutation for heat and light.

During the present emergency every commissioned officer of the Army of the United States on duty in the field, or on active duty without the territorial jurisdiction of the United States, who maintains a place of abode for a wife, child, or dependent parent, shall be furnished at the place where he maintains such place of abode, without regard to personal quarters furnished him elsewhere, the number of rooms prescribed by the Act of March second, nineteen hundred and seven (Thirty-fourth Statutes, page eleven hundred and sixty-nine), to be occupied by, and only so long as occupied by, said wife, child, or dependent parent; and in case such quarters are not available every such commissioned officer shall be paid commutation thereof and commutation for heat and light at the rate au-

thorized by law in cases where public quarters are not available; but nothing in this Act shall be so construed as to reduce the allowances now authorized by law for any person in the Army. (40 Stat. 530.)

This was an act entitled "An act to provide quarters or commutation thereof to commissioned officers in certain cases," cited above.

Notes of Decisions

Construction and operation in general.—This section does not determine that the term "in the field" includes the cantonments in this country, so as to render a civilian employé at such camp subject to military law, under article 2 of the Articles of War (Comp. St. 1916, § 2038a). Ex parte Mikell (D. C.) 253 F. 817.

§ 2118d. (Act July 9, 1918, c. 143.) Housing of officers serving in the Canal Zone.

Hereafter officers of the Army pertaining to the United States troops serving in the Canal Zone shall not be required to pay rent for the occupancy of houses of the Panama Canal to which they may be assigned. (40 Stat. 855.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 2123a. (Act Aug. 31, 1918, c. 166, § 9.) Uniforms, accouterments, and equipment furnished at cost.

Hereafter, uniforms, accouterments, and equipment shall, upon the request of any officer of the Army or cadet at the Military Academy, be furnished by the Government at cost, subject to such restrictions and regulations as the Secretary of War may prescribe. (40 Stat. 957.)

See note to § 2044g, ante.

§ 2126a. (Act April 20, 1918, c. 60.) Travel expenses; enlisted men under competent orders.

Hereafter under such regulations and within such maximum rates as may be prescribed by the Secretary of War enlisted men may be reimbursed for actual expenses of travel, including subsistence and lodging, incurred while traveling under competent orders and not embraced in the movement of troops, or they may be paid a flat per diem therefor in lieu of such reimbursement. (40 Stat. 534.)

This was an act entitled "An act to provide for reimbursement of actual expenses or flat per diem for enlisted men traveling on duty under competent orders," cited above.

§ 2126b. (Act July 9, 1918, c. 143.) Travel expenses; enlisted men incident to entry on or relief from active duty.

In the discretion of the Secretary of War, and under such regulations as he may prescribe, travel pay at the rate now prescribed by law for discharged soldiers may be given to all enlisted men for whom the law authorizes travel allowances as an incident to their entry upon and relief from active duty with the Army. (40 Stat. 860.)

This was a provision of the Army appropriation act for the fiscal year 1919 cited above.

§ 2132a. (Act May 12, 1917, c. 12.) Mileage; officers of Ordnance Department.

Mileage to officers of the Ordnance Department traveling on duty in connection with that department shall be paid from the appropriation for the work in connection with which the travel is performed. (40 Stat. 65.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

§ 2136a. (Act April 27, 1914, c. 72.) Transportation of private mounts of officers, and reimbursement for charges thereon.

Operation of section in general.—This section applies only to officers changing stations, and not to those ordered "over the seas" to their homes, or to any other place in the United States. Illinois Cent. R. Co. v. U. S., 52 Ct. Cl. 53.

Such section tends to show that it is necessary to have authority of law for transportation of excess mounts on change of station, and that such transportation could not legally be provided for by regulation. Id.

§ 2136aa. (Act July 9, 1918, c. 143, subchapter XVIII.) Transportation of mounts of deceased officers.

Hereafter, under such regulations as the Secretary of War may prescribe, authorized mounts of officers who die in the service may, within ninety days after the death of the officer, be transported at public expense from their last duty station to such places within the limits of the United States as may be the home of their families, or as may be designated by their legal representatives or executors, or such mount may be disposed of as directed by such representatives or executors. (40 Stat. 892.)

This was a part of the Army appropriation act for the fiscal year 1919, cited above.

§ 2136b. (Act July 9, 1918, c. 143.) Transportation of mounts of officers ordered for duty to Alaska or overseas.

Hereafter, under such regulations as the Secretary of War may direct, the authorized horses of mounted officers ordered for duty over the seas or to Alaska may be transported at public expense to remount depots or elsewhere in the United States for safekeeping during the absence of such officers. (40 Stat. 859.)

This was a provision of the Army appropriation act for the fiscal year 1919 cited above.

§ 2136c. (Act July 9, 1918, c. 143, subchapter XVIII.) Transportation of baggage of deceased civilian employés.

Hereafter, under such regulations as the Secretary of War may prescribe, transportation at public expense may be provided for the baggage of civilian employees who die in the service from their last duty station to such places within the limits of the United States as may be the home of their families, or as may be designated by their legal representatives or executors. (40 Stat. 892.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 2139. (Act March 2, 1903, c. 975.) Officers on retired list; length of service pay.

Construction and operation in general.—Congress, by Act June 3, 1916, ante, § 2080a, gave to retired officers of the Army detailed on active duty the longevity pay which would accrue to them by reason of their added active service after retirement, which pay they could not theretofore receive by reason of this section. Jonas v. U. S., 53 Ct. Cl. 254.

§ 2144. (Act May 11, 1908, c. 163.) Pay of enlisted men.

The pay of all enlisted men of the Army of the United States in active service during the war with Germany is increased by Act May 18, 1917, c. 15, § 10, ante, § 2044j.

§ 2144a. (Act June 3, 1916, c. 134, § 28, as amended, Act July 9, 1918, c. 143, subchapter XVII, § 5.) Pay of certain enlisted men.

Hereafter the monthly pay of enlisted men of certain grades of the Army created in this Act shall be as follows, namely: Quartermaster sergeant, senior grade, Quartermaster Corps; master hospital sergeant, Medical Department; master engineer, senior grade, Corps of Engineers; and band leader, Infantry, Cavalry, Artillery, and

Corps of Engineers, $75; hospital sergeant, Medical Department and master engineer, junior grade, Corps of Engineers, $65; ser geant, first class, Medical Department, $50; sergeant, first class Corps of Engineers; regimental supply sergeant, Infantry, Cavalry Field Artillery, and Corps of Engineers; battalion supply sergeant Corps of Engineers; and assistant engineer, Coast Artillery Corps $45; assistant band leader, Infantry, Cavalry, Artillery, an Corps of Engineers; and sergeant bugler, Infantry, Cavalry, Ar tillery, and Corps of Engineers, $40; musician, first class, Infan try, Cavalry, Artillery, and Corps of Engineers; supply sergeant mess sergeant, and stable sergeant, Corps of Engineers; ser geant Medical Department, $36; supply sergeant, Infantry, Cavalry and Artillery; mess sergeant, Infantry, Cavalry, and Artillery cook, Medical Department; horseshoer, Infantry, Cavalry, Artil lery, Corps of Engineers, Signal Corps, and Medical Department stable sergeant, Infantry and Cavalry; radio sergeant, Coast Ar tillery Corps; and musicians, second class, Infantry, Cavalry, Ar tillery, and Corps of Engineers, $30; musician, third class, Infan try, Cavalry, Artillery, and Corps of Engineers; corporal, Med ical Department, $24; saddler, Infantry, Cavalry, Field Artillery Corps of Engineers, and Medical Department; mechanic, Infan try, Cavalry, and Field Artillery, and Medical Department; far rier, Medical Department; and wagoner, Infantry, Field Artil lery, and Corps of Engineers, $21; private, first class, Infantry Cavalry, Artillery, and Medical Department, $18; private, Medica Department, and bugler, $15. Nothing herein contained shall op erate to reduce the pay or allowances now authorized by law for an grade of enlisted men of the Army: Provided, That enlisted mer who are now qualified, or who may hereafter qualify, as expert mili tary telegraphers, shall receive $5 a month; as first-class militar telegraphers, $3 a month; as military telegraphers, $2 a month; al in addition to their pay, under such regulations as the Secretary o War may prescribe, but no enlisted man shall receive at the same time additional pay for more than one of the classifications named (39 Stat. 186. 40 Stat. 890.)

This section was amended by Act July 9, 1918, c. 143, subchapter XVII, § 5 cited above, by adding thereto the proviso, as set forth above.

Temporary increases in pay were authorized by § 2044j, ante.

§ 2146. (Act May 11, 1908, c. 163, as amended Act May 12, 1917, c. 12.) Additional pay.

Hereafter enlisted men now qualified or hereafter qualifying as marksmen shall receive $2 per month; as sharpshooters, $3 per month; as expert riflemen, $5 per month; as second-class gunners, $2 per month; as first-class gunners, $3 per month; as expert first-class gunners, Field Artillery, $5 per month; as gun pointers gun commanders, observers second-class, chief planters, and chief loaders, $7 per month; as plotters, observers first-class, casemate electricians, and coxswains, $9 per month, all in addition to their pay, under such regulations as the Secretary of War may prescribe, but no man shall receive at the same time additional pay for more than one of the classifications named in this section. (35 Stat. 110. 40 Stat. 45.)

This section was amended by Act May 12, 1917, c. 12, cited above, by including expert first-class gunners, Field Artillery, at $5 per month, and coxswains at $9 per month.

§ 2158. (R. S. § 1287.) Extra duty.

Construction of statutes.—Where a statute provides for extra pay for the United States military prison guard, the privates as well as noncommissioned officers performing such duty are entitled thereunder to extra pay Schwanz v. U. S., 50 Ct. Cl. 276.

The appropriation in Act March 3 1885, c. 339 (Comp. St. 1916, § 2159) for "enlisted men on extra duty," wa

limited in its provisions to the Quartermaster Corps, but the other language in the same section, amendatory of this section, had no relation to the Quartermaster Corps and was permanent legislation. Scheid v. U. S., 52 Ct. Cl. 247.

§ 2159. (Act March 3, 1885, c. 339.) Rates of extra-duty pay.

Construction of statutes.—Where a statute provides for extra pay for the United States military prison guard, the privates as well as noncommissioned officers performing such duty are entitled thereunder to extra pay. Schwanz v. U. S., 50 Ct. Cl. 276.

The appropriation in this section for "enlisted men on extra duty" was limited in its provisions to the Quartermaster Corps, but the other language in the same section, amendatory of section 1287, Rev. St. (Comp. St. 1916, § 2158), had no relation to the Quartermaster Corps and was permanent legislation. Scheid v. U. S., 52 Ct. Cl. 247.

§ 2161a. (Act May 12, 1917, c. 12.) Extra-duty pay; United States disciplinary barracks guard.

Hereafter the extra-duty pay to the United States disciplinary barracks guard shall be at the following rates per day: Battalion sergeants major, first sergeants, mess sergeants, supply sergeants, and sergeants, 35 cents; corporals, 30 cents; cooks and mechanics, privates first class, privates, and buglers, 20 cents. (40 Stat. 52.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above. It supersedes a somewhat similar provision of the Army appropriation act for the fiscal year 1917, Act Aug. 29, 1916, c. 418, § 1, 39 Stat. 632.

§ 2162aa. (Act March 3, 1919, c. 112.) Pay and allowances during captivity.

Members of the Army Nurse Corps (female) or of the Navy Nurse Corps (female), Army field clerks, field clerks, Quartermaster Corps, and civil employees of the Army, shall be entitled to full pay and allowances during any period of involuntary captivity by the enemy of the United States; and their right to such full pay and allowances shall not be abridged or lost by reason of absence from duty when that absence is caused by involuntary captivity by the enemy of the United States. Any captivity by the enemy shall be construed to be involuntary until the contrary shall be affirmatively established.

All rights and privileges hereunder shall be in force from April sixth, nineteen hundred and seventeen, to the end of the existing war. (40 Stat. 1321.)

This section is an act entitled "An act granting to members of the Army Nurse Corps (female) and Navy Nurse Corps (female), Army field clerks, field clerks, Quartermaster Corps, and civil employés of the Army pay and allowances during any period of involuntary captivity by the enemy of the United States," cited above.

§ 2164. (Act June 3, 1916, c. 134, § 126, as amended, Act Feb. 28, 1919, c. 70, § 3.) Travel allowances on discharge.

An enlisted man honorably discharged from the Army, Navy, or Marine Corps since November eleventh, nineteen hundred and eighteen, or who may hereafter be honorably discharged, shall receive five cents per mile from the place of his discharge to his actual bona fide home or residence, or original muster into the service, at his option: Provided, That for sea travel on discharge, transportation and subsistence only shall be furnished to enlisted men: Provided, That naval reservists duly enrolled who have been honorably released from active service since November eleventh, nineteen hundred and eighteen, or who may hereafter be honorably released from active service, shall be entitled likewise to receive mileage as aforesaid. (39 Stat. 217. 40 Stat. 1203.)

This section was amended by Act Feb. 28, 1919, c. 70, § 3, cited above, to read as set forth above. Prior to this amendment said section read as follows:

"On and after July first, nineteen hundred and sixteen, an enlisted man when discharged from the service, except by way of punishment for an offense, shall receive 3½ cents per mile from the place of his discharge to the place of his acceptance for enlistment, enrollment, or original muster into the service, at his option: Provided, That for sea travel on discharge transportation and subsistence only shall be furnished to enlisted men." Section 4 of said Act Feb. 28, 1919, c. 70, repeals all inconsistent acts and parts of acts.

§ 2165a. (Act Feb. 24, 1919, c. 18, § 1406.) Allowance to officer or enlisted man on discharge or placing on reserve list.

All persons serving in the military or naval forces of the United States during the present war who have, since April 6, 1917, resigned or been discharged under honorable conditions (or, in the case of reservists, been placed on inactive duty), or who at any time hereafter (but not later than the termination of the current enlistment or term of service) in the case of the enlisted personnel and female nurses, or within one year after the termination of the present war in the case of officers, may resign or be discharged under honorable conditions (or, in the case of reservists, be placed on inactive duty), shall be paid, in addition to all other amounts due them in pursuance of law, $60 each.

This amount shall not be paid (1) to any person who though appointed or inducted into the military or naval forces on or prior to November 11, 1918, had not reported for duty at his station on or prior to such date; or (2) to any person who has already received one month's pay under the provisions of section 9 of the Act entitled "An Act to authorize the President to increase temporarily the military establishment of the United States," approved May 18, 1917; or (3) to any person who is entitled to retired pay; or (4) to the heirs or legal representatives of any person entitled to any payment under this section who has died or may die before receiving such payment. In the case of any person who subsequent to separation from the service as above specified has been appointed or inducted into the military or naval forces of the United States and has been or is again separated from the service as above specified, only one payment of $60 shall be made.

The above amount, in the case of separation from the service on or prior to the passage of this Act, shall be paid as soon as practicable after the passage of this Act, and in the case of separation from the service after the passage of this Act shall be paid at the time of such separation.

The amounts herein provided for shall be paid out of the appropriations for "pay of the Army" and "pay of the Navy," respectively, by such disbursing officers as may be designated by the Secretary of War and the Secretary of the Navy.

The Secretary of War and the Secretary of the Navy respectively shall make all regulations necessary for the enforcement of the provisions of this section. (40 Stat. 1151.)

This section is § 1406 of the Revenue Act of 1918 (Title XIV—General Provisions), cited above.

Act May 18, 1917, § 9, referred to in this section, is Act May 18, 1917, c. 15, § 9, ante, § 2044i.

§§ 2169, 2170. [Superseded.]

See note to § 2170a, post.

§ 2170a. (Act March 2, 1899, c. 352, § 16, as amended, Act March 2, 1901, c. 803, and Act Oct. 6, 1917, c. 81.) Allotments of pay.

The Secretary of War is hereby authorized to permit, under such regulations as he may prescribe, any officer or enlisted man on the active list of the Army, any retired officer or enlisted man of the Army on active duty, and any permanent civilian employee under the jurisdiction of the War Department on duty outside of the con-

tinental limits of the United States, to make allotments of his pay for the support of his wife, children, or dependent relatives, or for such other purposes as the Secretary of War may deem proper. All allotments of pay of officers, enlisted men, and civilian employees that have been or shall be paid to designated allottees previous to the receipt by disbursing officer of notice of discontinuance of the same from the officer required by regulations to furnish such notice shall pass to the credit of the disbursing officer who has made or shall make such payments; and, if erroneous payment is made because of the failure of an officer to report, in the manner prescribed by the Secretary of War, the death of the grantor, or any fact which renders the allotment not payable, then the amount of such erroneous payment shall be collected by the Quartermaster General from the officer who fails to make such report, if such collection is practicable. Nothing herein shall be construed to invalidate allotments now in force. (30 Stat. 981. 31 Stat. 896. 40 Stat. 384.)

This was an act entitled "An act making further provision for the allotment of pay of officers, enlisted men, and civilian employés of the Army, and for other purposes," cited above.

The following was the enacting clause:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section sixteen of the Act of Congress approved March second, eighteen hundred and ninety-nine, entitled 'An Act for increasing the efficiency of the Army of the United States, and for other purposes,' as amended by the Act of March second, nineteen hundred and one, be, and the same is hereby, amended as follows:"

This section therefore may be considered as superseding said Act March 2, 1899, c. 352, § 16, and the provision of said Act March 2, 1901, c. 803.

§ 2205a. (Act July 9, 1918, c. 143.) Valuation of foreign moneys paid out by disbursing officers.

For payment of exchange by acting quartermasters serving in foreign countries and when specially authorized by the Secretary of War by officers disbursing funds pertaining to the Quartermaster Corps when serving in Alaska, and all foreign money received shall be charged to and paid out by disbursing officers of the Quartermaster Corps at the legal valuation fixed by the Secretary of the Treasury. * * (40 Stat. 855.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

CHAPTER FOUR—THE MILITARY ACADEMY

Sec.
2206. Officers, professors, and instructors.
2207a. Quarters for civilian instructors in departments of modern languages and tactics.
2219a. Chapel organist and choirmaster.
2230. Cadets; number and appointment.
2230c. Cadets; number and appointment.
2264a. Master of sword; rank, pay, and allowances.
2266. Cadets; pay.
2267a. Cadets; rations; commutation.
2270. Band.
2271. Band.
2273a. Retirement of "order and purchasing clerk."
2275a. Battalion sergeant major, rank, pay, allowances, and retirement.
2275b. Battalion sergeant major; rank, pay, and allowances.
2275bb. Regimental sergeant major; rank, pay, and allowances.
2275c. Sergeants, coast artillery.
2275d. Enlisted men; extra pay.
2278a. Sale of machinery, apparatus, or supplies.
2280b. Disbursement of and accounting for certain funds.
2282a. Hotel at Reservation.

§ 2206. (R. S. § 1309, as amended, Act Feb. 18, 1896, c. 22.) Officers, professors, and instructors.

The current Military Academy appropriation act, Act March 4, 1919, c. 124, 40 Stat. 1336, makes appropriations for civilian instructors in music, in French, etc., as follows:

"Pay of civilians: For pay of one teacher of music, $1,800.

"For pay of two civilian instructors of French, to be employed under the rules prescribed by the Secretary of War, at $2,000 each, $4,000.

"For pay of two civilian instructors of Spanish, to be employed under the rules prescribed by the Secretary of War, at $2,000 each, $4,000.

"For pay of two expert civilian instructors in fencing, broadsword exercises, and other military gymnastics as may be required to perfect this part of the training of cadets, $3,000.

"For pay of one professional civilian instructor in military gymnastics, fencing, boxing, wrestling, and swimming, $1,500.

"For pay of two expert assistant civilian instructors in military gymnastics, fencing, boxing, wrestling, and swimming, $4,000." Said act also makes appropriations for copyists, etc., as follows:

"For pay of one stenographer, typewriter, and attendant in charge of the library in the department of law, to be appointed by the Superintendent of the United States Military Academy, $900.

"For pay of one copyist, stenographer, clerk, librarian, typewriter, and attendant in the department of modern languages, to be appointed by the Superintendent United States Military Academy, $1,040.

"For pay of one stenographer, typewriter, and attendant in the department of English and history, to be appointed by the superintendent, $840.

"For pay of one skilled copyist, confidential stenographer, librarian, typewriter, and attendant in the department of mathematics, to be appointed by the Superintendent of the United States Military Academy, $1,000.

"For pay of one stenographer, typewriter, and clerk in the medical department and department of military hygiene, to be appointed by the superintendent of the United States Military Academy under the Act of Congress approved March 4, 1913, $840.

"For pay of one confidential stenographer, copyist, librarian, typewriter, and multigraph operator in the department of natural and experimental philosophy, to be appointed by the Superintendent of the United States Military Academy, $1,000."

§ 2207a. (Act March 4, 1919, c. 124.) Quarters for civilian instructors in departments of modern languages and tactics.

[The] these civilian instructors employed in the department of modern languages and the department of tactics shall be entitled to public quarters and to the same allowances with respect to fuel and light as those of a first lieutenant when occupying public quarters. (40 Stat. 1339.)

This was a provision accompanying an appropriation for civilian instructors in military gymnastics, fencing, boxing, wrestling, and swimming, in the Military Academy appropriation act for the fiscal year 1920, cited above.

§ 2219a. (Act Aug. 11, 1916, c. 314.) Chapel organist and choirmaster.

For pay of chaplain, for the fiscal year 1920, there was appropriated $2,400 by Act March 4, 1919, c. 124, 40 Stat. 1336.

§ 2230. (Act May 4, 1916, c. 110, § 1.) Cadets; number and appointment.

Domicile of cadets.—One having domicile in Louisiana, who is appointed cadet at West Point and remains in army until voluntary retirement 30 years later, does not forfeit domicile. Stevens v. Allen (La.) 71 So. 936.

§ 2230c. (Act July 9, 1918, c. 143, subchapter XXII.) Cadets; number and appointment.

The Corps of Cadets of the United States Military Academy shall hereafter consist of two from each congressional district, two from each Territory, four from the District of Columbia, two from natives of Porto Rico, four from each State at large, and eighty-two from the United States at large, twenty of whom shall be selected from among the honor graduates of educational institutions having officers of the Regular Army detailed as professors of military science

and tactics under existing law or any law hereafter enacted for the detail of officers of the Regular Army to such institutions, and which institutions are designated as "honor schools," upon the determination of their relative standing at the last preceding annual inspection regularly made by the War Department, and two of whom shall be selected from persons recommended by the Vice President. They shall be appointed by the President and shall, with the exception of the eighty-two appointed from the United States at large, be actual residents of the congressional or territorial district, or of the District of Columbia, or of the Island of Porto Rico, or of the States, respectively, from which they purport to be appointed. (40 Stat. 894.)

This was a part of the Army appropriation act for the fiscal year 1919, cited above.

§ 2264a. (Act May 29, 1917, c. 22.) Master of sword; rank, pay, and allowances.

The master of the sword shall have the relative rank and shall be entitled to the pay, allowances, and emoluments of a major during the active service of the present incumbent of that office. (40 Stat. 90.)

This was a provision of the Military Academy appropriation act for the fiscal year 1918, cited above.

For pay of master of the sword, see Act March 4, 1919, c. 124, 40 Stat. 1336.

§ 2266. (Act May 11, 1908, c. 163.) Cadets; pay.

The current Military Academy appropriation act, Act March 4, 1919, c. 124, 40 Stat. 1336, makes the following appropriation:

"For pay of cadets, $780,000: Provided, That the pay of cadets for the fiscal year ending June 30, 1920, shall be fixed at $780 per annum and one ration per day or commutation therefor at the rate of 68 cents per ration, to be paid from the appropriation for the subsistence of the Army."

§ 2267a. (Act July 9, 1918, c. 143.) Cadets; rations; commutation.

For payments: Of commutation of rations to the cadets of the United States Military Academy in lieu of the regular established ration, at the rate of 68 cents per ration. (40 Stat. 856.)

This was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 2270. (R. S. § 1111, as amended, Act March 2, 1901, c. 804, Act March 3, 1905, c. 1404, and Act June 27, 1918, c. 108.) Band.

The Military Academy Band shall hereafter consist of one teacher of music, who shall be the leader of the band, one enlisted band sergeant and assistant leader, and of fifty enlisted musicians. The teacher of music shall receive the pay and have the rank of a first lieutenant, not mounted; the enlisted band sergeant and assistant leader shall receive $972 per year; and of the enlisted musicians of the band, fifteen shall each receive $51 per month, fifteen shall receive $44 per month, and the remaining twenty shall each receive $38 per month, and each of the aforesaid enlisted men shall also be entitled to the clothing, fuel, rations, and other allowances of musicians of the Regular Army; and the said teacher of music, the band sergeant and assistant leader, and the enlisted musicians of the band shall be entitled to the same benefits in respect to pay, emoluments, and retirement arising from longevity, reenlistment, and length of service as are, or may hereafter become, applicable to other officers or enlisted men of the Army. (31 Stat. 912. 33 Stat. 853. 40 Stat. 623.)

This section was again amended by Act June 27, 1918, c. 108, cited above, to read as set forth above. For section as amended by Act March 3, 1905, c. 1404, see U. S. Comp. St. 1916, § 2270.

§ 2271. (Act May 28, 1908, c. 214.) Band.

The current Military Academy appropriation act, Act March 4, 1919, c. 124, 40 Stat. 1336, makes the following appropriation for the Military Academy Band:

"For pay of the Military Academy Band, field musicians, general Army service, Cavalry, Artillery, and engineer detachments, and enlisted men on detached service, and extra pay for enlisted men on special duty:

"For pay of Military Academy Band: One band sergeant and assistant leader, $972.

"Fifteen enlisted musicians, at $51 each per month, $9,180.

"Fifteen enlisted musicians, at $44 each per month, $7,920.

"Twenty enlisted musicians, at $38 each per month, $9,120.

"Additional pay for length of service, $6,437.

"For pay of field musicians: One sergeant, $672.

"Two corporals, at $36 each per month, $864.

"Seven privates, first class, at $33 each per month, and twenty-one privates, second class, at $30 each per month, $10,332.

"Additional pay for length of service, $990."

§ 2273a. (Act June 27, 1918, c. 108.) Retirement of "order and purchasing clerk."

The clerk now holding the position of "order and purchasing clerk" in the quartermaster's office shall, on his own application, after fifty years in the military and civil service of the United States, be entitled to be placed on the retired list of the Army with the pay of a retired pay clerk, Quartermaster Corps, of the same period of service. (40 Stat. 623.)

This was a provision of the Military Academy appropriation act for the fiscal year 1919, cited above.

§ 2275a. (Act June 27, 1918, c. 108.) Battalion sergeant major; rank, pay, allowances, and retirement.

For pay of one battalion sergeant major, Infantry * *: Provided, That the enlisted man in the headquarters, United States Corps of Cadets, performing that duty has the rank, pay, and allowances of that grade: And provided further, That if performing the above duties at time of retirement the said enlisted man shall be retired with the rank, pay, and allowances of a retired sergeant major, Infantry. (40 Stat. 623.)

This section is a provision of the Military Academy appropriation act for the fiscal year 1919, cited above.

§ 2275b. (Act March 4, 1919, c. 124.) Battalion sergeant major; rank, pay, and allowances.

For pay of one battalion sergeant major, Infantry, * *: Provided, That the enlisted man at headquarters, United States Military Academy, performing that duty shall have the rank, pay, and allowance of that grade. (40 Stat. 1339.)

This section is a provision of the Military Academy appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts

§ 2275bb. (Act March 4, 1919, c. 124.) Regimental sergeant major; rank, pay, and allowances.

For pay of one regimental sergeant major, Infantry, * * Provided, That the enlisted man in the headquarters United States Corps of Cadets, performing that duty has the rank, pay, and allowances of that grade. (40 Stat. 1339.)

This section is a provision of the Military Academy appropriation act for the fiscal year 1920, cited above.

§ 2275c. (Act March 4, 1919, c. 124.) Sergeants, coast artillery.

For pay of four sergeants (Coast Artillery) to be used as assistant noncommissioned instructors of cadets and for the purpose of military administration, to be attached to the United States Military Academy detachment of Field Artillery. * * (40 Stat. 1339.)

This section is a provision of the Military Academy appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts

§ 2275d. **(Act June 27, 1918, c. 108.) Enlisted men; extra pay.**

Extra pay, not to exceed 50 cents per day, may be paid enlisted men from any item under Current and Ordinary Expenses, Miscellaneous Expenses, and Buildings and Grounds, for labor involved, when in the opinion of the superintendent this will result in economy to the Government and the employment of enlisted men on such labor will not interfere with their regular duties. (40 Stat. 631.)

This section is a provision of the Military Academy appropriation act for the fiscal year 1919, cited above.

§ 2278a. **(Act March 4, 1919, c. 124.) Sale of machinery, apparatus, or supplies.**

Hereafter, when any machinery, apparatus implements, supplies, or materials which have been heretofore or may hereafter be purchased or acquired from appropriations made for the support of the United States Military Academy are no longer needed or are no longer serviceable, they may be sold in such manner as the superintendent may direct; and that the proceeds shall be turned into the Treasury as miscellaneous receipts. (40 Stat. 1347.)

This section is a part of the Military Academy appropriation act for the fiscal year 1920, cited above.

§ 2280b. **(Act March 4, 1919, c. 124.) Disbursement of and accounting for certain funds.**

For the purpose of accounting only, all funds hereinbefore appropriated under the titles "Current and ordinary expenses," "Miscellaneous items and incidental expenses," and "Buildings and grounds" shall be disbursed and accounted for by the disbursing officer, United States Military Academy, as "Maintenance, United States Military Academy," and for the purpose shall constitute one fund. * * (40 Stat. 1347.)

This section is a part of the Military Academy appropriation act for the fiscal year 1920, cited above.

§ 2282a. **(Act March 4, 1919, c. 124.) Hotel at Reservation.**

The Secretary of War is hereby authorized to allow any corporation, company, or individual to erect on the United States Military Academy reservation at West Point, New York, a hotel, in accordance with plans and specifications to be approved by the Superintendent of the United States Military Academy and to enjoy the revenue therefrom for a period of fifty years; after which time said hotel shall become the property of the United States: Provided, That the title and ownership of said hotel may be accepted by the Secretary of War on the behalf of the United States at any time. That said hotel shall be conducted under such regulations including the rates and the charges for accommodations thereat as may be promulgated by the Superintendent of the United States Military Academy under the direction of the Secretary of War. (40 Stat. 1348.)

This section is a part of the Military Academy appropriation act for the fiscal year 1920, cited above.

CHAPTER FOUR A—MILITARY INSTRUCTION IN EDUCATIONAL INSTITUTIONS

§ 2289aa. (Act April 17, 1918, c. 56, § 4.) Military equipment and instructors at other schools and colleges.

During the present war such arms, tentage, and equipment as the Secretary of War shall deem necessary for proper military training shall be supplied by the Government to schools and colleges other than those provided for in section forty-seven of the national-defense Act approved June third, nineteen hundred and sixteen, having a course of military training prescribed by the Secretary of War, and having not less than one hundred physically fit male students above the age of fourteen years, under such rules and regulations as he may prescribe; and the Secretary of War is hereby authorized during the present war to detail commissioned and noncommissioned officers of the Army of the United States to said schools and colleges, detailing not less than one such officer or noncommissioned officer to each five hundred students under military instruction; but no officer or noncommissioned officer shall be so detailed who has not had at least one year's active service in the Army of the United States. (40 Stat. 532.)

See note to § 1881ii, ante.

CHAPTER FOUR B—DESERTIONS

§ 2297. (Act June 18, 1898, c. 469, § 6.) Arrest of deserters by civil officers.

Right of private detective to make arrest.—A private detective has no authority as such, without warrant or military order, to arrest or detain a deserter from the navy; this section not applying. People v. Hamilton (Sup.) 170 N. Y. S. 705, 183 App. Div. 55, 36 N. Y. Cr. R. 472.

CHAPTER FIVE—ARTICLES OF WAR

Sec.
2308a. Articles of War.

I. PRELIMINARY PROVISIONS
2. Persons subject to military law.

II. COURTS-MARTIAL
3. Courts-martial classified.
B. BY WHOM APPOINTED
8. General courts-martial.
9. Special courts-martial.
10. Summary courts-martial.
C. JURISDICTION
12. General courts-martial.
15. Not exclusive.
G. ACTION BY APPOINTING OR SUPERIOR AUTHORITY
46. Approval and execution of sentence.
50. Mitigation or remission of sentences.
52. Suspension of sentence.
53. Execution or remission; confinement in disciplinary barracks.

III. PUNITIVE ARTICLES
A. ENLISTMENT; MUSTER; RETURNS
54. Fraudulent enlistment.
55. Officer making unlawful enlistment.
57. False returns; omission to render returns.
B. DESERTION—ABSENCE WITHOUT LEAVE
58. Desertion.
D. ARREST; CONFINEMENT
74. Delivery of offenders to civil authorities.
F. MISCELLANEOUS CRIMES AND OFFENSES
92. Murder; rape.
93. Various crimes.

V. MISCELLANEOUS PROVISIONS
108. Soldiers; separation from the service.
109. Oath of enlistment.
112. Effects of deceased persons; disposition of.

§ 2308a. (R. S. § 1342, as amended, Act Aug. 29, 1916, c. 418, § 3, Act July 9, 1918, c. 143, subchapter X, and Act Feb. 28, 1919, c. 81.) Articles of War.

I. PRELIMINARY PROVISIONS.

Art. 2. Persons subject to military law.

Construction and operation in general.—Articles of War, art. 2, defining persons subject to military law, is not repealed by section 6 of Selective Draft Act, declaring that violation of any of the provisions of act shall be misdemeanor. Franke v. Murray, 248 F. 865, 160 C. C. A. 623.

Provision of Selective Draft Act, § 6, ante, § 2044f, that it shall be a misdemeanor to violate any provision of act or regulations made thereunder, does not preclude punishment under military law by one subject thereto because he was duly certified into the service; section itself expressly excepting those subject to military law. Id.

The construction placed by the Secretary of War on article 2 is not conclusive; but the construction is for the courts specially, in so far as it affects the relations between the armies and civilian population. Ex parte Mikell (D. C.) 253 F. 817.

Validity.—Under Const. U. S. art. 1, § 8, Congress was authorized to make persons not part of the military personnel accompanying United States armies, subject to Articles of War. Ex parte Gerlach (D. C.) 247 F. 616.

As Const. art. 1, § 8, gives Congress authority to make rules for the government of land and naval forces, and as Articles of War, art. 2, makes civilians serving with armies in the field subject to military law, such a civilian, who attempted to desert, cannot question the jurisdiction of a court-martial, authorized by article 58 to impose death or other penalty, etc., on the ground that he was not tried under the guaranties prescribed by the Fifth Amendment; that amendment excepting cases arising in the land or naval forces. Ex parte Falls (D. C.) 251 F. 415.

Enlisted men under military age.—Under Rev. St. § 761 (Comp. St. 1916, § 1289), held that, on habeas corpus by father to avoid enlistment of minor son over 16 and under 18 in National Guard, immediate surrender would not be directed, where son was guilty of military offense, but the military authorities would be allowed to retain custody to punish for such offense. Hoskins v. Dickerson, 239 F. 275, 152 C. C. A. 263, Ann. Cas. 1917C, 776, L. R. A. 1917D, 1056.

A military tribunal held to have jurisdiction to try offender under military age for offenses committed before father's election to terminate enlistment, though he was not taken into custody until after such election. U. S. v. Brown (D. C.) 242 F. 983.

Person enlisting in National Guard, and later taking federal enlistment oath under National Defense Act, § 70 (Comp. St. 1916, § 3044i), is subject to jurisdiction of military tribunal, though under 21 and enlisted without written consent of parent or guardian. Ex parte Dostal (D. C.) 243 F. 664.

Drafted men.—Under Selective Draft Act, § 2, ante, § 2044b, and Articles of War, art. 2, one certified into military service under Draft Act is, from date he was certified, subject to military law, and to punishment as deserter on account of his refusal to obey summons. Franke v. Murray, 248 F. 865, 160 C. C. A. 623.

Aliens.—Person enlisting in National Guard, and later taking federal enlistment oath under National Defense Act, § 70 (Comp. St. 1916, § 3044i), held subject to jurisdiction of military tribunal, though an alien, and though he had a mother dependent upon him for support. Ex parte Dostal (D. C.) 243 F. 664.

Civilian employés.—A seaman, carried to United States on army transport, who volunteered to stand watch and then refused to continue, though ordered to do so, held subject to Articles of War as a person accompanying armies of United States, voluntarily serving with them in the field without territorial jurisdiction of the United States. Ex parte Gerlach (D. C.) 247 F. 616.

Under Articles of War, art. 2, a civilian employed in time of war by quartermaster's department and assigned as cook on a vessel transporting army supplies is "serving with the armies in field," and court-martial has jurisdiction to try him for his attempt to desert the ship just before sailing. Ex parte Falls (D. C.) 251 F. 415.

A civilian stenographer, employed as a clerk, during war at a camp or cantonment in the United States, is not subject to military law, under article 2, for he is not serving with an army in the field, there being no hostilities in the United States; and this is true, despite the language of Act April 16, 1918, ante, § 2118bb. Ex parte Mikell (D. C.) 253 F. 817.

II. COURTS-MARTIAL

Art. 3. Courts-martial classified.

10. Review of decisions.—A civil court has no power to interfere with the conduct of a court-martial, except where that court has exceeded its jurisdiction, and, if it originally had jurisdiction, it must be shown that, at some point in the proceedings under its governing law, it lost such jurisdiction. U. S. v. Hunt (D. C.) 254 F. 365.

In view of Regulations for United States Army, art. 72, which is law of land, state courts have no authority to grant a writ of habeas corpus for discharge of members of state militia which has been drafted into the military service of United States under National Defense Act. Ex parte McMillan (Ala. App.) 74 So. 396.

Where members of state National Guard had been drafted into military service of United States, under National Defense Act, and hence are beyond jurisdiction of state courts, appellate court will not consider whether they were properly mustered into service of state, as case has become moot, and courts will decline to pass upon appeals in such cases. Id.

B. BY WHOM APPOINTED

Art. 8. General courts-martial.

Construction and operation in general.—See Ex parte Foley (D. C.) 243 F. 470.

Art. 9. Special courts-martial.

Construction and operation in general.—See Ex parte Foley (D. C.) 243 F. 470.

Art. 10. Summary courts-martial.

Construction and operation in general.—See Ex parte Foley (D. C.) 243 F. 470.

C. JURISDICTION

Art. 12. General courts-martial.

Validity.—Under Const. art. 1, § 8, cls. 9, 11, 12, 14, Congress is authorized to create military tribunals and to confer upon them, as has been done by Articles of War, arts. 8, 9, 10, and 12, jurisdiction to try military offenses to the exclusion of the civil tribunals. Ex parte Foley (D. C.) 243 F. 470.

Enlisted man under military age.—While parent of minor under 18 years of age was entitled under National Defense Act to obtain his release where he enlisted without her consent, nevertheless military authorities had jurisdiction to try such minor in accordance with Articles of War, arts. 8, 9, 10, 12, and 54, for offense of fraudulent enlistment. Ex parte Foley (D. C.) 243 F. 470.

Insane persons.—That a defendant, on trial for desertion before a court-martial, was shown to have been in a "haze" or "stupor" at the time in question, held insufficient, under a plea of not guilty, to raise an issue of insanity, which deprived the court of jurisdiction under section 219 of the Manual of Courts-Martial. U. S. v. Hunt (D. C.) 254 F. 365.

Art. 15. Not exclusive.

Construction and operation in general.—Provision of Articles of War, art. 15, preventing construction of article conferring jurisdiction on courts-martial, so as to deprive military commissions, provost courts, or other military tribunal of concurrent jurisdiction, did not impliedly deprive civil courts of concurrent jurisdiction. People v. Denman (Cal.) 177 P. 461.

G. ACTION BY APPOINTING OR SUPERIOR AUTHORITY

Art. 46. Approval and execution of sentence.

Effect of conviction.—Conviction of a military offense by court-martial does not make a witness incompetent to testify in the civil courts in a criminal prosecution. Reed v. U. S. (C. C. A.) 252 F. 21.

Art. 50. Mitigation or remission of sentences.

The power to order the execution of the sentence adjudged by a court-martial shall be held to include, inter alia, the power to mitigate or remit the whole or any part of the sentence.

Any unexecuted portion of a sentence adjudged by a court-martial may be mitigated or remitted by the military authority competent to appoint, for the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the person under sentence is held, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority; but no sentence approved or confirmed by the President shall be remitted or mitigated by any other authority, and no approved sentence of loss of files by an officer shall be remitted or mitigated by any authority inferior to the President, except as provided in the fifty-second article.

When empowered by the President so to do, the commanding general of the Army in the field or the commanding general of the territorial department or division may mitigate or remit, and order executed as mitigated or remitted, any sentence which under these articles requires the confirmation of the President before the same may be executed.

The power of remission and mitigation shall extend to all uncollected forfeitures adjudged by sentence of a court-martial. (39 Stat. 658. 40 Stat. 1211.)

This article was again amended by Act Feb. 28, 1919, c. 81, cited above, to read as set forth above. Prior to this amendment said section read as follows:

"The power to order the execution of the sentence adjudged by a court-martial shall be held to include, inter alia, the power to mitigate or remit the whole or any part of the sentence, but no sentence of dismissal of an officer and no sentence of death shall be mitigated or remitted by any authority inferior to the President.

"Any unexecuted portion of a sentence adjudged by a court-martial may be mitigated or remitted by the military authority competent to appoint, for the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the person under sentence is held, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority; but no sentence extending to the dismissal of an officer or loss of files, no sentence of death, and no sentence approved or confirmed by the President shall be remitted or mitigated by any other authority.

"The power of remission and mitigation shall extend to all uncollected forfeitures adjudged by sentence of a court-martial."

Art. 52. Suspension of sentence.

The authority competent to order the execution of the sentence of a court-martial may, at the time of the approval of such sentence, suspend the execution, in whole or in part, of any such sentence as does not extend to death, and may restore the person under sentence to duty during such suspension. A sentence, or any part thereof, which has been so suspended may be remitted, in whole or in part, except in cases of persons confined in the United States Disciplinary Barracks or its branches, by the officer who suspended the same, by his successor in office, or by any officer exercising appropriate court-martial jurisdiction over the command in which the person under sentence may be serving at the time, and, subject to the foregoing exceptions the same authority may vacate the order of suspension at any time and order the execution of the sentence or the suspended part thereof in so far as the same shall not have been previously remitted. The death or honorable discharge of a person under suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence. (39 Stat. 659. 40 Stat. 882.)

For this article as originally enacted see U. S. Comp. St. 1916, § 2308a, art. 52.

Art. 53. Execution or remission; confinement in disciplinary barracks.

When a sentence of dishonorable discharge has been suspended until the soldier's release from confinement, the execution or remission of any part of his sentence shall, if the soldier be confined in the United States Disciplinary Barracks, or any branch thereof, be directed by the Secretary of War. (39 Stat. 659. 40 Stat. 883.)

For this article as originally enacted see U. S. Comp. St. 1916, § 2308a, art. 53.

III. PUNITIVE ARTICLES

A. ENLISTMENT; MUSTER; RETURNS.

Art. 54. Fraudulent enlistment.

Enlistment by minor.—A minor under 16 who attempted to enlist and did no other act held not guilty of fraudulent enlistment within Article of War 54. Hoskins v. Pell, 239 F. 279, 152 C. C. A. 267, L. R. A. 1917D, 1053.

Under Rev. St. § 761 (Comp. St. 1916, § 1289), held that, on habeas corpus by father to avoid enlistment of minor son over 16 and under 18 in National Guard, immediate surrender would not be directed, where son was guilty of military offense, but the military authorities would be allowed to retain custody to punish for such offense. Hoskins v. Dickerson, 239 F. 275, 152 C. C. A. 263, Ann. Cas. 1917C, 776, L. R. A. 1917D, 1056.

While parent of minor under 18 years of age was entitled under National Defense Act to obtain his release where he enlisted without her consent, nevertheless military authorities had jurisdiction to try such minor in accordance with Articles of War, arts. 8, 9, 10, 12, and 54, for offense of fraudulent enlistment. Ex parte Foley (D. C.) 243 F. 470.

Art. 55. Officer making unlawful enlistment.

Enlistment of minors.—See Hoskins v. Pell, 239 F. 279, 152 C. C. A. 267, L. R. A. 1917D, 1053.

Art. 57. False returns; omission to render returns.

Every officer commanding a regiment, an independent troop, battery, or company, or a garrison shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same. Every officer whose duty it is to render to the War Department or other superior authority a return of the state of the troops under his command, or of the arms, ammunition, clothing, funds, or other property thereunto belonging, who knowingly makes a false return thereof shall be dismissed from the service and suffer such other punishment as a court-martial may direct. And any officer who, through neglect or design, omits to render such return shall be punished as a court-martial may direct. (39 Stat. 660. 40 Stat. 883.)

For this article as originally enacted see U. S. Comp. St. 1916, § 2308a, art. 57.

B. DESERTION—ABSENCE WITHOUT LEAVE

Art. 58. Desertion

Civilian employé.—As Const. art. 1, § 8, gives Congress authority to make rules for the government of land and naval forces, and as Articles of War, art. 2, makes civilians serving with armies in the field subject to military law, such a civilian, who attempted to desert, cannot question the jurisdiction of a court-martial, authorized by article 58 to impose death or other penalty, etc., on the ground that he was not tried under the guaranties prescribed by the Fifth Amendment; that amendment excepting cases arising in the land or naval forces. Ex parte Falls (D. C.) 251 F. 415.

Desertion by minor.—A minor under 16 who attempted to enlist held not a deserter within Article of War 58. Hoskins v. Pell, 239 F. 279, 152 C. C. A. 267, L. R. A. 1917D, 1053.

See, also, notes to § 1885, ante.

D. ARREST; CONFINEMENT

Art. 74. Delivery of offenders to civil authorities.

Operation on civil and criminal laws in general.—If military authorities have the right to try members of the military for violations of state or municipal law, it is under federal law, and if there is such a law it is paramount. In re Wulzen (D. C.) 235 F. 362, Ann. Cas. 1917A, 274.

Consent by captain and major that soldier should be tried by civil authorities for alleged offense held not to be binding on general commanding brigade of which soldier was member. Ex parte King (D. C.) 246 F. 868.

Conceding paramount right of military authorities in time of war to custody of soldier notwithstanding criminal charges against him in the courts of a state, the right inures solely to military authorities, and cannot be raised by the offender. People v. Denman (Cal.) 177 P. 461.

Although military authorities may have priority to try alleged offenses against state or municipal law, it does not necessarily follow that the victims of such offenses may not by proceedings in the state courts secure redress; but where, during mobilization of militia, at time of Mexican trouble, a company marching to a meeting to encourage enlistments pushed its way through the crowd, but it is not shown that it was done violently, or that prosecuting witness was even touched, the military authorities, and not state courts, have power to try members of the company for such alleged breaches of the peace. In re Wulzen (D. C.) 235 F. 362, Ann. Cas. 1917A, 274.

Jurisdiction of civil courts.—Articles of War enacted August 29, 1916, do not deprive the civil courts, either in time of peace or war, of the concurrent jurisdiction previously vested in them over crimes against either federal or state law, committed within the United States, by persons subject to military law. U. S. v. Hirsch (D. C.) 254 F. 109.

Laws of the land.—If a member of the military is charged with disorderly conduct in violation of a municipal ordinance, a paramount remedy is provided for by punishment by the military authorities. In re Wulzen (D. C.) 235 F. 362, Ann. Cas. 1917A, 274.

F. MISCELLANEOUS CRIMES AND OFFENSES

Art. 92. Murder; rape.

Jurisdiction of state court.—Under Articles of War 92 and 93, and in view of article 58 of the old Articles of War, held that, where a soldier in time of war shot and killed one in a state, military authorities had first right to try him for offense. Ex parte King (D. C.) 246 F. 868.

Any changes in articles of war in years 1913 and 1916 did not alter rule that courts-martial do not have exclusive jurisdiction for trial of a soldier for murder committed in time of war, but that the state courts have jurisdiction until it is assumed by military authorities. People v. Denman (Cal.) 177 P. 461.

Art. 93. Various crimes.

Jurisdiction of civil courts.—Under Articles of War 92 and 93, and in view of article 58 of the old Articles of War, held that, where a soldier in time of war shot and killed one in a state, military authorities had first right to try him for offense. Ex parte King (D. C.) 246 F. 868.

V. MISCELLANEOUS PROVISIONS

Art. 108. Soldiers; separation from the service.

What constitutes discharge.—Certificate of furlough granted to applicant for citizenship after three years' service with army, pursuant to Act Aug. 24, 1912, § 2 (Comp. St. 1916, § 1892), held not honorable discharge, and so applicant could not be admitted to citizenship under Rev. St. § 2166 (Comp. St. 1916, § 4355). In re Markun (D. C.) 232 F. 1018.

Grounds for discharge.—Despite Rev. St. § 1116 (Comp. St. 1916, § 1884), held, in view of article 100, relator, having been duly certified into military service of United States under Selective Draft Act, is not entitled to discharge on ground that he was afflicted with disease which rendered discharge necessary, for that question is one for army. In re Traina (D. C.) 248 F. 1004.

Power of courts.—In view of Regulations for United States Army, art. 72, which is law of land, state courts have no authority to grant a writ of habeas corpus for discharge of members of state militia which has been drafted into the military service of United States under National Defense Act. Ex parte McMillan (Ala. App.) 74 So. 396.

Art. 109. Oath of enlistment.

Drafted men.—Articles of War, art. 109, requiring every soldier, at time of his enlistment, to take oath of allegiance, applies only to voluntary enlistment, and one certified into military service under Selective Draft Act cannot escape liability to military law because he has not taken required oath. Franke v. Murray, 248 F. 865, 160 C. C. A. 523.

Art. 112. Effects of deceased persons; disposition of.

In case of the death of any person subject to military law, the commanding officer of the place of command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters, and if no legal representative or widow be present, the commanding officer shall direct a summary court to secure all such effects; and said summary court shall have authority to collect and receive any debts due decedent's estate by local debtors; and as soon as practicable after the collection of such effects said summary court shall transmit such effects, and any money collected, through the Quartermaster Department, at Government expense, to the widow or legal representative of the deceased, if such be found by said court, or to his son, daughter, father, mother, brother, or sister, in the order named, if such be found by said court, or to the beneficiary named by the deceased, if such be found by said court, and such court shall thereupon make to the War Department a full report of its transactions; but if there be none of the persons hereinabove named, or such persons or their addresses are not known to, or readily ascertainable by, said court, and the court shall so find, said summary court shall have authority to convert into cash, by public or private sale, not earlier than thirty days after the death of the deceased, all effects of the deceased, except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes; and as soon as practicable after converting such effects into cash said summary court shall deposit with the proper officer, to be designated in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposits, any will or other papers of value belonging to the deceased, any sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes; together with an inventory of the effects secured by said summary court, and a full account of its transactions to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of the accounts of deceased officers and enlisted men of the Army.

The provisions of this article shall be applicable to inmates of the United States Soldiers' Home who die in any United States military hospital outside of the District of Columbia where sent from the home for treatment. (39 Stat. 668. 40 Stat. 883.)

For this article as originally enacted see U. S. Comp. St. 1916, § 2308a, art. 112.

CHAPTER SIX—THE UNITED STATES DISCIPLINARY BARRACKS

§ 2458a(1, 7).

Act March 4, 1915, c. 143, § 1, 38 Stat. 1074, contains these further provisions:

"The United States military prison at Fort Leavenworth, Kansas, shall hereafter be known as the United States Disciplinary Barracks and the branches of said prison as branches of said barracks."

"The authority now vested in the Secretary of War to give an honorable restoration to duty, in case the same is merited, to general prisoners confined in the United States Disciplinary Barracks and its branches shall be extended so that such restoration may be given to general prisoners confined elsewhere, and the Secretary of War shall be, and he is hereby, authorized to establish a system of parole for prisoners confined in said barracks and its branches, the terms and conditions of such parole to be such as the Secretary of War may prescribe."

TITLE XV—THE NAVY

Chap.		Sec.
1.	Organization	2471a
2.	General provisions relating to officers	2619
3.	Retired officers and men of the Navy	2653
4.	Rank and precedence, promotion and advancement	2660a
5.	The Naval Academy	2726aa
6.	Vessels and navy-yards and naval stations	2776a
7.	General provisions relating to the Navy	2805
8.	Pay, emoluments, and allowances	2816a
8A.	The Naval Reserve Force	2900½a
9.	The Marine Corps	2901a
9A.	Naval Flying Corps	2952½co
10.	Articles for the government of the Navy	2960a

CHAPTER ONE—ORGANIZATION

Sec.
2471a. [Repealed.]
2471aa. Admirals and vice admirals.
2471aaa. Admirals and vice admirals.
2483. Increase in numbers in grades of active list.
2483g. Temporary additional officers in Navy and Marine Corps; number.
2483h. Same; temporary advancement and temporary appointments.
2483i. Same; temporary promotion of lieutenants and ensigns.
2483ii. Effect of amendment of Act May 22, 1917, c. 114, §§ 4, 5.
2483j. Temporary additional officers in Navy and Marine Corps; temporary advancements or promotions not to prejudice permanent and probationary commissions.
2483k. Same; time of continuance.
2483l. Same; retired rank of officers temporarily advanced.
2483m. Same; how made.
2483n. Same; act not to reduce rank.
2496. Medical Corps; appointment of passed assistant surgeons; pay; relative rank.
2497. Medical Corps; commissions to passed assistant surgeons; promotions, and examinations therefor.
2499. [Repealed.]
2499a. Medical Reserve Corps and Dental Reserve Corps; laws relating to repealed.
2510. [Repealed in part.]
2511a–2511d. [Amended by providing substitutes therefor.]
2511e. Naval Dental Corps; officers; number and appointment.
2511f. Same; officers; qualifications.
2511g. Same; officers; retirement.
2511h. Same; officers; permanent appointment of probationary officers; retirement.
2511i. Same; acts repealed.
2512, 2512a. [Repealed in part.]
2519a. Nurse Corps; commutation of quarters.
2534. Paymasters' clerks, when allowed.
2535. Paymasters' clerks, when not allowed.
2536. Clerks of passed assistant and assistant paymasters.
2537a. Pay clerks and acting pay clerks; appointment and qualifications; pay, allowances, etc.
2537b. Chief pay clerks; rank, pay, and allowances.
2537c. Number of chief pay clerks, pay clerks, and acting pay clerks; examinations for appointment; limitation as to age.
2541d. Chaplains: temporary and acting chaplains.
2554a. Warrant officers; temporary appointments.
2554aa. Chief warrant officers; temporary appointments.
2554b. Additional Marine gunners, quartermaster's clerks.
2554bb. Additional marine gunners and quartermaster clerks; temporary appointment.
2556a. Machinists; number.
2559a. Warrant officers; pay on shore duty.
2571a. Enlisted men; number of apprentice seamen.
2573a½. Same; increase of strength.
2573aa. Same; temporary increase in strength.
2577a. Term of enlistment in Navy and Marine Corps in war.
2578a. Enlisted men; extension of minority enlistments.
2579a. [Repealed in part.]
2590a. [Repealed.]

§ 2471a. [Repealed.]

This section was repealed by a provision of Act May 22, 1917, c. 20, § 18. Other provisions for the designation of admirals and rear admirals were made by said Act May 22, 1917, c. 20, § 18, post, § 2471aa.

§ 2471aa. (Act May 22, 1917, c. 20, § 18.) Admirals and vice admirals.

That the President be, and he is hereby, further authorized to designate six officers of the Navy for the command of fleets or subdivisions thereof and, after being so designated from the date of assuming such command until relinquishing thereof, not more than three of such officers shall each have the rank and pay of an admiral, and the others shall each have the rank and pay of a vice admiral; and the grades of admiral and vice admiral are hereby authorized and continued for the purpose of this Act: Provided, That in time of war the selections under the provisions of this section shall be made from the grades of rear admiral or captain on the active list of the Navy: Provided further, That the pay of an admiral shall be $10,000 and the pay of a vice admiral $9,000 per annum: Provided further, That in time of peace officers for the command of fleets and subdivisions thereof, as herein authorized, shall be designated from among the rear admirals on the active list of the Navy: Provided further, That nothing herein contained shall create any vacancy in any grade in the Navy or increase the total number of officers authorized by law: Provided further, That when an officer with the rank of admiral or vice admiral is detached from the command of a fleet or subdivision thereof, as herein authorized, he shall return to his regular rank in the list of officers of the Navy and shall thereafter receive only the pay and allowances of such rank: And provided further, That nothing in this Act shall be held or construed as amending or repealing the provisions of sections fourteen hundred and thirty-four, fourteen hundred and sixty-three, and fourteen hundred and sixty-four of the Revised Statutes of the United States. (40 Stat. 89.)

This was a part of section 18 of Act May 22, 1917, c. 20, entitled "An act to temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes," cited above. The remainder of said section repealed provisions of Act March 3, 1915, c. 83, relating to the designation of admirals and rear admirals. Said repealing provision read as follows: "That the provision in the Act approved March third, nineteen hundred and fifteen, for the designation of commanders in chief of certain fleets with the rank of admiral and for the designation of officers second in command of such fleets with the rank of vice admiral be, and the same is hereby repealed."

R. S. §§ 1434, 1463, 1464, referred to in this section, are §§ 2604, 2654, 2655 of U. S. Comp. St. 1916.

Section 13 of said Act May 22, 1917, c. 20, provided that "nothing contained in this act shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this act."

§ 2471aaa. (Act July 1, 1918, c. 114.) Admirals and vice admirals.

The officers of the Navy holding the rank and title of Admiral and Vice Admiral in the Navy while holding such rank and title shall receive the allowances of a General and Lieutenant General of the Army, respectively. (40 Stat. 717.)

This was a provision of the Naval appropriation act for the fiscal year 1919, cited above.

§ 2483. (Act March 3, 1903, c. 1010.) Increase in numbers in grades of active list.

Cited without definite application,
Crapo v. U. S., 50 Ct. Cl. 337.

§ 2483g. (Act May 22, 1917, c. 20, § 4, as amended, Act July 1, 1918, c. 114.) Temporary additional officers in Navy and Marine Corps; number.

Additional commissioned officers in the Navy and Marine Corps, based upon the temporary increases herein authorized in the number of enlisted men, shall be temporarily appointed by the President, in his discretion, with the advice and consent of the Senate, not above the grades and ranks of lieutenant commander in the line and staff of the Navy and major in the Marine Corps, the distribution in said grades and ranks to be made in accordance with the provisions of the Act of August twenty-ninth, nineteen hundred and sixteen: Provided, That all temporary original appointments shall be made in the lowest commissioned grades of the line and staff of the Navy and Marine Corps, exclusive of commissioned warrant officers, and that there shall be no permanent or temporary appointments in or permanent or temporary promotions to any grade or rank above that of lieutenant commander in the Navy or major in the Marine Corps by reason of the temporary appointment of officers authorized by this Act in excess of the total number of officers authorized by existing law or on account of the increase of enlisted men herein authorized: Provided further, That, during the period of the present war, the deficiency existing prior to the passage of this Act in the total number of commissioned officers of the Navy and Marine Corps authorized by the Act of August twenty-ninth, nineteen hundred and sixteen, may also be supplied by temporary appointments in the lowest grades and by temporary promotions to all other grades until a sufficient number of officers shall be available for regular appointment or promotion in accordance with existing law: Provided further, That nothing herein shall be held or construed to limit or abridge the use or service of the officers of the Navy and Marine Corps on the retired list or of the officers of the Naval Militia and National Naval Volunteers, Naval Reserve Force, and Marine Corps Reserve, as provided and authorized under existing law. (40 Stat. 85, 715.)

This section was amended by Act July 1, 1918, c. 114, cited above, by striking out the word "lieutenant," wherever it appeared therein, and by substituting therefor the words "lieutenant commander."

§ 2483h. (Act May 22, 1917, c. 20, § 5, as amended, Act July 1, 1918, c. 114.) Same; temporary advancement and temporary appointments.

The additional temporary officers authorized in the various grades and ranks of the Navy and Marine Corps in accordance with the next preceding section may be temporarily appointed to serve in the grades or ranks to which appointed or promoted by the temporary advancement of officers holding permanent and probationary commissions, by temporary appointment of commissioned warrant officers, warrant officers, and enlisted men of the Navy, and warrant officers, noncommissioned officers, and clerks to assistant paymasters of the Marine Corps, commissioned and warrant officers of the United States Coast Guard, citizens of the United States who have had previous naval or military service or training, and other citizens of the United States specially qualified: Provided, That such chief warrant officers as are given the temporary appointments provided herein who were chief warrant officers in the permanent Navy on July first, nineteen hundred and seventeen, and were not given such temporary appointments as of that date because of age restriction or ill health, shall take rank and precedence with the other chief warrant officers temporarily appointed as of July first, nineteen hundred and seventeen, and according to their seniority as chief war-

rant officers in the permanent service: Provided further, That in making appointments authorized herein the maximum age limit shall be fifty years for enlisted men to ensign, enlisted men of the Navy to warrant rank, noncommissioned officers of the Marine Corps to commissioned rank, members of the Marine Corps branch of the Naval Militia and National Naval Volunteers, Marine Corps Reserve, and civilians specially qualified to commissioned rank, and temporary chaplains and temporary acting chaplains: Provided further, That graduates of the Naval Academy and warrant officers duly commissioned in the Navy or Marine Corps in accordance with existing law shall not, by virtue of this Act, be required to receive temporary appointments; and the class of midshipmen graduated from the Naval Academy on March twenty-ninth, nineteen hundred and seventeen, and the classes to be graduated hereafter, may be commissioned effective from date of graduation. (40 Stat. 85, 716.)

This section was amended by Act July 1, 1918, c. 114, cited above, by striking out, after the words "shall be fifty years for" the words "commissioned warrant officers, warrant officers, and."

§ 2483i. (Act May 22, 1917, c. 20, § 5, as amended, Act July 1, 1918, c. 114.) Same; temporary promotion of lieutenants and ensigns.

Lieutenants (junior grade) and ensigns may be considered eligible for temporary promotions to the grades of lieutenant and lieutenant (junior grade), respectively, without regard to length of service in grade. (40 Stat. 86, 716.)

Act May 22, 1917, c. 20, § 5, of which this section formed a part, was amended by Act July 1, 1918, c. 114, cited above. This section was not affected by said amendment. For other parts of said section 5, see ante, § 2483h, post, §§ 2554a, 2554aa, 2554bb.

§ 2483ii. (Act July 1, 1918, c. 114.) Effect of amendment of Act May 22, 1917, c. 114, §§ 4, 5.

Nothing contained in the preceding amendments of the Act of May twenty-second, nineteen hundred and seventeen, shall be construed to reduce the pay or allowances now authorized by law for any commissioned, warrant, or appointed officer or any enlisted man of the active or retired lists of the Navy. (40 Stat. 717.)

This was a provision of the Naval appropriation act for the fiscal year 1919, cited above. Act May 22, 1917, c. 20, § 5, as amended, mentioned in this section, is set forth ante, §§ 2483g, 2483h, 2483i, post, §§ 2541d, 2554a, 2554aa, 2554bb, 2901b.

§ 2483j. (Act May 22, 1917, c. 20, § 7.) Temporary additional officers in Navy and Marine Corps; temporary advancements or promotions not to prejudice permanent and probationary commissions.

The permanent and probationary commissions, appointments, and warrants of officers shall not be vacated by reason of their temporary advancement or appointment, nor shall said officers be prejudiced in their relative lineal rank in regard to promotion in accordance with the Act of August twenty-ninth, nineteen hundred and sixteen: Provided, That the rights, benefits, privileges, and gratuities of all enlisted men of the Navy and Marine Corps now authorized by law shall not be lost or abridged in any respect whatever by their acceptance of temporary commissions or warrants hereunder: Provided further, That no person who shall receive a temporary appointment shall be entitled to pay or allowances except under such temporary appointment: And provided further, That upon the termination of temporary appointments in a higher grade or rank as authorized by this Act the officers so advanced, including probationary second lieutenants, warrant officers, clerks to assistant paymasters, and enlisted men of the Navy and Marine Corps, commissioned and warrant officers of the United

States Coast Guard, shall revert to the grade, rank, or rating from which temporarily advanced, unless such officers or enlisted men in the meantime, in accordance with law, become entitled to promotion to a higher grade or rank in the permanent Navy or Marine Corps, in which case they shall revert to said higher grade or rank and shall, after passing the prescribed examinations, be commissioned accordingly. (40 Stat. 86.)

See note to § 2483g, ante.

§ 2483k. (Act May 22, 1917, c. 20, § 8.) Same; time of continuance.

All temporary appointments or advancements authorized by this Act shall continue in force only until otherwise directed by the President or until Congress shall amend or repeal the authorization for the increases herein provided and not later than six months after the termination of the present war. (40 Stat. 86.)

See note to § 2483g, ante.

§ 2483*l*. (Act May 22, 1917, c. 20, § 9.) Same; retired rank of officers temporarily advanced.

Any officer of the permanent Navy or Marine Corps, temporarily advanced in grade or rank in accordance with the provisions of this Act, who shall be retired from active service under his permanent commission while holding such temporary rank, except for physical disability incurred in line of duty, shall be placed on the retired list with the grade or rank to which his position in the permanent Navy or Marine Corps at the date of his retirement would entitle him, and any person originally appointed temporarily, as provided in this Act, shall not be entitled to any rights of retirement, except for physical disability incurred in line of duty. (40 Stat. 86.)

See note to § 2483g, ante.

§ 2483m. (Act May 22, 1917, c. 20, § 12.) Same; how made.

The temporary appointments and promotions herein authorized shall be made by the President, with the advice and consent of the Senate. (40 Stat. 87.)

See note to § 2483g, ante.

§ 2483n. (Act May 22, 1917, c. 20, § 13.) Same; act not to reduce rank.

Nothing contained in this Act shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this Act. (40 Stat. 87.)

See note to § 2483g, ante.

§ 2496. (Act March 3, 1871, c. 117, § 5.) Medical Corps; appointment of passed assistant surgeons; pay; relative rank.

Promotion of assistant surgeons.— In view of Comp. St. 1916, §§ 2496, 2497, as to rank and pay of assistant surgeons, such officer at the end of three years' service, is eligible to promotion, subject to examination, and takes rank from the date on which he becomes eligible, though examination be delayed, and under § 2840 may also get the pay of the advanced rank from such date. Toulon v. U. S., 51 Ct. Cl. 87.

§ 2497. (Act Feb. 13, 1897, c. 221.) Medical Corps; commissions to passed assistant surgeons; promotions, and examinations therefor.

Promotion of assistant surgeon.— In view of Comp. St. 1916, §§ 2496, 2497, as to rank and pay of assistant surgeons, such officer at the end of three years' service is eligible to promotion, subject to examination, and takes rank from the date on which he becomes eligible, though examination be delayed, and under § 2840, may also get the pay of the advanced rank from such date. Toulon v. U. S., 51 Ct. Cl. 87.

Where assistant surgeon in navy failed professionally and took new examination, and commission as passed assistant surgeon was corrected, he was, in view of Comp. St. 1916, §§ 2497, 2838, as to pay, etc., entitled to pay of advanced rank from date shown in corrected commission. Toulon v. U. S., 52 Ct. Cl. 333.

Cited without definite application. U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 2499. [Repealed.]

All laws relating to the Medical Reserve Corps are repealed by a provision of Act July 1, 1918, c. 114. See post, § 2499a.

§ 2499a. (Act July 1, 1918, c. 114.) Medical Reserve Corps and Dental Reserve Corps; laws relating to repealed.

That all laws heretofore enacted by Congress relating to the Medical Reserve Corps and Dental Reserve Corps be, and the same hereby are, repealed. (40 Stat. 708.)

This was a provision of the Naval appropriation act for the fiscal year 1919, cited above. It was accompanied by a provision that members of said Corps might be enrolled in the Naval Reserve Force, set forth post, § 2900½a (26⅝).

Notes of Decisions

Construction and operation of repealed statutes.—Act March 4, 1913, 37 Stat. 903, creating a Navy Dental Reserve Corps, did not repeal the provision of Act Aug. 22, 1912, 37 Stat. 344, authorizing appointments to the grade of acting assistant dental surgeon in the Navy from among dental graduates in civil life. 30 Op. Atty. Gen. 279.

§ 2510. [Repealed in part.]

So much of this section as relates to the Medical Reserve Corps was repealed by a provision of Act July 1, 1918, c. 114, ante, § 2499a.

§§ 2511a–2511d. [Amended by providing substitutes therefor.]

These sections, which were provisions of the Naval appropriation act for the fiscal year 1917, Act Aug. 29, 1916, c. 417, 39 Stat. 573, 574, were stricken out, and substitutes provided therefor, by provisions of Act July 1, 1918, c. 114, post, §§ 2511e–2511i.

§ 2511e. (Act Aug. 29, 1916, c. 417, as amended, Act July 1, 1918, c. 114.) Naval Dental Corps; officers; number and appointment.

The President of the United States is hereby authorized to appoint and commission, by and with the advice and consent of the Senate, dental officers in the Navy at the rate of one for each thousand of the total authorized number of officers and enlisted men of the Navy and Marine Corps, in the grades of assistant dental surgeon, passed assistant dental surgeon and dental surgeon, who shall constitute the Naval Dental Corps, and shall be a part of the Medical Department of the Navy. Original appointments to the Naval Dental Corps shall be made in the grade of assistant dental surgeon with the rank of lieutenant (junior grade), and all dental officers now in the Dental Corps appointed under the provisions of the Act of Congress approved August twenty-second, nineteen hundred and twelve (Statutes at Large, volume thirty-seven, page three hundred and forty-five), or under the provisions of the Act of Congress approved August twenty-ninth, nineteen hundred and sixteen (Statutes at Large, volume thirty-nine, page five hundred and seventy-three), or who may hereafter be appointed, shall take rank and precedence with officers of the Naval Medical Corps of the same rank according to the dates of their respective commissions or original appointments, and all such dental officers shall be eligible for advancement in grade and rank in the same manner and under the same conditions as officers of the Naval Medical Corps with or next after whom they take precedence, and shall receive the same pay and allowances as officers of corresponding rank and length of service in the Naval Medical Corps up to and including the rank of lieutenant commander: Provided, That dental surgeons

shall be eligible for advancement in pay and allowances, but not i rank, to and including the pay and allowances of commander an captain, subject to such examinations as the Secretary of the Nav may prescribe, except that the number of dental surgeons with th pay and allowances of captain shall not exceed four and one-ha per centum and the number of dental surgeons with the pay an allowances of commander shall not exceed eight per centum of th total authorized number of dental officers: Provided further, Tha dental surgeons shall be eligible for advancement to the pay an allowances of commander and captain when their total active serv ice as dental officers in the Navy is such that if rendered as office of the Naval Medical Corps, it would place them in the list of med cal officers with the pay and allowances of commander or captai as the case may be: And provided further, That dental office who shall have gained or lost numbers on the Navy list shall b considered to have gained or lost service accordingly; and the tim served by dental officers on active duty as acting assistant dent surgeons and assistant dental surgeons under provisions of la existing prior to the passage of this Act shall be reckoned in com puting the increased service pay and service for precedence an promotion of dental officers herein authorized or heretofore ap pointed. (40 Stat. 708.)

This section, and the four sections next following, were provisions of th Naval appropriation act for the fiscal year 1919, cited above. These sectio were preceded by an amending clause as follows: "That the Act approve August twenty-ninth, nineteen hundred and sixteen, entitled 'An Act makin appropriations for the naval service for the fiscal year ending June thirtiet nineteen hundred and seventeen, and for other purposes' (Statutes at Larg volume thirty-nine, chapter four hundred and seventeen, pages five hundre and seventy-three and five hundred and seventy-four), be, and the same hereby, amended by striking out all of said Act following the caption 'Nav Dental Corps' on page five hundred and seventy-three, but preceding t caption 'Dental Reserve Corps', on page five hundred and seventy-four, a by substituting therefor the following." The provisions of act referred to said amendatory clause are provisions of Act Aug. 29, 1916, c. 417, 3 Stat. 573, 574, which were set forth in U. S. Comp. St. 1916, as §§ 2511 2511d.

§ 2511f. (Act July 1, 1918, c. 114.) Same; officers; qualification

All appointees authorized by this Act shall be citizens of th United States between twenty-one and thirty-two years of age, an shall be graduates of standard medical or dental colleges and trai ed in the several branches of dentistry, and shall, before appoin ment, have successfully passed mental, moral, physical, and pr fessional examinations before medical and professional examinin boards appointed by the Secretary of the Navy, and have bee recommended for appointment by such boards: Provided, Tha hereafter no person shall be appointed as assistant dental surgeo in the Navy who is not a graduate of a standard medical or dent college. (40 Stat. 709.)

See note to § 2511e.

§ 2511g. (Act July 1, 1918, c. 114.) Same; officers; retirement.

Officers of the Naval Dental Corps shall become eligible for re tirement in the same manner and under the same conditions a now prescribed by law for officers of the Naval Medical Corps, ex cept that section fourteen hundred and forty-five of the Revise Statutes of the United States shall not be applicable to dental off cers, and they shall not be entitled to rank above lieutenant com mander on the retired list, or to retired pay above that of captai (40 Stat. 709.)

See note to § 2511e.

§ 2511h. (Act July 1, 1918, c. 114.) Same; officers; permanent appointment of probationary officers; retirement.

All dental officers now serving under probationary appointments shall become immediately eligible for permanent appointment under the provisions of this Act, subject to the examinations prescribed by the Secretary of the Navy for original appointment as dental officers, and may be appointed assistant dental surgeon with the rank of lieutenant (junior grade) to rank from the date of their probationary appointments: Provided, That the senior dental officer now at the United States Naval Academy shall not be displaced by the provisions of this Act, and he shall hereafter have the grade of dental surgeon and the rank, pay, and allowances of lieutenant commander, and he shall not be eligible for retirement before he has reached the age of seventy years, except for physical disability incurred in the line of duty: Provided further, That no dental officer in the Navy who on original appointment as dental officer was over forty years of age shall be eligible for retirement before he has reached the age of seventy years, except for physical disability incurred in line of duty. (40 Stat. 709.)

See note to § 2511e.

§ 2511i. (Act July 1, 1918, c. 114.) Same; acts repealed.

All Acts or parts of Acts inconsistent with the provisions of this Act relating to the Dental Corps of the Navy are hereby repealed: Provided, That nothing herein contained shall be construed to legislate out of the service any officer now in the Medical Department of the Navy or to reduce the rank, pay, or allowances now authorized by law for any officer of the Navy. (40 Stat. 710.)

See note to § 2511e.

§§ 2512, 2512a. [Repealed in part.]

So much of these sections as relate to the Naval Dental Reserve Corps were repealed by a provision of Act July 1, 1918, c. 114, ante, § 2499a.

§ 2519a. (Act June 15, 1917, c. 29, § 1.) Nurse Corps; commutation of quarters.

Pay of the Navy: * * Members of Nurse Corps (female) who shall hereafter be paid the same commutation as is or may be allowed members of the Nurse Corps of the Army. (40 Stat. 209.)

This was a provision of the urgent deficiency appropriation act for the military and naval establishments on account of war expenses for the fiscal year 1917, cited above.

§ 2534. (R. S. § 1386.) Paymasters' clerks, when allowed.

Cited without definite application,
Seifert v. U. S., 52 Ct. Cl. 40.

§ 2535. (R. S. § 1387.) Paymasters' clerks, when not allowed.

Cited without definite application,
Seifert v. U. S., 52 Ct. Cl. 40.

§ 2536. (R. S. § 1388.) Clerks of passed assistant and assistant paymasters.

Cited without definite application,
Seifert v. U. S., 52 Ct. Cl. 40.

§ 2537a. (Act March 3, 1915, c. 83.) Pay clerks and acting pay clerks; appointment and qualifications; pay, allowances, etc.

Appointment.—The right of an officer of the Navy (which includes paymaster's clerks) to the allowances prescribed by statute is fixed, and the appointing power cannot attach conditions which have the effect of depriving him of what the law authorizes him to receive. Katzer v. U. S., 52 Ct. Cl. 32.

This section changed the method of selection of pay clerks and inaugurated a system for the creation of a new

corps, but did not create a right to the positions so established. Seifert v. U. S., 52 Ct. Cl. 40.

Compensation.—Plaintiff, having reported to the navy yard as ordered, and, being found qualified, accepted the appointment as paymaster's clerk and executed the oath of office, was from that date "holding appointment in accordance with law," as required by Act June 24, 1910, c. 378. Katzer v. U. S. 52 Ct. Cl. 32.

Cited without definite application, Ashton v. U. S., 51 Ct. Cl. 65.

§ 2537b. (Act March 3, 1915, c. 83.) Chief pay clerks; rank, pay, and allowances.

Appointment.—This section changed the method of selection of pay clerks and inaugurated a system for the creation of a new corps, but did not create a right to the positions so established. Seifert v. U. S., 52 Ct. Cl. 40.

Cited without definite application, Ashton v. U. S., 51 Ct. Cl. 65.

§ 2537c. (Act March 3, 1915, c. 83.) Number of chief pay clerks, pay clerks, and acting pay clerks; examinations for appointment; limitation as to age.

Cited without definite application, Ashton v. U. S., 51 Ct. Cl. 65; Seifert v. U. S., 52 Ct. Cl. 40.

§ 2541d. (Act May 22, 1917, c. 20, § 4, as amended, Act July 1, 1918 c. 114.) Chaplains; temporary and acting chaplains.

Temporary chaplains and temporary acting chaplains in the Navy may be appointed for service during the period of the war in the proportion of the personnel of the Navy as now prescribed by existing law. (40 Stat. 85, 716.)

This section, which was a part of section 4 of Act May 22, 1917, c. 20, was amended by Act July 1, 1918, c. 114, cited above, by amending the first part of said section, which is set forth ante, § 2483g, and by adding to the section a new proviso, which is set forth post, § 2901b. This section was not affected by the amendatory act.

§ 2554a. (Act May 22, 1917, c. 20, § 5, as amended, Act July 1, 1918, c. 114.) Warrant officers; temporary appointments.

Temporary appointments as warrant officers of the Navy may be made by the Secretary of the Navy. (40 Stat. 86, 716.)

Act May 22, 1917, c. 20, § 5, of which this section forms a part, was amended by Act July 1, 1918, c. 114, cited above. This section was not affected by said amendment. For other parts of said section 5, see ante, §§ 2483h, 2483i, post, §§ 2554aa, 2554bb.

§ 2554aa. (Act May 22, 1917, c. 20, § 5, as amended, Act July 1, 1918, c. 114.) Chief warrant officers; temporary appointments.

Temporary appointments as chief warrant officers may be made by the President with the consent of the Senate. (40 Stat. 716.)

This section was added by amendment to Act May 22, 1917, c. 20, § 5, cited above, by Act July 1, 1918, c. 114, also cited above. For other parts of said section 5, see ante, §§ 2483h, 2483i, 2554a, post, § 2554bb.

§ 2554b. (Act May 22, 1917, c. 20, § 11.) Additional Marine gunners, quartermaster's clerks.

The appointment of thirty marine gunners, thirty quartermaster's clerks, and nine clerks to assistant paymasters, additional to the number now prescribed by law, and the temporary appointment of eight clerks to assistant paymasters for the war, is hereby authorized, such appointments to be made in the manner now provided by law. (40 Stat. 87.)

See note to § 2554a, ante.

Section 13 of said Act May 22, 1917, c. 20, provided that "nothing contained in this Act shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this Act."

§ 2554bb. (Act May 22, 1917, c. 20, § 5, as amended, Act July 1, 1918, c. 114.) Additional marine gunners and quartermaster clerks; temporary appointment.

The temporary appointment for the war of seventy-six additional marine gunners, and seventy-six additional quartermaster clerks, is authorized. (40 Stat. 716.)

This section was added to Act May 22, 1917, c. 20, § 5, cited above, by the amendatory act of July 1, 1918, c. 114, also cited above.

§ 2556a. (Act July 1, 1918, c. 114.) Machinists; number.

Pay of the Navy: * * As many machinists as the President may from time to time deem necessary to appoint. (40 Stat. 728.)

This was a provision of the Naval appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of Act June 15, 1917, c. 29, § 1, 40 Stat. 210.

§ 2559a. (Act March 4, 1917, c. 180.) Warrant officers; pay on shore duty.

Hereafter the pay of warrant officers while on shore duty during the fourth three years' service shall be $1,750 per annum. (39 Stat. 1181.)

This was a provision of the naval appropriation act for the fiscal year 1918, cited above.

§ 2571a. (Act July 1, 1918, c. 114.) Enlisted men; number of apprentice seamen.

Pay of the Navy: * * Twenty-four thousand apprentice seamen under training at training stations and on board training ships, at the pay prescribed by law. * * (40 Stat. 728.)

This was a provision of the Naval appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of Act March 4, 1917, c. 180, 39 Stat. 1181.

§ 2573a½. (Act July 1, 1918, c. 114.) Same; increase of strength.

The authorized enlisted strength of the active list of the Navy is hereby increased from eighty-seven thousand to one hundred and thirty-one thousand four hundred and eighty-five. (40 Stat. 714.)

This was a provision of the Naval appropriation act for the fiscal year 1919, cited above.

§ 2573aa. (Act May 22, 1917, c. 20, § 1, as amended, Act July 1, 1918, c. 114.) Same; temporary increase in strength.

The authorized enlisted strength of the active list of the Navy is hereby temporarily increased from one hundred and thirty-one thousand four hundred and eighty-five to one hundred and eighty-one thousand four hundred and eighty-five; the authorized number of apprentice seamen is hereby temporarily increased from six thousand to twenty-four thousand; and the authorized number of enlisted men of the Flying Corps is hereby temporarily increased from three hundred and fifty to ten thousand: Provided, That the phrase "authorized enlisted strength," as applied to the personnel of the Navy, shall mean the total number of enlisted men of the Navy authorized by law, exclusive of the Hospital Corps, apprentice seamen, those sentenced by court-martial to discharge, those detailed for duty with Naval Militia, those furloughed without pay, enlisted men of the Flying Corps, and those under instruction in trade schools: Provided further, That the number of enlisted men for instruction in trade schools shall not at any time exceed fourteen thousand, which number is hereby temporarily authorized: Provided further, That the President is authorized, at any time during the period of the present war, when in his judgment it becomes necessary, temporarily to increase the authorized enlisted

strength of the Navy, as provided for herein, by the addition of fifty thousand men. (40 Stat. 84, 714.)

This section was amended by Act July 1, 1918, c. 114, cited above, by striking out the section as originally enacted, and substituting therefor the provisions as set forth above. Said section, as originally enacted, read as follows: "The authorized enlisted strength of the active list of the Navy is hereby temporarily increased from eighty-seven thousand to one hundred and fifty thousand, including four thousand additional apprentice seamen."

§ 2577a. (Act May 22, 1917, c. 20, § 3.) Term of enlistment in Navy and Marine Corps in war.

Enlistments in the Navy and Marine Corps, during such time as the United States may be at war, shall be for four years or for such shorter period or periods as the President may prescribe, or for the period of the present war. (40 Stat. 85.)

See note to § 2573aa, ante.

§ 2578a. (Act April 25, 1917, c. 6.) Enlisted men; extension of minority enlistments.

Hereafter any enlistment for minority in the Navy or Marine Corps may be extended as is provided by law for extending an enlistment for a term of four years, under similar conditions and with like rights, privileges, benefits, and obligations. (40 Stat. 38.)

This was an act entitled "An act to provide for the extension of minority enlistments in the naval service," cited above.

§ 2579a. [Repealed in part.]

So much of this section as authorized the payment of $5 to postmasters for each recruit secured by them and accepted by the Navy and Marine Corps was repealed by Act July 2, 1918, c. 117, § 11, 40 Stat. 754.

§ 2590a. [Repealed.]

This section, which provided for honorable discharges of men serving under a first enlistment after one year's service at sea, was repealed by a provision of Act March 4, 1917, c. 180. Said repealing provision provided that the repeal should not apply to enlistments under the provision repealed.

CHAPTER TWO—GENERAL PROVISIONS RELATING TO OFFICERS

§ 2619. (Act March 4, 1913, c. 148.) Credit not allowed for service as midshipman or as cadet.

Cited without definite application,
Barber v. U. S., 50 Ct. Cl. 250.

§ 2619a. (Act March 4, 1917, c. 180.) Examination of candidates for appointment, promotion and retirement.

Hereafter the Secretary of the Navy may authorize the senior officer present, or other commanding officer, on a foreign station to order boards of medical examiners, examining boards, and retiring boards for the examination of such candidates for appointment, promotion, and retirement in the Navy and Marine Corps as may be serving in such officer's command and may be directed to appear before any such board. (39 Stat. 1171.)

This was a provision of the naval appropriation act for the fiscal year 1918 cited above.

§ 2619b. (Act April 2, 1918, c. 39.) Dropping from rolls; reappointment.

The President is hereby authorized to drop from the rolls of the Navy or Marine Corps any officer thereof who is absent from duty without leave for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement in a State or Federal penitentiary: Pro

vided, That no officer so dropped shall be eligible for reappointment. (40 Stat. 501.)

This was an act entitled "An act to authorize the President to drop from the rolls any Naval or Marine Corps officer absent without leave for three months, or who has been convicted of any offense, punishable by confinement in the penitentiary by the civil authorities, and prohibiting such officer's reappointment," cited above.

§ 2619c. (Act Jan. 12, 1919, c. 8.) Sale of uniforms and equipment at cost.

Hereafter uniforms, accouterments, and equipment shall, upon the request of any officer of the Navy or any officer of the Marine Corps or any officer of the Coast Guard while operating with the Navy or any midshipman at the Naval Academy or cadets at the Coast Guard Academy, be furnished by the Government at cost, subject to such restrictions and regulations as the Secretary of the Navy may prescribe. (40 Stat. 1054.)

This section is an act entitled "An act providing for the purchase of uniforms, accouterments, and equipment by officers of the Navy, Marine Corps, and Coast Guard, and midshipmen at the Naval Academy from the Government at cost," cited above.

CHAPTER THREE—RETIRED OFFICERS AND MEN OF THE NAVY

§ 2653. (Act Aug. 22, 1912, c. 335.) Active duty; pay, etc., while employed thereon.

Officer of marine corps.—The Secretary of the Navy exercised his authority properly under this section when he assigned a retired officer of the Marine Corps to duty as post quartermaster, and upon such assignment he became entitled to the pay and allowances herein provided. Jonas v. U. S., 50 Ct. Cl. 281.

§ 2653c. (Act July 1, 1918, c. 114.) Active duty; officers ordered on; promotion, pay, and allowances.

Hereafter, during the existence of war or of a national emergency declared by the President to exist, any commissioned or warrant officer of the Navy, Marine Corps, or Coast Guard of the United States on the retired list may, in the discretion of the Secretary of the Navy, be ordered to active duty at sea or on shore; and any retired officer performing such active duty in time of war or national emergency, declared as aforesaid, shall be entitled to promotion on the retired list to the grade or rank, not above that of lieutenant commander in the Navy or major in the Marine Corps or captain in the Coast Guard, and shall thereafter receive the pay and allowances thereof, which his total active service as an officer both prior and subsequent to retirement, in the manner rendered by him, would have enabled him to attain in due course of promotion had such service been rendered continuously on the active list during the period of time last past. (40 Stat. 717.)

This section and the section next following were parts of the Naval appropriation act for the fiscal year 1919, cited above.

§ 2653d. (Act July 1, 1918, c. 114.) Same; temporary advancement in rank.

During the existence of war or of a national emergency, declared as aforesaid, any commissioned or warrant officer of the Navy, Marine Corps or Coast Guard of the United States on the retired list, while on active duty, may be temporarily advanced to and commissioned in such higher grade or rank on the retired list, not above that of lieutenant commander in the Navy or major in the Marine

Corps or captain in the Coast Guard, as the President may deter mine, and any officer so advanced shall, while on active duty, b entitled to the same pay and allowances as officers of like grade o rank on the active list: Provided, That any such commissioned o warrant officer who has been so temporarily advanced in grade o rank shall, upon his relief from active duty, or in any case not late than six months after the termination of the war or of the nationa emergency, declared as aforesaid, revert to the grade or rank on th retired list and to the pay and allowance status which he would hav held had he not been so temporarily advanced: Provided furthe That nothing in this Act shall operate to reduce the pay and allow ances now allowed by law to retired officers. (40 Stat. 717.)

See note to § 2653c.

§ 2659aa. (Act July 1, 1918, c. 114.) Call into active service of re tired enlisted men; promotion; pay.

Any enlisted man of the Navy or Marine Corps upon the retire list who has been ordered into active service since April sixth, nine teen hundred and seventeen, or who may hereafter be ordered int active service, shall be eligible for promotion and he shall be ent tled to the pay and benefits of continuous service of such rank an for such length of time as he is or has been employed in active serv ice, and when relieved of active service shall retain upon the retire list the rank and service held by him at the time of such relief, wit the pay and allowances of such rank on the retired list; and th accounting officers of the Treasury are hereby directed to allow i the accounts of any enlisted man of the Navy or Marine Corps wh resigned from the retired list in order to reenlist for appointmen in a higher grade, the same continuous service pay and the benefit of such rank to which he may have been appointed upon reenlist ment, as if his service had been continuous, and any difference i pay from the date of reenlistment shall be credited to his accoun (40 Stat. 719.)

This section was a part of the Naval appropriation act for the fiscal yea 1919, cited above.

CHAPTER FOUR—RANK AND PRECEDENCE, PROMOTION AND ADVANCEMENT

Sec.

OF RANK AND PRECEDENCE

2660a. Relative rank of Navy and Army officers.
2663. Aid or executive officer.
2672a. Officers of Corps of Civil Engineers.

OF PROMOTION AND ADVANCEMENT

2685. Physical examination.
2697e. Recommendations of board as to promotion of officers.
2697gg. Mode of promotion to grades of commander, captain and rear admiral; semiannual computation by Secretary of Navy; convening board of Rear Admirals; recommendations.
2697h. Promotion of captain, commander, or lieutenant commander.
2699a. Existing laws as to promotion extended to advancements t certain ranks.
2700. Suspension from promotion o failing in examination.
2700a. Promotion laws applicable to a vancement of staff officers.
2700aa. Same; examinations.
2701b. Relative position of officers i Medical Corps.
2712. Chief machinists; rank, pay, etc. examination for promotion warrant officers; pay; chi warrant officers; appointmen as ensign.
2715b. Medals of honor; to whom pr sented.
2715c. Distinguished-service medals; t whom presented.
2715d. Navy crosses; to whom pr sented.
2715e. Additional pay to person awarded medals or crosses.

Sec.
2715f. Bars or other insignia for additional acts of valor.
2715g. Expenditure for medals, crosses, or other devices; replacement of lost medals, crosses, or devices.
2715h. Time limit on award of medals, crosses, or other devices.
2715i. Awards in case of death.
2715j. Delegation of power to make awards; rules and regulations.

OF RANK AND PRECEDENCE

§ 2660a. (Act Oct. 6, 1917, c. 105, § 3.) Relative rank of Navy and Army officers.

Brigadier generals of the Army shall hereafter rank relatively with rear admirals of the lower half of the grade. (40 Stat. 411.)

This was a provision of section 3 of an act entitled "An act to amend an act entitled 'An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September second, nineteen hundred and fourteen, and for other purposes," cited above.

§ 2663. (R. S. § 1469.) Aid or executive officer.

Duties of aid.—An aid in the Navy is an officer legally ordered to duty with an admiral, vice admiral, or rear admiral to perform for him strictly personal, confidential, and routine duties. Knox v. U. S., 52 Ct. Cl. 22.

§ 2672a. (Act March 4, 1917, c. 180.) Officers of Corps of Civil Engineers.

Officers of the Corps of Civil Engineers hereafter appointed shall, from the date of their original appointment, take rank and precedence with Lieutenants (junior grade). (39 Stat. 1184.)

This was a provision of the naval appropriation act for the fiscal year 1918, cited above.

OF PROMOTION AND ADVANCEMENT

§ 2685. (R. S. § 1493.) Physical examination.

Validity of promotion.—In suit to recover the difference in pay of a machinist and a chief machinist in the Navy the grade to which plaintiff had been promoted from date of rank stated in commission, held that, under this section and section 1505, R. S., as amended (Comp. St. 1916, § 2700), plaintiff was not promoted in grade or rank pursuant to law, and is illegally in the service. Hooper v. U. S., 53 Ct. Cl. 90.

Cited without definite application, Downes v. U. S., 52 Ct. Cl. 237.

§ 2697e. (Act Aug. 29, 1916, c. 417.) Recommendations of board as to promotion of officers.

The board shall recommend for promotion a number of officers in each grade equal to the number of vacancies to be filled in the next higher grade during the following calendar year: Provided, That no officer shall be recommended for promotion unless he shall have received the recommendation of not less than six members of said board. (39 Stat. 579.)

This section was repealed in part by a provision of Act May 22, 1917, c. 20, § 14, by the omission therefrom of the proviso found in the section as originally enacted.

See, also, note to § 2573aa.

§ 2697gg. (Act May 22, 1917, c. 20, § 6.) Mode of promotion to grades of commander, captain and rear admiral; semiannual computation by Secretary of Navy; convening board of Rear Admirals; recommendations.

During the period of the present war the computations to be made by the Secretary of the Navy as prescribed by the act of August twenty-ninth, nineteen hundred and sixteen, shall be made semiannually as of July first and January first of each year and at such other times as he may deem necessary; and the Board of Rear Admirals for selection for promotion prescribed in said Act may be convened at such times as the exigencies of the service may require and shall recommend for promotion such number of officers

as the Secretary of the Navy may prescribe to fill vacancies in th several grades as provided by existing law. (40 Stat. 86.)

See note to § 2573aa.

§ 2697h. (Act Aug. 29, 1916, c. 417, as amended, Act July 1, 1918 c. 114.) Promotion of captain, commander, or lieutenant commander.

On and after June thirtieth, nineteen hundred and twenty, n captain, commander, or lieutenant commander shall be promote unless he has had not less than two years' actual sea service on sea going ships in the grade in which serving or who is more than fifty six, fifty, or forty-five years of age, respectively: Provided, Tha in exceptional cases where officers are specifically designated dur ing war or national emergency declared by the President by th Secretary of the Navy as performing, or as having performed, suc highly important duties on shore that their services can not be o could not have been spared from such assignment without serious prejudice to the successful prosecution of the war, the qualificatio of sea service in the cases of those officers so specifically designate shall not apply while the United States is at war, or during a national emergency declared by the President, or within two and one half years subsequent to the ending of such war or national emergency: Provided, That the qualification of sea service shall not apply to officers restricted to the performance of engineering dut only: Provided further, That captains, commanders, and lieutenant commanders who become ineligible for promotion on accoun of age shall be retired on a percentage of pay equal to two and one half per centum of their shore-duty pay for each year of service Provided further, That the total retired pay shall not exceed seventy-five per centum of the shore-duty pay they were entitled to receive while on the active list. (39 Stat. 579. 40 Stat. 717.)

This section was amended by Act July 1, 1918, c. 114, cited above, by inserting therein the first proviso, as set forth above.

§ 2699a. (Act July 1, 1918, c. 114.) Existing laws as to promotions extended to advancements to certain ranks.

The provisions of existing laws with reference to promotion by selection in the line of the Navy are hereby extended to include and authorize advancement to the ranks of commander, captain, and rear admiral in the Staff Corps of the Navy under the same conditions in all respects except as may be necessary to adapt the said provisions to such Staff Corps: Provided, That boards of selection shall in each case be composed, when practicable, of not less than five members of the corps concerned and promotions shall be made on the basis of fitness alone by selection from among the officers of the rank next below: Provided further, That the requirements for sea service in grade, length of service in grade and maximum age in grade for promotion shall not apply. (40 Stat. 718.)

This section was a part of the Naval appropriation act for the fiscal year 1919, cited above.

§ 2700. (R. S. § 1505, as amended, Act March 11, 1912, c. 55.) Suspension from promotion on failing in examination.

Construction and application.—This section does not apply where the officer was qualified professionally, but failed to pass his physical examination. Downes v. U. S., 52 Ct. Cl. 237.

Date of promotion.—Naval warrant officer, entitled under Comp. St. 1916, § 2712, to promotion on examination on March 3, 1909, who failed at examination May 17, the delay being without his fault, and was, under this section, suspended from promotion for one year, and whose second examination, without his fault, was delayed until June 8, 1910, was entitled, under §§ 2838, 2840, to pay of advanced rate from date when he became entitled to take second examination, which he passed. Smith v. U. S., 50 Ct. Cl. 244.

Where Congress removes all the diffi-

culties encountered in pursuit of advancement in rank and grade according to existing law, and fixed without qualification an officer's status as that of a lieutenant in the navy to take rank from January 1, 1904, he is entitled to the pay provided by law for that rank from that date. Williams v. U. S., 50 Ct. Cl. 320.

The proper date of eligibility to the higher rank when promoted is six months from the period when he first became eligible to such promotion. Toulon v. U. S., 51 Ct. Cl. 87.

Validity of promotion.—In suit to recover the difference in pay of a machinist and a chief machinist in the Navy, the grade to which plaintiff had been promoted from date of rank stated in commission, held, that under section 1493, R. S. (Comp. St. 1916, § 2685), and this section, plaintiff was not promoted in grade or rank pursuant to law, and is illegally in the service. Hooper v. U. S., 53 Ct. Cl. 90.

Cited without definite application. Crapo v. U. S., 50 Ct. Cl. 337.

§ 2700a. (Act March 4, 1917, c. 180.) Promotion laws applicable to advancement of staff officers.

Hereafter all laws relating to the examination of officers of the Navy for promotion shall be construed to apply to the regular advancement of staff officers to higher ranks on the active list, the same as though such advancements in rank were promotions to higher grades: Provided, That nothing in this paragraph shall be construed as in any way affecting the original appointment of officers to the Dental Corps as provided in the Act approved August twenty-ninth, nineteen hundred and sixteen, making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes, and the time served by dental surgeons as acting or acting assistant dental surgeons shall be reckoned in computing the increased service pay and service for promotion of such as are commissioned under said Act. (39 Stat. 1182.)

This was a provision of the naval appropriation act for the fiscal year 1918, cited above.

See, also, § 2700aa, post

§ 2700aa. (Act May 22, 1917, c. 20, § 20.) Same; examinations.

Hereafter all laws relating to the examination of officers of the Navy for promotion shall be construed to apply to the regular advancement of staff officers to higher ranks on the active list the same as though such advancements in rank were promotions to higher grades: Provided, That examinations for such staff officers shall not be required except for such regular advancements in rank: Provided further, That the President be, and he is hereby, authorized to direct the Secretary of the Navy to take such action on the records of proceedings of naval examining boards and boards of naval surgeons for the promotion of officers of the Navy as is now required by law to be taken by the President. (40 Stat. 89.)

See ante, § 2700a. See, also, note to § 2573aa, ante.

§ 2701b. (Act May 22, 1917, c. 20, § 17.) Relative position of officers in Medical Corps.

Nothing contained in the Act of August twenty-ninth, nineteen hundred and sixteen, shall operate to disturb the relative position of officers in the Medical Corps with reference to precedence or promotion, but all such officers otherwise qualified shall be advanced in rank with or ahead of officers in said corps who were their juniors on the date of said Act. (40 Stat. 89.)

See note to § 2573aa, ante.

§ 2712. (Act March 3, 1909, c. 255.) Chief machinists; rank, pa etc.; examination for promotion; warrant officers; pa chief warrant officers; appointment as ensign.

Date of promotion.—Naval warrant officer, entitled, under Comp St. 1916, § 2712, to promotion on examination on March 3, 1909, who failed at examination May 17, the delay being without his fault, and was, under § 2700, suspended from promotion for one year, and whose second examination, with his fault, was delayed until June 1910, was entitled under §§ 2838, 28 to pay of advanced rate from d when he became entitled to take sec examination, which he passed. Sm v. U. S., 50 Ct. Cl. 244.

§ 2715b. (Act Feb. 4, 1919, c. 14, § 1.) Medals of honor; to who presented.

That the President of the United States be, and he is hereby, a thorized to present, in the name of Congress, a medal of honor any person who, while in the naval service of the United Stat shall, in action involving actual conflict with the enemy, distingui himself conspicuously by gallantry and intrepidity at the risk of h life above and beyond the call of duty and without detriment the mission of his command or the command to which attache (40 Stat. 1056.)

This section, and the eight sections next following, are an act entitled "A act to provide for the award of medals of honor, distinguished-service meda and Navy crosses, and for other purposes," cited above.

§ 2715c. (Act Feb. 4, 1919, c. 14, § 2.) Distinguished-service me als; to whom presented.

That the President be, and he hereby is, further authorized present, but not in the name of Congress, a distinguished-servi medal of appropriate design and a ribbon, together with a roset or other device to be worn in lieu thereof, to any person who, whi in the naval service of the United States, since the sixth day April, nineteen hundred and seventeen, has distinguished; or wh hereafter shall distinguish, himself by exceptionally meritorio service to the Government in a duty of great responsibility. (Stat. 1056.)

See note to § 2715b, ante.

§ 2715d. (Act Feb. 4, 1919, c. 14, § 3.) Navy crosses; to who presented.

That the President be, and he hereby is, further authorized present, but not in the name of Congress, a Navy cross of appr priate design and a ribbon, together with a rosette or other devi to be worn in lieu thereof, to any person who, while in the nav service of the United States, since the sixth day of April, ninete hundred and seventeen, has distinguished, or who shall hereaft distinguish, himself by extraordinary heroism or distinguished ser ice in the line of his profession, such heroism or service not bei sufficient to justify the award of a medal of honor or a disti guished-service medal. (40 Stat. 1056.)

See note to § 2715b, ante.

§ 2715e. (Act Feb. 4, 1919, c. 14, § 4.) Additional pay to perso awarded medals or crosses.

Each enlisted or enrolled person of the naval service to whom awarded a medal of honor, distinguished-service medal, or a Na cross shall, for each such award, be entitled to additional pay the rate of $2 per month from the date of the distinguished act service on which the award is based, and each bar, or other suitab emblem or insignia, in lieu of a medal of honor, distinguishe service medal, or Navy cross, as hereinafter provided for, shall e title him to further additional pay at the rate of $2 per month fro

the date of the distinguished act or service for which the bar is awarded, and such additional pay shall continue throughout his active service, whether such service shall or shall not be continuous. (40 Stat. 1056.)

See note to § 2715b, ante.

§ 2715f. (Act Feb. 4, 1919, c. 14, § 5.) Bars or other insignia for additional acts of valor.

No more than one medal of honor or one distinguished-service medal or one Navy cross shall be issued to any one person; but for each succeeding deed or service sufficient to justify the award of a medal of honor or a distinguished-service medal or Navy cross, respectively, the President may award a suitable bar, or other suitable emblem or insignia, to be worn with the decoration and the corresponding rosette or other device. (40 Stat. 1056.)

See note to § 2715b, ante.

§ 2715g. (Act Feb. 4, 1919, c. 14, § 6.) Expenditure for medals, crosses, or other devices; replacement of lost medals, crosses, or devices.

The Secretary of the Navy is hereby authorized to expend from the appropriation "Pay of the Navy" of the Navy Department so much as may be necessary to defray the cost of the medals of honor, distinguished-service medals, and Navy crosses, and bars, emblems, or insignia herein provided for, and so much as may be necessary to replace any medals, crosses, bars, emblems, or insignia as are herein or may heretofore have been provided for: Provided, That such replacement shall be made only in those cases where the medal of honor, distinguished-service medal, or Navy cross, or bar, emblem, or insignia presented under the provisions of this or any other Act shall have been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was awarded, and shall be made without charge therefor. (40 Stat. 1056.)

See note to § 2715b, ante.

§ 2715h. (Act Feb. 4, 1919, c. 14, § 7.) Time limit on award of medals, crosses, or other devices.

Except as otherwise prescribed herein, no medal of honor, distinguished-service medal, Navy cross, or bar or other suitable emblem or insignia in lieu of either of said medals or of said cross, shall be issued to any person after more than five years from the date of the act or service justifying the award thereof, nor unless a specific statement or report distinctly setting forth the act or distinguished service and suggesting or recommending official recognition thereof shall have been made by his naval superior through official channels at the time of the act or service or within three years thereafter. (40 Stat. 1057.)

See note to § 2715b, ante.

§ 2715i. (Act Feb. 4, 1919, c. 14, § 8.) Awards in case of death.

In case an individual who shall distinguish himself dies before the making of the award to which he may be entitled the award may nevertheless be made and the medal or cross or the bar or other emblem or insignia presented within five years from the date of the act or service justifying the award thereof to such representative of the deceased as the President may designate: Provided, That no medal or cross or no bar or other emblem or insignia shall be awarded or presented to any individual or to the representative of any individual whose entire service subsequent to the time he distinguished himself shall not have been honorable: Provided further, That in cases of persons now in the naval service

for whom the award of the medal of honor has been recommende in full compliance with then existing regulations, but on account c services which, though insufficient fully to justify the award of th medal of honor, appears to have been such as to justify the awar of the distinguished-service medal or Navy cross hereinbefore pr vided for, such cases may be considered and acted upon under th provisions of this Act authorizing the award of the distinguishe service medal and Navy cross notwithstanding that said service may have been rendered more than five years before said cases sha have been considered as authorized by this proviso, but all consic eration or any action upon any of said cases shall be based exclu sively upon official records now on file in the Navy Departmen (40 Stat. 1057.)

See note to § 2715b, ante.

§ 2715j. (Act Feb. 4, 1919, c. 14, § 9.) Delegation of power t make awards; rules and regulations.

That the President be, and he hereby is, authorized to delegat under such conditions, regulations, and limitations as he shall pr scribe, to flag officers who are commanders in chief or commandin on important independent duty the power conferred upon him b this Act to award the Navy cross; and he is further authorized t make from time to time any and all rules, regulations, and order which he shall deem necessary to carry into effect the provisions c this Act and to execute the full purpose and intention thereof. (4 Stat. 1057.)

See note to § 2715b, ante.

CHAPTER FIVE—THE NAVAL ACADEMY

Sec.
2726bb. Increase of number of midshipmen; increase of appointments by Secretary of Navy.
2726c. Increase of number of midshipmen.
2732a. Qualifications; age.
2737a. Academic course; temporary duction.
2748a. Professors and instructor compensation.

§ 2726bb. (Act March 4, 1917, c. 180.) Increase of number of mi shipmen; increase of appointments by Secretary of Navy.

Hereafter, in addition to the appointment of midshipmen to t United States Naval Academy, as now prescribed by law, the Se retary of the Navy is allowed one hundred appointments annuall instead of twenty-five as now prescribed by law, to be appoint from the enlisted men of the Navy who are citizens of the Unit States, and not more than twenty years of age on the date of e trance to the Naval Academy, and who shall have served not le than one year as enlisted men on the date of entrance: Provide That such appointments shall be made in the order of merit fro candidates who have, in competition with each other, passed t mental examination now or hereafter required by law for entran to the Naval Academy, and who passed the physical examinati before entrance under existing laws. (39 Stat. 1182.)

This was a provision of the naval appropriation act for the fiscal year 19 cited above.

This section supersedes so much of U. S. Comp. St. 1916, § 2726b, as lates to the appointment of midshipmen by the Secretary of the Navy.

§ 2726c. (Act Dec. 20, 1917, c. 5, § 1.) Increase of number of midshipmen.

Hereafter there shall be allowed at the United States Naval Academy five midshipmen for each Senator, Representative, and Delegate in Congress, one for Porto Rico, two for the District of Columbia, fifteen appointed each year at large, and one hundred appointed annually from enlisted men of the Navy, as now authorized by law. (40 Stat. 430.)

This was an act entitled "An act to increase the number of midshipmen at the United States Naval Academy," cited above.

Section 2 of said act repeals all inconsistent acts and parts of acts.

Act April 25, 1917, c. 8, 40 Stat. 38, authorized the appointment of one additional midshipman for each Senator, etc., during the period from the passage of the act until Sept. 1, 1918.

§ 2732a. (Act May 14, 1918, c. 73.) Qualifications; age.

Hereafter all candidates for admission to the Naval Academy must be not less than sixteen years of age nor more than twenty years of age on April first of the calendar year in which they enter the academy: Provided, That the foregoing shall not apply to candidates for midshipmen designated for entrance to the academy in nineteen hundred and eighteen. (40 Stat. 550.)

This section was an act entitled "An act to fix the age limits for candidates for admission to the United States Naval Academy," cited above.

§ 2737a. (Act April 2, 1918, c. 40.) Academic course; temporary reduction.

That the President be, and he is hereby, authorized, until August first, nineteen hundred and twenty-one, to reduce, in his discretion, the course of instruction at the United States Naval Academy from four to three years and to graduate classes which have completed such reduced courses of instruction. (40 Stat. 501.)

This was an act entitled "An act to authorize the President to reduce temporarily the course of instruction in the United States Naval Academy," cited above.

Act March 4, 1917, c. 180, 39 Stat. 1182, contained a similar provision, operative for two years from the date of its enactment.

§ 2748a. (Act Aug. 29, 1916, c. 417.) Professors and instructors; compensation.

The Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114, 40 Stat. 704, under the heading "Naval Academy," contains the following appropriation: "Pay of professors and others, Naval Academy: Pay of professors and instructors, including one professor as librarian, $235.000. One swordmaster, $1,700; assistants: one $1,500; one $1,300; headmaster in physical training, $2,000; instructors in physical training: one $1,800; two at $1,500 each; three at $1,300 each; assistant librarian, $2,400; cataloguer, $1,600; shelf assistants: two at $1,200 each; secretary of the Naval Academy, $2,500; clerks: two at $1,900 each; two at $1,700 each; two at $1,600 each, four at $1,400 each; four at $1,200 each; seven, $1,100 each; seven, $1,000 each; draftsman, $1,700; surveyor, $1,500; services of organist at chapel, $300; captain of the watch, $1,460; second captain of the watch, $1,300; twenty-two watchmen, at $1,160 each; three telephone switchboard operators, at $660 each; mail messenger, $1,100. In all, pay of professors and others, Naval Academy, $329,460."

CHAPTER SIX—VESSELS AND NAVY-YARD AND NAVAL STATIONS

Sec.
2776a. Salvage service.
2781. Repairs on hull and spars.
2781a. Repairs; authority to order.
2804bb. Dry dock at Boston; docking rates.
2804bbb. Acquisition of land for naval purposes at Cape May.
2804bbbb. Facilities for construction of torpedo-boat destroyers.
2804bbbbb. Increase of facilities f proof and test of or nance material.
2804f. Building of vessels in yards.
2804ff. Equipment of yards.
2804g. Leases of water-front property.
2804h. Purchase of vessels for transpo tation of fuel.
2804hh. Selection of coal lands i Alaska.

§ 2776a. (Act July 1, 1918, c. 114.) Salvage service.

Hereafter the Secretary of the Navy is authorized to cause ves sels under his control adapted to the purpose, to afford salvag service to public or private vessels in distress: Provided, Tha when such salvage service is rendered by a vessel specially equip ped for the purpose or by a tug, the Secretary of the Navy may de termine and collect reasonable compensation therefor. (40 Sta 705.)

This was a provision of the Naval appropriation act for the fiscal year 191 cited above.

§ 2781. (R. S. § 1538.) Repairs on hulls and spars.

The limitations imposed by existing law relative to repairs to vessels of th navy are not applicable to the expenditures of funds for repairs made avai able by the Naval appropriation act for the fiscal year 1919, Act July 1, 191 c. 114, 40 Stat. 704, by a provision of said act.

§ 2781a. (Act March 4, 1917, c. 180.) Repairs; authority to order

Nothing herein contained shall deprive the Secretary of the Nav of the authority to order repairs of ships damaged in foreign wa ters or on the high seas, so far as may be necessary to bring ther home. (39 Stat. 1184.)

This was a proviso accompanying appropriations for the construction an repair of vessels in the naval appropriation act for the fiscal year 1918, cite above.

§ 2804bb. (Act March 4, 1917, c. 180.) Dry dock at Boston; dock ing rates.

The Secretary of the Navy is hereby authorized to enter into con tract for the use by the United States Government of a dry doc at Boston, Massachusetts, which shall be capable of docking th largest vessel that can be passed through the locks of the Panam Canal, for a period of not to exceed six years from completion c such dock, at a compensation of $50,000 per annum during sai period of six years, the right of the United States Government t the use of said dock in time of war to be prior and paramount Provided, That the construction of said dock shall be undertake immediately upon entering into this contract and shall be com pleted within thirty months thereafter: And provided furthe That said contract shall provide for docking rates not in excess c commercial rates and for such other conditions as may be pr scribed by the Secretary of the Navy prior to entering into sai contract: And provided further, That in the event, during the sai contract period of six years, the necessities of the fleet require th

docking of vessels which will necessitate a charge greater than $50,000 per annum, the Secretary of the Navy is authorized to have vessels docked therein at a rate of charge not greater than the price stipulated in said contract. (39 Stat. 1180.)

These were provisions of the naval appropriation act for the fiscal year 1918, cited above.

§ 2804bbb. (Act Oct. 6, 1917, c. 77, as amended, Act July 1, 1918, c. 114.) Acquisition of land for naval purposes at Cape May.

That the Secretary of the Navy be, and he is hereby, authorized to acquire, by purchase or condemnation, including all easements, riparian and other rights appurtenant thereto, for use for naval purposes, the tract of land situate at Cape May, New Jersey, lying between Princeton and Kansas Avenues and the water front and Cape May Avenue, comprising, exclusive of Pennsylvania Avenue, which intersects the tract and is to remain a public thoroughfare, approximately fifty-seven and seventy-three one-hundredths acres, or such enlarged area for which he may be able to contract within the appropriation, and there is hereby appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the acquisition of said property and of all easements, riparian and other rights appurtenant thereto, the sum of $150,000: Provided, That the Secretary of the Navy shall authorize the payment of no part of this sum, except for perfecting the title and dredging Cold Spring Harbor and the entrance thereto, in order to make it more available for naval purposes: And provided further, That the Secretary of the Navy be, and he is hereby, empowered in his discretion to acquire, if possible, additional acreage without increased cost and within the appropriation herein authorized, and to exact guarantees for the maintenance of the electric railway now running through the above-described land; and power is hereby conferred upon the Secretary of the Navy to condemn the said tract of land for naval, aviation, and kindred purposes on the New Jersey coast adjacent to Cold Spring Harbor; and the Secretary of the Navy is hereby directed, in conducting his negotiations with the Cape May Real Estate Company, to maintain intact the obligation existing between the United States and the Cape May Real Estate Company, executed by the said company June twenty-fifth, nineteen hundred and seven; and that this contract shall not be regarded as a waiver of either the obligation of the company or the rights of the United States: And provided further, That in the event the Secretary of the Navy is unable satisfactorily to consummate the negotiations for the purchase thereof under the provisions of said Act approved October sixth, nineteen hundred and seventeen, the President is hereby authorized and empowered to take over for and in behalf of the United States the immediate possession of and title to such land, including all easements, rights of way, riparian and other rights appurtenant or appertaining thereto deemed by him to be necessary for the purposes aforesaid, and to make compensation therefor under the terms and provisions of the legislation contained in this Act; and the appropriation of $150,000 appropriated in said Act, approved October sixth, nineteen hundred and seventeen, or so much thereof as may be necessary, is hereby made available for the payment of compensation for said property so taken over by the President. (40 Stat. 344, 720.)

This section was amended by Act July 1, 1918, c. 114, cited above, by adding thereto the last proviso, as set forth above.

§ 2804bbbb. (Act Oct. 6, 1917, c. 79, § 1.) Facilities for construction of torpedo-boat destroyers.

The President is hereby authorized and empowered, within the amount hereinbefore authorized, to acquire or provide facilities additional to those now in existence for the construction of torpedo-boat destroyers, their hulls, machinery, and appurtenances, including the immediate taking over for the United States of the possession of and title to land, its appurtenances and improvements, which he may find necessary in this connection.

That if said lands and appurtenances and improvements shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said seventy-five per centum will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, section one hundred and forty-five of the Judicial Code.

Upon the taking over of said property by the President as aforesaid the title to all property so taken over shall immediately vest in the United States. (40 Stat. 371.)

These were provisions accompanying an appropriation for the construction of torpedo-boat destroyers in the urgent deficiency appropriation act for the fiscal year 1918, cited above.

§ 2804bbbbb. (Act April 26, 1918, c. 64.) Increase of facilities for proof and test of ordnance material.

The Secretary of the Navy is hereby authorized to expend the sum of $1,000,000, or any part thereof, in his discretion, for the purpose of increasing the facilities for the proof and test of ordnance material, including necessary buildings, construction, equipment, railroad, and water facilities, land, and damages and losses to persons, firms, and corporations resulting from the procurement of the land for this purpose, and also all necessary expenses incident to the procurement of said land: Provided, That if such lands and appurtenances and improvements attached thereto, can not be procured by purchase within one month after the passage of this Act the President is hereby authorized and empowered to take over for the United States the immediate possession and title of such lands and improvements, including all easements, rights of way, riparian, and other rights appurtenant thereto, or any land selected by him to be used for the carrying out of the purposes of this Act. That if said land and appurtenances and improvements shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum, as, added to the said seventy-five per centum will make up such amount as will be just compensation therefor in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code Upon the taking over of said property by the President as aforesaid, the title to all such property so taken over shall immediately vest in the United States. For the purposes of this Act there is hereby appropriated out of any money in the Treasury of the Unit

ed States not otherwise appropriated the sum of $1,000,000, or so much thereof as may be necessary: Provided, That no railroad shall be built in the District of Columbia under this Act, until Congress has approved the point from which such road may start and also the route to be followed in the District of Columbia. (40 Stat. 537.)

This was an act entitled "An act to authorize the Secretary of the Navy to increase the facilities for the proof and test of ordnance material, and for other purposes," cited above.

See, also, second note under preceding section.

Proclamations, issued under this section:

June 10, 1918, taking possession of certain described land in Charles county, Maryland, and in King George county, Virginia, for naval proving grounds.

November 4, 1918, taking possession of certain described land in King George county, Virginia, for certain naval purposes.

The President was authorized and empowered to take over immediately for the United States possession of and title to each and all of certain parcels of land, including appurtenances and improvements, for the acquisition of which authority was granted and for which appropriations were made in the Naval Service Appropriation Act for the fiscal year 1919, Act July 1, 1918, c. 114, 40 Stat., within the amounts appropriated therefor therein, by a provision in said act. Said authority was accompanied by the following provisos: "Provided, That if said lands and appurtenances and improvements shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said seventy-five per centum will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, section one hundred and forty-five, of the Judicial Code: Provided further, That upon the taking over of said property by the President as aforesaid the title to all property so taken over shall immediately vest in the United States." Said act made appropriations, among others, for the acquisition of land for sites for naval aircraft stations, for the Navy Yard, Washington, D. C., for the Marine recruiting station, Port Royal, South Carolina, for the naval magazine, Lake Denmark, New Jersey, and for the torpedo station, Newport, Rhode Island. Pursuant to the authority conferred by said provisions the President issued the following proclamations: August 7, 1918, November 2, and November 4, 1918, taking possession of certain described lands for the purposes enumerated in said proclamations and authorized by said appropriation act.

§ 2804f. (Act March 4, 1917, c. 180.) Building of vessels in yards.

The Secretary of the Navy shall build any of the vessels herein appropriated for in such navy yards as he may designate should it reasonably appear that the persons, firms, or corporations, or the agents thereof, bidding for the construction of any of said vessels have entered into any combination, agreement, or understanding, the effect, object, or purpose of which is to deprive the Government of fair, open, and unrestricted competition in letting contracts for the construction of any of said vessels: Provided, that the Secretary of the Navy is hereby authorized to build any of the vessels herein authorized in such navy yards as he may designate. (39 Stat. 1194.)

This section and the section next following were provisions accompanying an appropriation of $115,000,000 for the purchase, construction, etc., of ships, material, etc., under the heading "Naval Emergency Fund," in the naval appropriation act for the fiscal year 1918, cited above.

§ 2804ff. (Act March 4, 1917, c. 180.) Equipment of yards.

In the event the Secretary of the Navy is unable to secure from the private shipbuilders contracts for the expeditious construction of the ships heretofore authorized at a fair and reasonable price, the sum of $12,000,000, or so much thereof as may be necessary, is hereby appropriated to enable the Secretary of the Navy to equip the navy yards with suitable and necessary machinery, implements, building ways, and equipment for the construction of such of said

vessels as may be assigned to navy yards for construction. (39 Stat. 1194.)

See note to § 2804f, ante.

§ 2804g. (Act July 1, 1918, c. 114.) Leases of water-front property.

The Secretary of the Navy is authorized in leasing water-front property from any State or municipality where the State law or charter of the municipality requires that the improvements placed upon leased lands shall at the termination of the lease become the property of the State or municipality, to provide, as a part or all of the consideration therefor, that improvements placed thereon by the United States shall become the property of the lessor upon the expiration of the lease or any renewal thereof. (40 Stat. 705.)

This section was a part of the Naval appropriation act for the fiscal year 1919, cited above.

§ 2804h. (Act July 1, 1918, c. 114.) Purchase of vessels for transportation of fuel.

When, in the opinion of the President, the prices asked for the charter of vessels for the transportation of fuel are excessive, he is authorized to purchase vessels suitable for the purpose, and, if money is not otherwise available, to pay for them from the appropriation "Fuel and transportation." (40 Stat. 730.)

This was a provision accompanying an appropriation for fuel and the transportation thereof in the Naval appropriation act for the fiscal year 1919, cited above.

§ 2804hh. (Act July 1, 1918, c. 114.) Selection of coal lands in Alaska.

Fuel and Transportation: Coal and other fuel for steamers' and ships' use, including expenses of transportation, storage, and handling the same; maintenance and general operation of machinery of naval fuel depots and fuel plants; water for all purposes on board naval vessels; and ice for the cooling of water, including the expense of transportation and storage of both, $49,400,000, $1,000,000 of which, or so much thereof as may be necessary, may in his discretion, be used by the Secretary of the Navy in mining coal, or contracting for the same in Alaska, the transportation of the same, and the construction of coal bunkers and the necessary docks for use in supplying ships therewith; and the Secretary of the Navy is hereby authorized to select from the public coal lands in Alaska such areas as may be necessary for use by him for the purposes stated herein. (40 Stat. 730.)

This was a provision of the Naval appropriation act for the fiscal year 1919, cited above.

CHAPTER SEVEN—GENERAL PROVISIONS RELATING TO THE NAVY

§ 2805. (R. S. § 1547.) Regulations.

Conflict with statutes.—This section gives no authority to make regulations contrary to existing statutes. 30 Op. Atty. Gen. 234.

§ 2808a. (Act March 4, 1917, c. 180.) Reserve supplies.

Reserve material, Navy: For procuring apparatus and materials (other than ordnance materials and medical stores), as a war reserve necessary to be carried in the supply departments for the purpose of fitting out vessels of the fleet and merchant auxiliaries in time of war or when, in the opinion of the President, a national emergency exists, to be immediately available and to continue available until expended, * *: Provided, That, to prevent deterio-

ration such materials shall be used as required in time of peace, and when so used reimbursement shall be made to this appropriation from current naval appropriations in order that additional stocks may be procured. (39 Stat. 1183.)

This was a provision of the naval appropriation act for the fiscal year 1918, cited above.

§ 2813cc. (Act Feb. 11, 1918, c. 15.) Detail.

That the President of the United States be, and he is hereby, authorized, in his discretion, to detail to assist the Dominican Republic, officers and enlisted men of the United States Navy and the United States Marine Corps: Provided, That officers and enlisted men so detailed be, and they are hereby, authorized to accept from the Government of the Dominican Republic offices under said Government with compensation and emoluments from the said Dominican Republic, subject to the approval of the President of the United States: Provided further, That while so detailed such officers and enlisted men shall receive, in addition to the compensation and emoluments allowed them by the Dominican Republic, the pay and allowances of their rank or rating in the United States Navy or United States Marine Corps, as the case may be, and they shall be entitled to the same credit, while so serving, for longevity, retirement, foreign-service pay, and for all other purposes that they would receive if they were serving with the United States Navy or Marine Corps in said Dominican Republic. (40 Stat. 437.)

This was an act entitled "An act to authorize and empower officers and enlisted men of the Navy and Marine Corps to serve under the Government of the Dominican Republic, and for other purposes," cited above.

§ 2813e. (Act Oct. 6, 1917, c. 92.) Extension of Act May 18, 1917, c. 15, §§ 12, 13, to Navy.

In construing the provisions of sections twelve and thirteen of the selective-draft Act approved May eighteenth, nineteen hundred and seventeen, the word "Army" shall extend to and include "Navy"; the word "military" shall include "naval"; "Article of War" shall include "Articles for the Government of the Navy"; the words "camps, station, cantonment, camp, fort, post, officers' or enlisted men's club," in section twelve, and "camp, station, fort, post, cantonment, training, or mobilization place," in section thirteen, shall include such places under naval jurisdiction as the President may prescribe, and the powers therein conferred upon the Secretary of War with regard to the military service are hereby conferred upon the Secretary of the Navy with regard to the naval service. (40 Stat. 393.)

This was an act entitled "An act to promote the efficiency of the United States Navy," cited above.

Sections 12 and 13 of Act May 18, 1917, c. 15, referred to in this section, are set forth ante, §§ 2019a, 2019b.

CHAPTER EIGHT—PAY, EMOLUMENTS, AND ALLOWANCES

Sec.
2816a. Additional pay of gun pointers or gun captains.
2817. Increase of pay for length of service.
2818. Service pay; credit to officers appointed from civil life.
2820. Increase of pay of officers on sea duty, or on shore duty beyond continental limits of United States.
2821. Increase of pay of officers on shore duty beyond seas, etc.
2826. Additions to pay of aids to rear-admirals.
2837. Commencement of pay; officers promoted.
2838. Commencement of pay; officers advanced in grade and rank after March 3, 1899.
2840. In cases of delayed examination.
2841a. Advances; officers ordered to and from sea or shore duty beyond seas.
2843. [Superseded.]
2843a. Mileage in lieu of actual traveling expenses.
2843aa. Pay and allowances of chiefs of bureaus.
2845. Mileage to officers traveling within United States.
2851. Commutation of quarters to officers on shore.
2851aa. Assignment of quarters o commutation thereof.
2855a. Enlisted men; ratings establish ed; base pay.
2856a. Same; temporary increase o pay.
2857. Additional pay for serving as fire men and coal-heavers.
2867–2869. [Repealed.]
2869a. Reimbursement of officers an enlisted men of Navy, Marin Corps, and Coast Guard fo effects lost, destroyed or dam aged by operations of war.
2870. Allowances, on death of officer o enlisted man to widow, or de pendent relative.
2885a. Rations; extra allowance t deck force standing nigh watches.
2886. Rations; commutation price.
2887aa. Outfits on first enlistment.
2887b. Commutation of rations; gener al courts-martial prisoners.
2887c. Same; payment to caterers o death or desertion.
2895a. Pay of retired chief warrant of ficers.
2895b. Pay of retired warrant officers
2900a. Absence from duty on accoun of sickness resulting from mis conduct.

§ 2816a. (Act March 29, 1918, c. 33.) Additional pay of gun pointers or gun captains.

During the period of the present war any enlisted man of the Navy or Marine Corps who has qualified, or who may hereafter qualify, as a gun pointer or gun captain, and who has been, or may hereafter be, detailed as gun pointer or gun captain for a gun of the class for which qualified, shall be entitled to the additional pay now or hereafter provided for such qualification and detail while temporarily absent by proper authority from the place where ordinarily required to perform duty under such detail, or while performing temporary duty which is not connected with such detail as gun pointer or gun captain. (40 Stat. 500.)

This was "An act to authorize the payment of gun pointers and gun captains while temporarily absent from their regular stations, and for other purposes," cited above.

§ 2817. (Act May 13, 1908, c. 166.) Increase of pay for length of service.

Longevity pay in general.—A naval officer who has been paid according to an erroneous rating given him by the department held entitled to retain the increased pay up to the time his rating was corrected. U. S. v. United States Fidelity & Guaranty Co. (D. C.) 244 F. 310.

§ 2818. (Act March 3, 1899, c. 413, § 13.) Service pay; credit to officers appointed from civil life.

Construction and application.—A naval officer who obtained his discharge as an enlisted man two days before his appointment, with such appointment in view, held not entitled to rating as a civilian appointee. U. S. v. United States Fidelity & Guaranty Co. (D. C.) 244 F. 310.

Where at the time of retirement from the public service it is the intention

of the party leaving the service to reenter the service, and the same party, as soon as he can do so thereafter, enters the service, such last appointment is not "from civil life." Barber v. U. S., 50 Ct. Cl. 250.

An officer who has resigned in good faith is entitled on reappointment to be credited with five years' constructive service under this section. Guilmette v. U. S., 52 Ct. Cl. 219.

§ 2820. (Act May 13, 1908, c. 166.) Increase of pay of officers on sea duty, or on shore duty beyond continental limits of United States.

Construction in general.—Service in Alaska is "shore duty beyond the continental limits of the United States," and an officer performing service there is entitled to the increased pay provided for such service. Downer v. U. S., 50 Ct. Cl. 273.

§ 2821. (Act March 3, 1901, c. 852.) Increase of pay of officers on shore duty beyond seas, etc.

Construction and application.—See Downer v. U. S., 50 Ct. Cl. 273.

§ 2826. (Act May 13, 1908, c. 166.) Additions to pay of aids to rear-admirals.

Aids to rear admirals.—No officer above the rank of lieutenant in the Navy is entitled to pay as aid to a rear admiral under this act and prior statutes assimilating the ranks in the Army and Navy are not disturbed by said act. Knox v. U. S., 52 Ct. Cl. 22; Craven v. Same, Id. 30; McLean v. Same, Id.; Tompkins v. Same, Id.; Palmer v. Same, Id. 31; Chase v. Same, Id.; Helm v. Same, Id. 32.

Where the officer, after the date of eligibility to promotion and before the date of his commission as a lieutenant commander, served as an aid to a division commander he is entitled to the additional pay as aid, as during the period of service he in fact held the grade of lieutenant. Downes v. U. S., 52 Ct. Cl. 237.

§ 2837. (Act June 22, 1874, c. 392, § 1.) Commencement of pay; officers promoted.

Construction and application.—An officer's commission determines the date it was intended he should take rank, and he is entitled to the pay and allowances fixed therefor by law from said date. Crapo v. U. S., 50 Ct. Cl. 337.

§ 2838. (Act March 4, 1913, c. 148.) Commencement of pay; officers advanced in grade and rank after March 3, 1899.

Construction and application in general.—As rank is not an office, where the commission issued to a naval officer shows that the date of rank is incorrect the officer cannot recover pay from the date so stated in virtue of this section. Toulon v. U. S., 51 Ct. Cl. 87.

A paymaster's clerk under the old order, when commissioned a chief pay clerk pursuant to Act March 3, 1915, c. 83 (Comp. St. 1916, § 2537a), was not "advanced in grade or rank pursuant to law" within this section. Seifert v. U. S., 52 Ct. Cl. 40.

Where a lieutenant receives additional pay as aid, and by subsequent executive action pursuant to this section, he became a lieutenant commander, the sum allowed as additional pay will not be set off against the claim for pay for the higher grade, because by that act he became retroactively and constructively, but not in fact, a lieutenant commander during that period. Downes v. U. S., 52 Ct. Cl. 327.

Previous failure in examination.—Naval warrant officer, entitled under Comp. St. 1916, § 2712, to promotion on examination on March 3, 1909, who failed at examination May 17, the delay being without his fault, and was, under § 2700, suspended from promotion for one year, and whose second examination, without his fault, was delayed until June 8, 1910, was entitled under §§ 2838, 2840, to pay of advanced rate from date when he became entitled to take second examination, which he passed. Smith v. U. S., 50 Ct. Cl. 244.

Where a lieutenant eligible for promotion was found physically disqualified, and when the physical defect was remedied was nominated as a lieutenant commander from the date when the vacancy occurred, he is entitled to the

pay of the higher grade for constructive service from the date of eligibility and was advanced in grade "pursuant to law" under this section. Downes v. U. S., 52 Ct. Cl. 237.

Where assistant surgeon in navy failed professionally and took new examination, and commission as passed assistant surgeon was corrected, he was, in view of Comp. St. 1916, §§ 2497, 2838, entitled to pay of advanced rank from date shown in corrected commission. Toulon v. U. S., 52 Ct. Cl. 333.

§ 2840. (R. S. § 1562.) In cases of delayed examination.

Construction and application.—Naval warrant officer, entitled under Comp. St. 1916, § 2712, to promotion on examination on March 3, 1909, who failed at examination May 17, the delay being without his fault, and was, under § 2700, suspended from promotion for one year, and whose second examination, without his fault, was delayed until June 8, 1910, was entitled under §§ 2838, 2840 to pay of advanced rate from date when he became entitled to take second examination, which he passed. Smith v. U. S., 50 Ct. Cl. 244.

In view of Comp. St. 1916, §§ 2496, 2497, assistant surgeon at the end of three years' service, is eligible to promotion, subject to examination, and takes rank from the date on which he becomes eligible, though examination be delayed, and under § 2840, may also get the pay of the advanced rank from such date. Toulon v. U. S., 51 Ct. Cl. 87.

§ 2841a. (Act March 4, 1917, c. 180.) Advances; officers ordered to and from sea or shore duty beyond seas.

Hereafter advances of pay not to exceed three months' pay in any one case may be made to officers ordered to and from sea duty and to and from shore duty beyond the seas, under such regulations as the Secretary of the Navy may prescribe. (39 Stat. 1181.)

This was a provision of the naval appropriation act for the fiscal year 1918, cited above.

§ 2843. [Superseded.]

This section, a provision of Act May 13, 1908, c. 166, 35 Stat. 128, prescribing the pay and allowances of Chiefs of Bureaus in the Navy Department, was superseded by a provision of Act July 1, 1918, c. 114, post, § 2843aa.

§ 2843a. (Act June 30, 1876, c. 159.) Mileage in lieu of actual traveling expenses.

So much of the act of June sixteenth, one thousand eight hundred and seventy-four, making appropriations for the support of the Army for the fiscal year ending June thirtieth, one thousand eight hundred and seventy-five, and for other purposes, as provides that only actual traveling expenses shall be allowed to any person holding employment or appointment under the United States while engaged on public business, as is applicable to officers of the Navy so engaged, is hereby repealed; and the sum of eight cents per mile shall be allowed such officers while so engaged, in lieu of their actual expenses. (19 Stat. 65.)

See Comp. St. 1916, note under R. S. § 1566, on pp. 4176, 4177.

Effect of order.—The rule is well settled that the terms of an order given for any purpose cannot determine the character of the travel or the service performed, but that question must be determined from the particular facts in each case. McCauley v. U. S., 50 Ct. Cl. 105.

Travel on public business.—When a sick officer, while convalescent, is sent home for the purpose of allowing him to regain his health, it is sending him on public business within the meaning of the law. McCauley v. U. S., 50 Ct. Cl. 105.

§ 2843aa. (Act July 1, 1918, c. 114.) Pay and allowances of chiefs of bureaus.

Hereafter chiefs of bureaus of the Navy Department, including the Judge Advocate General of the Navy, shall, while so serving, have corresponding rank and shall receive the same pay and allowances as are now or may hereafter be prescribed by or in pursuance of law for chiefs of bureaus of the War Department and the Judge Advocate General of the Army. (40 Stat. 717.)

This section was a part of the Naval appropriation act for the fiscal year 1919, cited above.

§ 2845. (Act March 3, 1901, c. 831.) Mileage to officers traveling within United States.

Construction and application in general.—The rule is well settled that the terms of an order given for any purpose cannot determine the character of the travel or the service performed, but that question must be determined from the particular facts in each case. McCauley v. U. S., 50 Ct. Cl. 105.

A regulation of a department is not sufficient to change the plaintiff's status, so as to bring him within the terms of this section. Ashton v. U. S., 51 Ct. Cl. 65.

This act repealed Rev. St. § 1566, only as to the amount per mile allowed for mileage, but does not repeal the provision that "no officer shall be paid mileage, except for travel actually performed at his own expense and in obedience to orders." Katzer v. U. S., 52 Ct. Cl. 32.

"Officer of the navy."—A paymaster's clerk is not an "officer of the navy" entitled to mileage pay, within the meaning of Act March 3, 1901. Ashton v. U. S., 51 Ct. Cl. 65.

§ 2851. (Act March 3, 1901, c. 852.) Commutation of quarters to officers on shore.

Right to commutation of quarters.—When an officer serving "beyond the continental limits of the United States" has all his actual and necessary expenses paid by the United States while so serving, he is not entitled to commutation of quarters, heat, and light during the period of said service. Downer v. U. S., 50 Ct. Cl. 273.

§ 2851aa. (Act July 1, 1918, c. 114.) Assignment of quarters or commutation thereof.

Hereafter the Secretary of the Navy may determine where and when there are no public quarters available for persons in the Navy and Marine Corps, or serving therewith, within the meaning of any Acts or parts of Acts relating to the assignment of quarters or commutation therefor. (40 Stat. 718.)

This section was a provision of the Naval appropriation act for the fiscal year 1919, cited above.

§ 2855a. (Act Oct. 6, 1917, c. 103.) Enlisted men; ratings established; base pay.

The ratings of engineman, first class, engineman, second class; blacksmith, first class, blacksmith, second class; coppersmith, first class, coppersmith, second class; pattern maker, first class, pattern maker, second class; molder, first class, molder, second class; chief special mechanic and special mechanic, first class, be, and they are hereby, established in the artificer branch of the Navy with the following rates of base pay per month: Engineman, first class, $45; engineman, second class, $40; blacksmith, first class, $65; blacksmith, second class, $50; coppersmith, first class, $65; coppersmith, second class, $50; pattern maker, first class, $65; pattern maker, second class, $50; molder, first class, $65; molder, second class, $50; chief special mechanic, $127; special mechanic, first class, $80: Provided, That the base pay of machinists' mates, second class, and water tenders be, and it is hereby, increased from $40 to $45 per month: Provided further, That all the aforesaid rates of pay shall be subject to such increases of pay and allowances as are, or may hereafter be, authorized by law for enlisted men of the Navy: And provided further, That appointments or enlistments in the said ratings may be made from enlisted men in the Navy or from civil life, respectively, and the qualifications of candidates for any of said ratings shall be determined in accordance with such regulations as the Secretary of the Navy may prescribe. (40 Stat. 397.)

This was an act entitled "An act to establish certain new ratings in the United States Navy, and for other purposes," cited above.

§ 2856a. (Act May 22, 1917, c. 20, § 15.) Same; temporary increase of pay.

Commencing June first, nineteen hundred and seventeen, and continuing until not later than six months after the termination of the present war, all enlisted men of the Navy of the United States in active service whose base pay does not exceed $21 per month shall receive an increase of $15 per month; those whose base pay is over $21 and does not exceed $24 per month, an increase of $12 per month; those whose base pay is over $24 and less than $45 per month, an increase of $8 per month; and those whose base pay is $45 or more per month, an increase of $6 per month: Provided, That the increases of pay herein authorized shall not enter into the computation of continuous-service pay: Provided, That during the continuance of the present war, warrant officers, petty officers and enlisted men of the United States Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy. (40 Stat. 87.)

See note to § 2573aa.

§ 2857. (R. S. § 1570, as amended, Act March 29, 1918, c. 32.) Additional pay for serving as firemen and coal-heavers.

Every seaman, landsman, or marine who performs the duty of a fireman on board any vessel of war shall be entitled to receive, in addition to his compensation as seaman, landsman, or marine, a compensation at the rate of 33 cents a day for the time he is employed as fireman. (40 Stat. 499.)

§§ 2867–2869. [Repealed.]

These sections, constituting R. S. §§ 288–290, relating to the payment of compensation to officers, petty officers, seamen, etc., of the Navy for personal effects lost on vessels, were repealed by a provision of Act Oct. 6, 1917, c. 85. See post, § 2869a.

§ 2869a. (Act Oct. 6, 1917, c. 85.) Reimbursement of officers and enlisted men of Navy, Marine Corps, and Coast Guard for effects lost, destroyed or damaged by operations of war.

That the Paymaster General of the Navy be, and he is hereby, authorized and directed to reimburse such officers, enlisted men, and others in the naval service of the United States as may have suffered, or may hereafter suffer, loss or destruction of or damage to their personal property and effects in the naval service due to the operations of war or by shipwreck or other marine disaster when such loss, destruction, or damage was without fault or negligence on the part of the claimant, or where the private property so lost, destroyed, or damaged was shipped on board an unseaworthy vessel by order of an officer authorized to give such order or direct such shipment, or where it appears that the loss, destruction, or damage of or to the private property of the claimant was in consequence of his having given his attention to the saving of the lives of others or of property belonging to the United States which was in danger at the same time and under similar circumstances. And the liability of the Government under this Act shall be limited to such articles of personal property as the Chief of the Bureau of Navigation of the Navy Department, with reference to the personnel of the Navy, or the major general commandant of the Marine Corps, with reference to the personnel of that corps, in his discretion, shall decide to be reasonable, useful, and proper for such officer, enlisted man, or other person while engaged in the public service in line of duty, and the certificate of said chief of bureau or major general commandant, as the case may be, shall be sufficient

voucher for and shall be final as to all matters necessary to the establishment and payment or settlement of any claim filed hereunder; and the action of the said chief of bureau or major general commandant, as the case may be, upon all claims arising under this Act shall be final, and no right to prosecute a claim or action in the Court of Claims or in any other court of the United States, or before any accounting officer of the United States, or elsewhere, except as herein provided, shall accrue to any person by virtue of this Act: Provided, That the liability of the Government under this Act shall be limited to such articles of personal property as are required by the United States Naval Regulations and in force at the time of loss or destruction for such officers, petty officers, seamen, or others engaged in the public service in the line of duty: Provided further, That with reference to claims of persons in the Marine Corps filed under the terms of this Act the paymaster of the Marine Corps shall make the reimbursement in money, and the quartermaster of the Marine Corps shall make the reimbursement in kind herein provided for: And provided further, That all claims now existing under this Act shall be presented within two years from the passage hereof and not thereafter; and all such claims hereafter arising shall be presented within two years from the occurrence of the loss, destruction, or damage: And provided further, That the term "in the naval service," as herein employed, shall be held to include service performed on board any vessel, whether of the Navy or not, provided the claimant is serving on such vessel pursuant to the orders of duly constituted naval authority: And provided further, That all claimants under this Act shall be required to submit their claims in writing and under oath to the said Chief of the Bureau of Navigation or major general commandant, as the case may be: And provided further, That claims arising in the manner indicated in this Act and which have been settled under the terms of previously existing law shall be regarded as finally determined and no other or further right of recovery under the provisions hereof shall accrue to persons who have submitted such claims as aforesaid: And provided further, That reimbursement for loss, destruction, or damage sustained and determined as herein provided shall be made in kind for such articles as are customarily issued to the service and shall be made in money for other articles at the valuation thereof at the time of their loss, destruction, or damage: And provided further, That in cases involving persons in the Navy reimbursement in money shall be made from the appropriation "Pay of the Navy," and reimbursement in kind shall be made from the appropriation "Outfits on first enlistment," and in cases involving persons in the Marine Corps reimbursement in money shall be made from the appropriation "Pay, Marine Corps," and reimbursement in kind shall be made from the appropriation "Clothing, Marine Corps," respectively, current at the time the claim covering such loss, damage, or destruction is paid: And provided further, That the provisions of this Act shall apply to the personnel of the Coast Guard in like manner as to the personnel of the Navy, whether the Coast Guard is operating under the Treasury Department or operating as a part of the Navy, and all of the duties, which, under this Act, devolve upon the major general commandant of the Marine Corps with reference to the personnel of that corps, shall devolve upon the captain commandant of the Coast Guard, and in cases involving persons in the Coast Guard reimbursement in money shall be made by a disbursing officer of the Coast Guard from the appropriation "Coast Guard" and reimbursement in kind shall be made

by the captain commandant from the appropriation "Coast Guard." (40 Stat. 389.)

This was an act entitled "An act to provide for the reimbursement of officers, enlisted men, and others in the naval service of the United States for property lost or destroyed in such service," cited above.

This section also repealed R. S. §§ 288–290, and Act March 2, 1895, c. 190. See notes ante, under §§ 2867–2869, and post, under § 6404.

§ 2870. (Act May 13, 1908, c. 166, as amended, Act Aug. 22, 1912, c. 335, and Act Oct. 6, 1917, c. 89.) Allowances, on death of officer or enlisted man to widow, or dependent relative.

Hereafter immediately upon official notification of the death, from wounds or disease not the result of his own misconduct, of any officer or enlisted man on the active list of the Navy and Marine Corps, or of any retired officer or enlisted man serving on active duty during the continuance of the present war, the Paymaster General of the Navy shall cause to be paid to the widow, and, if no widow, to the children, and, if there be no children, to any other dependent relative of such officer or enlisted man previously designated by him, an amount equal to six months' pay at the rate received by such officer or enlisted man at the date of his death, [less seventy-five dollars in the case of an officer and thirty-five dollars in the case of an enlisted man, to defray expenses of interment, and the residue, if any, of the amount reserved] shall be paid subsequently to the designated person. The Secretary of the Navy shall establish regulations requiring each officer and enlisted man to designate the proper person to whom this amount shall be paid in case of death, and said amount shall be paid to that person from funds appropriated for the pay of the Navy and Marine Corps. (35 Stat. 128. 37 Stat. 329. 40 Stat. 392.)

This was a provision accompanying various provisions relating to the rates of pay of officers and enlisted men in the naval appropriation act for the fiscal year 1909, cited above.

The first part of the provision, as originally enacted, was as follows:

"Hereafter immediately upon official notification of the death from wounds or disease contracted in line of duty of any officer or enlisted man on the active list of the Navy and Marine Corps the Paymaster-General of the Navy shall cause to be paid to the widow of such officer or enlisted man, or any person previously designated by him," continuing to the end of the paragraph as set forth here.

It was amended to read as set forth here by Act Aug. 22, 1912, c. 335, also cited above, with the exception of the words "or of any retired officer or enlisted man serving on active duty during the continuance of the present war," which were inserted in the section after the words "on the active list of the Navy or Marine Corps," by Act Oct. 6, 1917, c. 89, last cited above. Said Act Oct. 6, 1917, c. 89, contained the following preliminary amendatory clause: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the paragraph of the Act approved August twenty-second, nineteen hundred and twelve, entitled 'An Act making appropriations for the Naval Service for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes,' as amended by the Act of March third, nineteen hundred and fifteen, which provides for the payment of six months' gratuity to the widow or children or other previously designated dependent relative of a deceased officer or enlisted man on the active list of the Navy and Marine Corps, be, and the same is hereby, amended," etc.

Act March 3, 1915, c. 83, referred to in said amendatory clause, was superseded by a provision of Act Aug. 29, 1916, c. 417, Comp. St. 1916, § 2870a, providing that no deduction for funeral expenses shall be made, and the bracketed words have thus been superseded.

Provision for the payment of the sum of $60 to all persons serving in the military or naval forces of the United States, with certain enumerated exceptions, when discharged or placed upon the reserve list, is made by § 1406 of the Revenue Act of 1918, ante, § 2165a.

§ 2885a. (Act May 22, 1917, c. 20, § 21.) Rations; extra allowance to deck force standing night watches.

During the continuance of the present war an extra allowance of one ounce of coffee or cocoa, two ounces of sugar, four ounces of

hard bread or its equivalent, and four ounces of preserved meat or its equivalent shall be allowed to enlisted men of the deck force when standing night watches between eight o'clock postmeridian and eight o'clock antemeridian. (40 Stat. 90.)

See note to § 2573aa.

§ 2886. (R. S. § 1585, as amended, Act Oct. 6, 1917, c. 102.) Rations; commutation price.

Forty cents shall in all cases be deemed the commutation price of the Navy ration: Provided, however, That after January first, nineteen hundred and eighteen, the commutation price shall not exceed the average cost of the ration during the preceding six months, not to exceed 40 cents. (40 Stat. 397.)

This section was amended by Act Oct. 6, 1917, c. 102, cited above, by increasing the commutation price of the navy ration from 30 to 40 cents, and by adding the proviso, so as to make the section read as set forth here.

§ 2887aa. (Act July 1, 1918, c. 114.) Outfits on first enlistment.

Outfits for all enlisted men and apprentice seamen of the Navy on first enlistment, at not to exceed $100 each. (40 Stat. 707.)

This section was a provision of the Naval appropriation act for the fiscal year 1919, cited above.

§ 2887b. (Act July 1, 1918, c. 114.) Commutation of rations; general courts-martial prisoners.

The Secretary of the Navy is authorized to commute rations for such general courts-martial prisoners in such amounts as seem to him proper, which may vary in accordance with the location of the naval prison, but which shall in no case exceed 30 cents per diem for each ration so commuted. (40 Stat. 729.)

This section was a provision of the Naval appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of Act June 15, 1917, c. 29, § 1, 40 Stat. 210.

§ 2887c. (Act July 1, 1918, c. 114.) Same; payment to caterers on death or desertion.

Provisions, Navy: For provisions and commuted rations for the seamen and marines, which commuted rations may be paid to caterers of messes, in case of death or desertion, upon orders of the commanding officers. (40 Stat. 728.)

This section was a provision of the Naval appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of Act June 15, 1917, c. 29, § 1, 40 Stat. 210.

§ 2895a. (Act April 10, 1918, c. 49, § 1.) Pay of retired chief warrant officers.

Any retired chief warrant officer who has been on active duty since August twenty-ninth, nineteen hundred and sixteen, or who may hereafter perform active duty, and whose record is creditable, shall, during such time as he has been or may hereafter be, on active duty, and from the time his service on the active list after date of commission, plus his service on active duty while on the retired list, is equal to six years, receive the pay and allowances that are now, or may hereafter be, allowed a lieutenant (junior grade), United States Navy; and shall, during such time as he has been, or may hereafter be, on active duty, and from the time such total service is equal to twelve years, receive the pay and allowances that are now, or may hereafter be, allowed a lieutenant, United States Navy. (40 Stat. 516.)

This section, and the section next following, were an act entitled "An act to regulate the pay of retired chief warrant officers and warrant officers on active duty," cited above.

§ 2895b. (Act April 10, 1918, c. 49, § 2.) Pay of retired warrant officers.

Any retired warrant officer who has been on active duty since August twenty-ninth, nineteen hundred and sixteen, or who may

hereafter perform active duty, and whose record is creditable, shal during such time as he has been or may hereafter be on active du ty, and from the time his service on the active list after date o warrant, plus his service on active duty while on the retired list, equal to twelve years, receive the pay and allowances that are no or may hereafter be allowed a lieutenant (junior grade), Unite States Navy; and shall, during such time as he has been or ma hereafter be on active duty, and from the time such total service equal to eighteen years, receive the pay and allowances that ar now or may hereafter be allowed a lieutenant, United States Navy (40 Stat. 516.)

See note to § 2895a, ante.

§ 2900a. (Act Aug. 29, 1916, c. 417, as amended, Act July 1, 1918, c 114.) Absence from duty on account of sickness resulting fro misconduct.

Hereafter no officer or enlisted man in the Navy or Marine Corp in active service who shall be absent from duty on account of in jury, sickness or disease resulting from his own intemperate use o drugs or alcoholic liquors, or other misconduct, shall receive pay fo the period of such absence, the time so absent and the cause there of to be ascertained under such procedure and regulations as ma be prescribed by the Secretary of the Navy: Provided, That a enlistment shall not be regarded as complete until the enlisted ma shall have made good any time in excess of one day lost on accoun of injury, sickness or disease resulting from his own intemperat use of drugs or alcoholic liquors, or other misconduct. (39 Sta 580. 40 Stat. 717.)

This section was amended by Act July 1, 1918, c. 114, cited above, by in serting therein the word "injury," so as to make the section read as set fort above.

CHAPTER EIGHT A—THE NAVAL RESERVE FORCE

Sec.
2900½a. Naval Reserve Force.
(2) Composition of force.
(7½) Reenrollment.
(11½) Restriction on enrollment or promotions.
(11¾) Promotions.
(11⅞) Rank and precedence.
(12¼) Annual retainer pay.
(12½) Limitation on retainer pay.
(12¾) Retirement and retainer pay; computation.
(15½) Retirement.
(18¼) Subjection to Navy regulations; uniform.
(19¼) Pay in active service.
(22¼) Active service in time of peace.
(22½) Uniform and clothing gratuity.
(22¾) Retainer pay in time of peace while on active duty.
(22⅞) Deduction of clothing gratuity.
(26½) Clothing gratuity.
(26⅔) Enrollment of members of Medical Reserve Corps and Dental Reserve Corps.
(26⅞) Disenrollment.

Sec.
FLEET NAVAL RESERVE
2900½b. (3) Assignment to active dut for training; retaine pay; term of service.
(4) Rate of pay; computatio of service.

NAVAL RESERVE
2900½c. (1) Eligibility for membership officers.
(1½) Age limits.
(3¼) Minimum active service during each term of en rollment.
(5) Continuous service pay o former members of Unit ed States Naval Reserve etc.
(6) Increase in maximum ag limit for officers.

NAVAL COAST DEFENSE RE SERVE
2900½e. (5) Exercise of command.

NAVAL RESERVE FLYING CORPS
2900½g. (1) Reserve, how composed active service; retaine pay.

§ 2900½a. (Act Aug. 29, 1916, c. 417, as amended by Act May 22, 1917, c. 18.) Naval Reserve Force.

(2) Composition of force.

The Naval Reserve Force shall be composed of citizens of the United States who, by enrolling under regulations prescribed by the Secretary of the Navy or by transfer thereto as in this Act provided, obligate themselves to serve in the Navy in time of war or during the existence of a national emergency, declared by the President: Provided, That citizens of the insular possessions of the United States may enroll in the Naval Auxiliary Reserve. Provided further, That such persons who are not citizens of the United States, but who have or shall have declared their intention to become citizens of the United States, and who are citizens of countries which are at peace with the United States, may enroll in the Naval Reserve Force subject to the condition that they may be discharged from such enrollment at any time within the discretion of the Secretary of the Navy, and such persons who may, under existing law, become citizens of the United States, and who render honorable service in the Naval Reserve Force in time of war for a period of not less than one year may become citizens of the United States without proof of residence on shore and without further requirement than proof of good moral character and certificate from the Secretary of the Navy that such honorable service was actually rendered. (39 Stat. 587. 40 Stat. 84.)

This paragraph was amended by Act May 22, 1917, c. 18, cited above, by adding thereto the last proviso.

(7½) (Act July 1, 1918, c. 114.) Reenrollment.

All members of the Naval Reserve Force shall be eligible for reenrollment in the rank, grade, or rating held on the termination of their last enrollment. (40 Stat. 708.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(11½) (Act July 1, 1918, c. 114.) Restriction on enrollment or promotions.

No enrollments or promotions shall be made in any rank or grade above that of lieutenant commander, except as herein otherwise provided. (40 Stat. 708.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(11¾) (Act July 1, 1918, c. 114.) Promotions.

No officer of any class of the Naval Reserve Force shall in time of peace be promoted above the grade of lieutenant commander, but in time of war or other national emergency officers of the Naval Reserve Force of and above the rank of lieutenant commander in active service shall be eligible for selection for promotion to the next higher grade or rank by the same board of officers that selects officers of the United States Navy for promotion to such higher ranks and grades, under the same rules and regulations as apply to the selection for promotion of officers of the United States Navy. The promotion of officers of the Naval Reserve Force below the rank of lieutenant commander shall at all times be in accordance with such regulations as the Secretary of the Navy may prescribe. (40 Stat. 711.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(11⅘) (Act July 1, 1918, c. 114.) Rank and precedence.

When on active duty officers of the Naval Reserve Force shall take precedence among themselves and with other officers of the

naval service in their respective grades or ranks according to the dates of their commissions or provisional assignment of rank in the Naval Reserve Force: Provided, That all officers of the Naval Reserve Force of and above the rank of lieutenant commander shall rank with but after officers of the same rank or grade in the United States Navy, except that in time of war or other national emergency such officers of the Naval Reserve Force shall have a date of precedence with officers of the United States Navy as of the date of general mobilization, to be established by the Secretary of the Navy: Provided further, That during the present emergency the date of precedence of all officers of the Naval Reserve Force shall be as prescribed by the Secretary of the Navy. (40 Stat. 711.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(12¼) (Act July 1, 1918, c. 114.) Annual retainer pay.

The annual retainer pay of members of the Naval Reserve Force, except officers in the Naval Auxiliary Reserve and transferred members of the Fleet Naval Reserve, after confirmation in rank, grade, or rating, shall be the equivalent of two months' base pay of the corresponding rank, grade, or rating in the Navy, but the highest base pay upon which the retainer pay of officers of the Naval Reserve Force shall be computed shall not be greater than the base pay of a lieutenant commander. (40 Stat. 710.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(12½) (Act July 1, 1918, c. 114.) Limitation on retainer pay.

No retainer pay of any member of the Naval Reserve Force except those enlisted men transferred to the Fleet Naval Reserve after sixteen or twenty or more years' naval service shall be in excess of the amount authorized to members having had sixteen years' continuous service therein. (40 Stat. 711.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(12¾) (Act July 1, 1918, c. 114.) Retirement and retainer pay; computation.

Service in the Navy, Marine Corps, National Naval Volunteers, and Naval Militia shall be counted as continuous service in the Naval Reserve Force, both for the purpose of retirement and of computing retainer pay. (40 Stat. 710.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(15½) (Act July 1, 1918, c. 114.) Retirement.

No member of the Naval Reserve Force shall be eligible for retirement other than for physical disability incurred in line of duty. (40 Stat. 710.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(18¼) (Act July 1, 1918, c. 114.) Subjection to Navy regulations; uniform.

Enrolled members of the Naval Reserve Force when in active service shall be subject to the laws, regulations, and orders for the government of the Regular Navy, and the Secretary of the Navy may, in his discretion, permit the members of the Naval Reserve Force to wear the uniform of their respective ranks, grades, or ratings while not in active service, and such members shall, for any act committed by them while wearing the uniform of their respective

ranks, grades, or ratings, be subject to the laws, regulations, and orders for the government of the Regular Navy. (40 Stat. 712.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(19¼) (Act July 1, 1918, c. 114.) Pay in active service.

Members of the Naval Reserve Force when employed in active service, ashore or afloat, under the Navy Department shall receive the same pay and allowances as received by the officers and enlisted men of the Regular Navy of the same rank, grades, or ratings and of the same length of service, which shall include service in the Navy, Marine Corps, Naval Reserve Force, Naval Militia, National Naval Volunteers, or Marine Corps Reserve. (40 Stat. 712.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(22¼) (Act July 1, 1918, c. 114.) Active service in time of peace.

In time of peace the Secretary of the Navy is authorized, in his discretion, to order any member of the Naval Reserve Force, with his consent, who has been confirmed in his rank, grade, or rating, to perform any duty afloat for any period of time for which his services may be required: Provided, That such members may be relieved from duty by the Secretary of the Navy at any time and shall upon their own application be released from said duty within four months from the date of their application therefor. (40 Stat. 711.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(22½) (Act July 1, 1918, c. 114.) Uniform and clothing gratuity.

The uniform gratuity for the members, other than officers, of each class of the Naval Reserve Force shall be the same as that prescribed for enlisted men of the Navy, but in time of peace the Secretary of the Navy shall prescribe the portion of the clothing gratuity to be issued to such members, other than officers, of the Naval Reserve Force. (40 Stat. 711.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(22¾) (Act July 1, 1918, c. 114.) Retainer pay in time of peace while on active duty.

In time of peace no member of any class of the Naval Reserve Force shall be entitled to retainer pay when assigned to active duty for purposes other than training. (40 Stat. 711.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(22⅘) (Act July 1, 1918, c. 114.) Deduction of clothing gratuity.

No part of the clothing gratuity credited to members of the Naval Reserve Force shall be deducted from their accounts where said members accept or have accepted temporary appointments in the Navy in time of war or other national emergency. (40 Stat. 711.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(26½) (Act July 1, 1918, c. 114.) Clothing gratuity.

Outfits on first enlistment: * * For the clothing gratuity of officers and other members of the Naval Reserve Force, not to exceed $150 each for officers. (40 Stat. 707.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(26⅘) (Act July 1, 1918, c. 114.) Enrollment of members of Me ical Reserve Corps and Dental Reserve Corps.

Members of the Medical Reserve Corps and Dental Reserve Corp may be enrolled in the Naval Reserve Force in their present grade and ranks. (40 Stat. 708.)

This paragraph was a provision of the Naval appropriation act for the fisc year 1919, Act July 1, 1918, c. 114. It was preceded by a provision repealin all laws relating to the Naval Medical Reserve Corps and the Naval Dent Reserve Corps, set forth ante, § 2499a.

(26⅞) (Act July 1, 1918, c. 114.) Disenrollment.

Members of the Naval Reserve Force shall upon reaching the ag of sixty-four years be disenrolled except that in time of war or othe national emergency such members of the Naval Reserve Force, if i active service, may be continued therein during such period as th Secretary of the Navy may determine, but not longer than si months after said war or other national emergency shall cease t exist. (40 Stat. 711.)

This paragraph was a provision of the Naval appropriation act for the fisc year 1919, Act July 1, 1918, c. 114.

FLEET NAVAL RESERVE

§ 2900½b. (Act Aug. 29, 1916, c. 417, as amended Act April 2 1917, c. 5, and Act July 1, 1918, c. 114.)

(3) Assignment to active duty for training; retainer pay; term service.

The Secretary of the Navy is authorized to assign any membe of the Fleet Naval Reserve to active duty for training, upon the ap plication of such member, but any member who has failed to pe form three months' active service with the Navy in any term enrollment shall, on the next reenrollment, receive retainer pay the rate of $12 per annum until such time as he shall have com pleted three months' active service. The three months' activ service with the Navy may be taken in one or more periods, the election of the member: Provided, That no member shall b entitled to travel allowance unless the period of such active servic is for not less than one month, or unless specifically provided for b such regulations as may be prescribed by the Secretary of th Navy. (39 Stat. 590. 40 Stat. 37.)

This paragraph was amended by Act April 25, 1917, c. 5, by striking ou after the words "of the Fleet Naval Reserve to active duty for training," t words "on board ship."

(4) Rate of pay; computation of service.

The retainer pay of the enrolled men of the Fleet Naval Reserv shall be the same as for the enrolled men of the Naval Reserve an shall be computed in like manner: Provided, That nothing here shall operate to reduce the retainer pay allowed by existing law enlisted men who, after sixteen years' or more naval service, a transferred to the Fleet Naval Reserve, nor to deny to such enliste men their privilege of retirement upon completing thirty years' n val service as now provided by law: Provided, That for all pu poses of this Act a complete enlistment during minority and any e listment terminated within three months prior to the expiration the term of enlistment by special order of the Secretary of the Nav shall be considered as four years' service. The annual retainer pa of officers of the Fleet Naval Reserve shall be two months' base pa of the corresponding rank in the Navy. (39 Stat. 590. 40 Sta 710.)

This paragraph was amended by a provision of the Naval appropriation a for the fiscal year 1919, Act July 1, 1918, c. 114, by striking out the follo ing provision: "Men enrolled in the Fleet Naval Reserve with less than eig

years' naval service shall be paid at the rate of $50 per annum; those with eight or more years and less than twelve years' naval service shall be paid at the rate of $72 per annum; and those with twelve or more years' naval service shall be paid at the rate of $100 per annum, such pay to be considered as retainer pay for the obligation on the part of such members to serve in the Navy in time of war or national emergency," and by substituting therefor the provision as set forth above, down to the second proviso.

NAVAL RESERVE

§ 2900½c. (Act Aug. 29, 1916, c. 417, as amended, Act July 1, 1918, c. 114.) (1) Eligibility for membership; officers.

Members of the Naval Reserve Force who have enrolled for general service and are citizens of the United States are eligible for membership in the Naval Reserve. No person shall be enrolled in or transferred to this class unless he establishes satisfactory evidence as to his qualifications for duty on board combatant ships of the Navy. (39 Stat. 591. 40 Stat. 710.)

This paragraph was amended by the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114, by striking out the entire paragraph and substituting therefor the paragraph as set forth above.

Said stricken paragraph read as follows: "Members of the Naval Reserve Force who have been or may be engaged in the seagoing profession, and who have enrolled for general service, shall be eligible for membership in the Naval Reserve. No person shall be first enrolled in this class who is less than eighteen or more than thirty-five years of age, nor unless he furnishes satisfactory evidence as to his ability and character; nor shall any person be appointed an officer in this class unless he shall have had not less than two years' experience as an officer on board of lake or ocean going vessels."

(1½) (Act July 1, 1918, c. 114.) Age limits.

The age limits for the several ranks, grades, and ratings on first enrollment in the Naval Reserve shall be as prescribed by the Secretary of the Navy. (40 Stat. 710.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114.

(3¼) (Act July 1, 1918, c. 114.) Minimum active service; during each term of enrollment.

The minimum active service required for maintaining the efficiency of a member of the Naval Reserve shall be two months during each term of enrollment and an attendance at not less than thirty-six drills during each year, or other equivalent duty. The active service may be in one period or in periods of not less than fifteen days each. (40 Stat. 710.)

This paragraph was a provision of the Naval appropriation act for the fiscal year 1919, Act July 1, 1918, c. 114. It superseded the following provision of Act Aug. 29, 1916, c. 417, 39 Stat. 591: "The minimum active service required for maintaining the efficiency of a member of this class is three months during each term of enrollment. This active service may be in one period or in periods of not less than three weeks each year."

(5) (Act March 4, 1917, c. 180.) Continuous service pay of former members of United States Naval Reserve, etc.

Any former member of class one of the United States Naval Reserve, established by the Act of March third, nineteen hundred and fifteen, "An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and sixteen, and for other purposes," who shall have reenlisted in the Navy prior to May first, nineteen hundred and seventeen, shall be held and considered to have reenlisted within four months from the date of discharge from the Navy for the purpose of continuous-service pay. And any such member of the said Naval Reserve who was serving therein on August twenty-ninth, nineteen hundred and sixteen, shall upon his application therefor, any time prior to July first, nineteen hundred and seventeen, be enrolled in the Naval Reserve Force, and any such person so enrolled shall, for all purposes, be

considered as having served continuously in such Naval Reser Force since August twenty-ninth, nineteen hundred and sixtee with due credit for previous and continuous service in the Nav Reserve in the same manner and to the same effect as for equ length of service in the Naval Reserve Force: Provided, That such enrolled person shall receive any back pay or allowances f any period during which he shall have received pay or allowanc or either, for service in any other branch of the naval service, re ular or reserve. (39 Stat. 1174.)

These were provisions of the naval appropriation act for the fiscal y 1918, cited above.

The provisions of Act March 3, 1915, c. 130, 38 Stat. 940, 941, mentioned this section, were superseded by Act Aug. 29, 1916, c. 417. See note t 2900½a, U. S. Comp. St. 1916.

(6) (Act April 25, 1917, c. 9.) Increase in maximum age limit f officers.

The maximum limit of age for officers of the Naval Reserve the Naval Reserve Force on first appointment as such therein l and it is hereby, increased from thirty-five to fifty years. (40 St 38.)

This was an act entitled "An act to increase the age limit for persons pointed as officers in the Naval Reserve," cited above.

NAVAL COAST DEFENSE RESERVE

§ 2900½e. (5) (Act July 1, 1918, c. 114.) Exercise of commar

No officer of the Naval Coast Defense Reserve or officer of t Naval Reserve Flying Corps shall exercise command except with his particular department or service for the due performance of h respective duties. (40 Stat. 711.)

This paragraph was a provision of the Naval appropriation act for the fis year 1919, Act July 1, 1918, c. 114.

NAVAL RESERVE FLYING CORPS

§ 2900½g. (1) Reserve, how composed; active service; retain pay.

Act July 1, 1918, c. 114, set forth ante, § 2900½e(5), provides that no offi of the Naval Reserve Flying Corps shall exercise command except within particular department, etc.

CHAPTER NINE—THE MARINE CORPS

Sec.
2901a. Major Generals.
2901b. Temporary brigadier generals, colonels, and lieutenant colonels.
2903g. Probationary appointments to higher grade.
2906. Composition of staff.
2916a. Pay clerks.
2918aa. Temporary increase of enlisted force; privates first class.
2924b. Temporary promotion of officers serving with Army.
2925a. Advertising for recruits.
2929. Pay of Marine Corps.
2929b. Increased compensation; Marine gunners and quartermaster clerks on foreign shore service.
2932. Extra-duty pay not to be allo ed; exception.
2939. Rations or commutation to listed men on shore.
2941a. Clerks and messengers; for ture of pay and allowances furlough.
2942a. Exchange of sewing machin etc.
2942b. Transfer of reserve stock of su plies.
2948. Subject to laws governing Navy, except when serving w the Army.
2949. Retirement.
2952a. [Repealed.]

§ 2901a. (Act July 1, 1918, c. 114.) Major Generals.

The rank and title of Major General is hereby created in the M rine Corps, and the President is authorized to nominate, and, by a

with the advice and consent of the Senate, to appoint one Major General, who shall at all times be junior in rank to the Major General Commandant, and also one temporary Major General in the Marine Corps, who shall at all times be junior to the permanent Major General. (40 Stat. 715.)

This section was a provision of the Naval appropriation act for the fiscal year 1919, cited above.

§ 2901b. (Act May 22, 1917, c. 20, § 4, as amended, Act July 1, 1918, c. 114.) Temporary brigadier generals, colonels, and lieutenant colonels.

Based on the temporary increase of enlisted men of the Marine Corps herein authorized, the President, by and with the advice and consent of the Senate, is authorized, in his discretion, temporarily to appoint not exceeding six brigadier generals, twenty-two colonels, and twenty-two lieutenant colonels in the Marine Corps in addition to the number permanently allowed by law in those grades; said temporary appointments shall continue in force only until otherwise directed by the President or until Congress shall amend or repeal the same and not later than six months after the termination of the present war. (40 Stat. 716.)

This section was added by amendment to Act May 22, 1917, c. 20, § 4, by Act July 1, 1918, c. 114, cited above. The other provisions of said Act May 22, 1917, c. 20, § 4, are set forth ante, §§ 2483g, 2541d.

§ 2903g. (Act May 22, 1917, c. 20, § 10.) Probationary appointments to higher grade.

During the continuance of the present war, should any second lieutenant of the Marine Corps holding a probationary appointment for the period of two years become eligible for promotion to a higher grade and qualify therefor before the expiration of two years from the date of original appointment, he shall receive a probationary appointment in such higher grade, which appointment shall be made permanent or shall be vacated in the manner prescribed by the Act of August twenty-ninth, nineteen hundred and sixteen. (40 Stat. 87.)

See note to § 2573aa.

§ 2906. (Act March 3, 1899, c. 413, § 22.) Composition of staff.

Construction and application in general.—Article 4141 of the Navy Regulations, approved May 14, 1913, in that it permits officers of staff departments of the Marine Corps to be detached permanently from the headquarters of the command and gives the power to the commandant of the corps to impose duties upon these staff officers inconsistent with their staff functions, is in contravention of existing statutes, and is therefore invalid. 30 Op. Atty. Gen. 234.

§ 2916a. (Act July 1, 1918, c. 114.) Pay clerks.

The title of clerks for assistant paymasters is hereby changed to pay clerk, who shall hereafter receive the same pay, allowances, and other benefits now provided by law for clerks for assistant paymasters; and the total number of pay clerks shall not exceed ten for duty in the office of the paymaster, Marine Corps, fifteen for duty in the paymaster's department at large, and one for each assistant paymaster: Provided, That nothing herein contained shall be construed to reduce the pay, allowances, or other benefits granted by existing law to any clerk for assistant paymaster now in service. (40 Stat. 735.)

This section was a provision of the Naval appropriation act for the fiscal year 1919, cited above.

§ 2918aa. (Act May 22, 1917, c. 20, § 2, as amended, Act July 1918, c. 114.) Temporary increase of enlisted force; privat first class.

The authorized enlisted strength of the active list of the Mari Corps is hereby temporarily increased from seventeen thousand fo hundred to seventy-five thousand five hundred, this authoriz strength being distributed in the various grades of the enlisted for in the same proportion as those authorized at the date of the a proval of this Act: Provided, That not more than twenty-five p centum of the authorized number of privates in the Marine Cor shall have the rank of private, first class, which rank is hereby e tablished in the Marine Corps. (40 Stat. 84, 714.)

This section was amended by Act July 1, 1918, c. 114, cited above, by rais the authorized increase from 30,000, as authorized by this section as origin enacted, to 75,500, and by adding the proviso, so as to make the section r as set forth above.

§ 2924b. (Act Jan. 12, 1919, c. 7.) Temporary promotion of of cers serving with Army.

Commissioned officers of the Marine Corps, detached for du with the Army under the provisions of section sixteen hundred a twenty-one, Revised Statutes, shall be eligible, in the same mann as officers of the Regular Army, for temporary promotion to high grades in any of the forces provided by the Act entitled "An A to authorize the President to increase temporarily the Military E tablishment of the United States," approved May eighteenth, nin teen hundred and seventeen: Provided, That officers of the Mari Corps temporarily promoted to higher grades in any of the forc of the Army under the provisions of this Act shall not thereby v cate their permanent appointments or commissions, or be prej diced in their relative lineal standing in the Marine Corps: Provi ed further, That temporary vacancies in the Marine Corps caus by the appointment of officers to higher grades in the Army sh be temporarily filled in the same manner as is now prescribed law: And provided further, That the temporary promotions here authorized shall continue only while such officers are detached f duty with the Army. (40 Stat. 1054.)

This section is an act entitled "An act to provide for the temporary pro tion of commissioned officers of the Marine Corps serving with the Army."

§ 2925a. (Act July 1, 1918, c. 114.) Advertising for recruits.

Hereafter authority is hereby granted to employ the services advertising agencies in advertising for recruits under such terr and conditions as are most advantageous to the Government. (Stat. 736.)

This section was a provision of the Naval appropriation act for the fis year 1919, cited above. It supersedes a similar provision contained in A June 15, 1917, c. 29, § 1, 40 Stat. 214.

§ 2929. (R. S. § 1612.) Pay of Marine Corps.

Pay and allowances of officers.—Act March 3, 1885, 23 Stat. 350 (Comp. Stat. 1916, 6403), does not provide to men of army an "allowance," within this section, so that Marine Corps officer cannot recover thereunder for his personal property destroyed by fire. Harblee v. U. S., 51 Ct. Cl. 342.

The Marine Corps is an adjunct the Navy, and not a part of the Arr as to claims under Act March 3, 18 (Comp. St. 1916, § 6403). Id.

Cited without definite applicati Jonas v. U. S., 50 Ct. Cl. 281.

§ 2929b. (Act March 4, 1917, c. 180.) Increased compensatio Marine gunners and quartermaster clerks on foreign sho service.

Marine gunners and quartermaster clerks of the Marine Cor assigned to foreign shore service shall hereafter be entitled to t

ne increased compensation and under the same conditions as is w or hereafter allowed by law to commissioned officers of the rine Corps. (39 Stat. 1188.)

This was a provision of the naval appropriation act for the fiscal year 1918 cited above.

932. (Act March 3, 1909, c. 265.) Extra-duty pay not to be allowed; exception.

xtra-duty pay.—The mere designa- of the duty as special duty cannot tself determine the character of the and deprive the man of his right ompensation therefor, if in fact the was extra duty. Scheid v. U. S., Ct. Cl. 247.

The statute providing for details in writing was not intended to preclude a recovery of extra-duty pay to which a man might be entitled, where it appeared that he had been detailed to extra duty and that such duty had been actually performed. Id.

939. (Act March 4, 1917, c. 180.) Rations or commutation to enlisted men on shore.

Iereafter no law shall be construed to entitle enlisted men on re duty to any rations or commutation therefor other than such are now or may hereafter be allowed enlisted men in the Army: vided, That when it is impracticable or the expense is found ater to supply marines serving on shore duty in the island possions and on foreign stations with the Army ration, such marines be allowed the Navy ration or commutation therefor. (39 t. 1189.)

This was a provision of the naval appropriation act for the fiscal year 1918 cited above.

The urgent deficiency appropriation act for the military and naval establishments for war expenses, Act June 15, 1917, c. 29, § 1, contains a provision identical with the proviso of this section.

941a. (Act March 4, 1917, c. 180.) Clerks and messengers; forfeiture of pay and allowances on furlough.

Iereafter no part of the pay and allowances authorized for ened men detailed as clerks and messengers in the office of the jor General Commandant and the several staff offices shall be eited when granted furlough for not exceeding thirty days in calendar year. (39 Stat. 1191.)

This was a provision of the naval appropriation act for the fiscal year 1918, cited above.

942a. (Act March 4, 1917, c. 180.) Exchange of sewing machines, etc.

Iereafter worn-out sewing machines, machinery, rubber tires, band instruments may be exchanged in part payment for the chase of like articles. (39 Stat. 1189.)

This was a provision of the naval appropriation act for the fiscal year 1918 cited above.

942b. (Act Feb. 25, 1919, c. 39, § 4.) Transfer of reserve stock of supplies.

Iarine Corps. * * The Secretary of War is authorized and ected to transfer to the Secretary of the Navy for the use of the rine Corps without payment therefor, such reserve stock of hing, arms, and equipment, and other necessary military sups, inventoried at the cost to the Army and not to exceed in the regate $7,000,000, as the same from time to time may be requisied. (40 Stat. 1174.)

This section is a provision of the "Second Deficiency Appropriation Act, 1919," cited above.

948. (R. S. § 1621.) Subject to laws governing the Navy, except when serving with the Army.

Cited without definite application,
Jonas v. U. S., 50 Ct. Cl. 281; Harllee v. U. S., 51 Ct. Cl. 342.

§ 2949. (R. S. § 1622.) Retirement.

Construction and application in general.—This section simply provides for the conditions precedent to the retirement of an officer of the marine corps, but in no way changes the jurisdiction to which he is subject or the condition under which he may be again place on active duty. Jonas v. U. S., 5 Ct. Cl. 281.

§ 2952a. [Repealed.]

This section was repealed by a provision of Act May 22, 1917, c. 20, § 14. See, also, note to § 2573aa, ante.

CHAPTER NINE A—NAVAL FLYING CORPS

§ 2952½cc. (Act July 1, 1918, c. 114.) Pay of members; increase

Hereafter the allowances of officers, enlisted men, and studen flyers of the naval service shall in no case be increased by reaso of the performance of aviation duty. (40 Stat. 718.)

This section was a provision of the Naval appropriation act for the fisc year 1919, cited above.

CHAPTER TEN—ARTICLES FOR THE GOVERN MENT OF THE NAVY

§ 2980a. (Act March 29, 1918, c. 31.) Disposition of effects of de cedents.

Hereafter all moneys, articles of value, papers, keepsakes, an other similar effects belonging to deceased persons in the nava service, not claimed by their legal heirs or next of kin, shall be de posited in safe custody, and if any such moneys, articles of valu papers, keepsakes, or other similar effects so deposited have bee or shall hereafter be, unclaimed for a period of two years from th date of the death of such person, such articles and effects shall b sold and the proceeds thereof, together with the moneys abov mentioned, shall be deposited in the Treasury to the credit of th Navy pension fund: Provided, That the Secretary of the Navy i hereby authorized and directed to make diligent inquiry in ever instance after the death of such person to ascertain the where abouts of his heirs or next of kin, and to prescribe such regulation as may be necessary to carry out the foregoing provisions: Pro vided further, That claims may be presented hereunder at any tim within five years after such moneys or proceeds have been so de posited in the Treasury, and, when supported by competent proo in any case after such deposit in the Treasury, shall be certified t Congress for consideration. (40 Stat. 499.)

This was "An act to provide for the disposition of the effects of decease persons in the naval service," cited above.

§ 2988a. (Act Oct. 6, 1917, c. 93.) Deck courts and naval court martial.

When actively serving under the Navy Department in time of wa or during the existence of an emergency, pursuant to law, as a pa of the naval forces of the United States, commissioned officers of th Naval Reserve Force, Marine Corps Reserve, National Naval Volun teers, Naval Militia, Coast Guard, Lighthouse Service, Coast an Geodetic Survey, and Public Health Service are hereby empowered t serve on naval courts-martial and deck courts under such regulation necessary for the proper administration of justice and in the interest

f the services involved, as may be prescribed by the Secretary of the Iavy. (40 Stat. 393.)

This section was part of an act entitled "An act to provide for the service of officers of auxiliary naval forces on naval courts," cited above. Said act also repeals all acts and parts of acts inconsistent therewith.

3037. (Act Jan. 25, 1895, c. 45, as amended, Act March 3, 1901, c. 834, and Act March 4, 1917, c. 180.) Administration of oaths.

That judges advocate of naval general courts-martial and courts f inquiry, and all commanders in chief of naval squadrons, comıandants of navy yards and stations, officers commanding vessels f the Navy, and recruiting officers of the Navy, and the adjutant nd inspector, assistants adjutant and inspector, commanding offiers, recruiting officers of the Marine Corps, and such other officers f the Regular Navy and Marine Corps, of the Naval Reserve orce, of the Marine Corps Reserve, and of the National Naval Volnteers as may be hereafter designated by the Secretary of the Iavy, be, and they are hereby, authorized to administer oaths for ıe purposes of the administration of naval justice and for other urposes of naval administration. (28 Stat. 639. 31 Stat. 1086. 39 tat. 1171.)

This section was amended by Act March 4, 1917, c. 180, cited above, by inserting after the words "and recruiting officers of the Marine Corps," the words "and such other officers of the Regular Navy and Marine Corps, of the Naval Reserve Force, of the Marine Corps Reserve, and of the National Naval Volunteers," so as to make the section read as set forth here.

TITLE XVI—THE MILITIA

CHAPTER A—THE NATIONAL GUARD AND TH UNORGANIZED MILITIA

Sec.
3041. Composition of the militia.
3044. Composition of the National Guard.
3044cc. National Guard; officers and enlisted men of Staff Corps and Departments.
3044h. Enlistments in the National Guard.
3044i. Federal enlistment contract.
3044p. The National Guard Reserve.
3045. Drafting into service; appointment of officers; pay, etc.
3046. Drafting National Guard, etc., into federal service; period of service.
3048a. Drafting militia of Philippines into federal service; pay and allowances.
3052d. Drafting National Guard into federal service; application of § 3052b.
3061a. Supplying and exchanging infantry equipment; requisitions.
3062. Issue of field artillery material
3062d. Transfer of horses and pa mules to National Guard ganizations.
3062e. Detail of enlisted men to care f material, etc.
3064a. Property and disbursing office
3071aa. Rifle clubs, sale of ammuniti for use of; detail of enlist men as instructors.
3071c. Training camps; pay; mileag
3071d. Same; graduates of Milita Academy as instructors.
3072a. Training of National Guar camps.
3072b. Same; attendance at school attachment to organization Regular Army.
3072c. Sale of land purchased for targ ranges.
3074aa. Offices for inspector instructo

§ 3041. (Act June 3, 1916, c. 134, § 57.) Composition of the militi

Age limits.—See Hoskins v. Pell, 239 F. 279, 152 C. C. A. 267, L. R. A. 1917D, 1053.

Conscription for foreign service.—Congress, under Const. art. 1, § 8, can by conscription organize, for forei warfare the militia of the Unit States, as defined by this section; "m litia," in the Constitution, being sta militia. U. S. v. Stephens (D. C.) 2 F. 956.

§ 3044. (Act June 3, 1916, c. 134, § 58.) Composition of the Na tional Guard.

Organization.—Under Dick Law, 1903, as amended in 1908 (see Comp. St. 1916, § 3045, note), Const. art. 1, § 8, and Act June 3, 1916, §§ 58, 70 (Comp. St. 1916, §§ 3044, 3044i), members of the Massachusetts militia who had taken oath to support federal Constitution are, though they did not elect to enlist under the new law for the national defense, subject to being called out by the President to repel invasion, put down insurrection, etc. Sweetser v. Emerson, 236 F. 161, 149 C. C. A. 351; Same v. Lowell, 236 F. 169, 149 C. C. A. 359.

Officers.—Since the Governor's commission to a captain in a national guard could only be given after regular election, such commission is admissible and prima facie proof that the person named therein is an officer and that the statutory requirements have been met. Gray v. Mossman, 99 A. 1062, 91 Conn. 430.

Enlistment of minors.—Any defect enlistment in National Guard of o under 18 years, because without co sent of father, becomes immateri and is not available to the father secure his discharge, where not urge though known, till after he was 18 a drafted into the service of the Unit States, as under National Defense A a member of the National Guard ov 18 may be. Reed v. Cushman (C. A.) 251 F. 872.

See, also, notes to § 1885a, ante.

Regulations and discipline.—Und National Defense Act, §§ 58, 70, 1 (Comp. St. 1916, §§ 3044, 3044i, 3045 and Selective Draft Law May 18, 191 ante, § 2044a, member of Nation Guard, though not consenting to mustered into federal service und presidential order, held a soldier in t United States army, and subject military trial or punishment. Ex par Dostal (D. C.) 243 F. 664.

Though an act of Congress exemp

members of the militias of the s from arrest on civil process, ed pursuant to Const. U. S. art. 8, subds. 15, 16, would supersede any inconsistent state law, National Defense Act does not provide such immunity. Andrews v. Gardiner, 173 N. Y. S. 1.

044cc. (Act July 9, 1918, c. 143.) National Guard; officers and enlisted men of Staff Corps and Departments.

he National Guard of any State, Territory, or the District of umbia shall include such officers and enlisted men of the staff s and departments, corresponding to those of the Regular y, as may be authorized by the Secretary of War. (40 Stat.)

This section was a provision of the Army appropriation act for the fiscal ear 1919, cited above. It supersedes a similar provision of Act May 12, 1917, . 12, 40 Stat. 68.

44h. (Act June 3, 1916, c. 134, § 69.) Enlistments in the National Guard.

rlough into reserve.—Under Na- l Defense Act an enlisted man is on expiration of his enlistment, natically furloughed to the re- ; and no act or acts done by the any commander, nor acts of commander and enlisted man, without approval of War Department, can operate to discharge him or furlough him to reserve. Ex parte Roach (D. C.) 244 F. 625.

44i. (Act June 3, 1916, c. 134, § 70.) Federal enlistment contract.

cessity for oath.—Under Dick Law, as amended in 1908 (see Comp. 916, § 3045, note), Const. art. 1, § d Act June 3, 1916, §§ 58, 70 p. St. 1916, §§ 3044, 3044i), mem- of the Massachusetts militia who aken oath to support federal Con- ion are, though they did not elect list under the new law for the nal defense, subject to being call- it by the President to repel in- n, put down insurrection, etc. tser v Emerson, 236 F. 161, 149 A. 351; Same v. Lowell, 236 F 149 C. C. A. 359.

Effect of oath.—Where minor over 18 took federal enlistment oath prescribed by this section, after the enactment thereof, held, that defects in original enlistment were immaterial, and his parent or guardian could not reclaim his custody or control. Ex parte Dostal (D. C.) 243 F. 664.

Person enlisting in National Guard, and later taking federal enlistment oath under this section, held subject to jurisdiction of military tribunal, though under 21 and enlisted without written consent of parent or guardian. Id.

44p. (Act June 3, 1916, c. 134, § 78.) The National Guard Reserve.

rlough to reserve.—Under National ase Act, an enlisted man is not, xpiration of his enlistment, au- ically furloughed to the reserve; o act or acts done by the company commander, nor acts of commander and enlisted man, without approval of War Department, can operate to discharge him or furlough him to reserve. Ex parte Roach (D. C.) 244 F. 625.

45. (Act June 3, 1916, c. 134, § 111.) Drafting into service; appointment of officers; pay, etc.

See proclamation of the President, under § 3048a, post.

Notes of Decisions

lication of laws.—Under Dick 1903, as amended in 1908, super- by this section, Const. art. 1, § 8, ct June 3, 1916, §§ 58, 70 (Comp. 916, §§ 3044, 3044i), members of Massachusetts militia who had tak- ath to support federal Constitu- are, though they did not elect to under the new law for the na- defense, subject to being called y the President to repel invasion, down insurrection, etc. Sweetser nerson, 236 F. 161, 149 C. C. A. 351; Same v. Lowell, 236 F. 169, 149 C. C. A. 359.

Under Const. U. S. art. 1, § 8, and Const. S. D. art. 4, § 4, art. 15, §§ 2, 3, Laws 1917, c. 51, providing every enlisted man of Fourth South Dakota Infantry in federal service on Mexican border during 1916–1917 shall be paid $75, held not invalid on ground that when regiment was drafted into federal service under this act, it ceased to be part of National Guard of state, or on ground that there was no in-

surrection or state of war within state. State v. Handlin, 162 N. W. 379, 38 S. D. 550.

Foreign service.—Conscription Act, § 1, ante, § 2044a, in view of this section, held not to call forth the militia as such, authorized by Const. art. 1, § 8, cl. 15, for certain purposes only. U. S. v. Sugar (D. C.) 243 F. 423.

Draft.—See Ex parte Avery (D. C.) 235 F. 248.

Where petitioner, after enlistment in National Guard, became soldier of United States army, being drafted into service pursuant to this section and National Conscription Act May 18, 1917, § 1, subd. 2, ante, § 2044a, on August 5, 1917, at which time he was examined by federal medical officers and accepted his status is determined by draft of August 5, 1917, and irregularities at time of his previous examination and voluntary enlistment are immaterial. Blackington v. U. S., 248 F. 124, 160 C. C. A. 264, affirming order Ex parte Blackington (D. C.) 245 F. 801.

Any defect of enlistment in National Guard of one under 18 years, because without consent of father, becomes immaterial, and is not available to the father to secure his discharge, where not urged, though known, till after he was 18 and drafted into the service of the United States, as under National Defense Act, §§ 57, 58, 111 (Comp. St. 1916, §§ 3041, 3044, 3045), a mem of the National Guard over 18 may Reed v. Cushman (C. C. A.) 251 872.

Under National Defense Act, §§ 70, 111 (Comp. St. 1916, §§ 3044, 30 3045), and Selective Draft Law M 18, 1917, ante, § 2044a et seq., m ber of National Guard, though not c senting to be mustered into fede service under presidential order, b a soldier in the United States ar and subject to military trial or puni ment. Ex parte Dostal (D. C.) F. 664.

In view of Regulations for Uni States Army, art. 72, which is law land, state courts have no authority grant a writ of habeas corpus for charge of members of state mil which has been drafted into the milit service of United States under tional Defense Act. Ex parte McMil (Ala. App.) 74 So. 396.

—— **Judicial notice.**—Court will t judicial notice of Acts of the Pr dent pursuant to acts and resoluti of Congress (including National fense Act), and resolution of July 1916 (Comp. St. 1916, § 3046), m tering militia of state into service United States and ordering mobili tion on Mexican border. Ex pa McMillan (Ala. App.) 74 So. 396.

Cited without definite applicati U. S. v. Sugarman (D. C.) 245 F. 60

§ 3046. (Res. July 1, 1916, c. 211, § 1.) Drafting National Gua etc., into federal service; period of service.

Judicial notice of draft.—Court will take judicial notice of Acts of the President pursuant to acts and resolutions of Congress (including National Defense Act), and resolution of July 1, 1916, mustering militia of state i service of United States and order mobilization on Mexican border. parte McMillan (Ala. App.) 74 So. 3

§ 3048a. (Act Jan. 26, 1918, c. 11.) Drafting militia of Philippin into federal service; pay and allowances.

The militia and other locally created armed forces in the Philippi Islands may be called into the service of the United States, and members thereof may be drafted into said service and organized such manner as is or may be provided by law for calling or drafti the National Guard into said service, and shall in all respects wh therein be upon the same footing with members of the National Gua so called or drafted: Provided, That the pay and allowances of o cers and men of the Philippine Militia and other locally created ar ed forces in the Philippine Islands called into the service of the Unit States under the provisions of this Act when serving in the Philippi Islands shall in no case exceed the pay and allowances for correspon ing grades of Philippine Scouts. (40 Stat. 432.)

This was an act entitled "An act to authorize the calling into the service the United States the militia and other locally created armed forces in Philippine Islands, and for other purposes," cited above.

Proclamation, issued under this section, and Act June 3, 1916, c. 134 111, dated November 18, 1918, calling into the military service of the Uni States certain units of the Philippine Guard.

§ 3052d. (Act April 17, 1917, c. 3, § 1.) Drafting National Gua into federal service; application of § 3052b.

The provision in the Act of August twenty-ninth, nineteen hu dred and sixteen, as amended by section nine hundred and one

Act of September eighth, nineteen hundred and sixteen, for Federal support of families of enlisted men shall, with respect enlisted men belonging to organizations of the Organized Militia National Guard which entered the service of the United States ler the calls of the President of May ninth, nineteen hundred and een, and June eighteenth, nineteen hundred and sixteen, and en- ed men of the Regular Army who by the provisions of Acts ve cited are beneficiaries thereof only during the time the Or- ized Militia or National Guard continue in the service of the ted States under said calls, apply only to applications stated in form prescribed by the Secretary of War which are received in office of the Depot Quartermaster, Washington, District of umbia, on or before June thirtieth, nineteen hundred and sev- een. (40 Stat. 11.)

This was a provision of the deficiency appropriation act for the fiscal year 917, cited above.

See U. S. Comp. St. 1916, §§ 3052b, 3052c.

061a. (Act May 12, 1917, c. 12.) Supplying and exchanging in- fantry equipment; requisitions.

Vhenever in the opinion of the Secretary of War a sufficient ıber of Infantry equipment, model of nineteen hundred and ten, l have been procured and shall be available for the purpose the retary of War is hereby authorized to issue on the requisition he governors of the several States and Territories or the com- ıding general of the District of Columbia National Guard, such ıbers thereof as are required for equipping the National Guard aid States, Territories, and the District of Columbia, without rging the cost or value thereof or any expenses connected there- ı, against any allotments to said States, Territories, or the Dis- t of Columbia, provided that the equipment thus issued shall eceipted for and shall remain the property of the United States be annually accounted for in the manner prescribed by the Act une third, nineteen hundred and sixteen, and that each State, ritory, and the District of Columbia shall, upon receipt of new ipment, turn in to the Ordnance Department of the United es Army, without receiving any money credit therefor and ıout expense for transportation of Infantry equipment now in ossession, the property of the United States, and replaced by cles of the model of nineteen hundred and ten equipment. (40 . 68.)

This section and the sections next following were provisions of the Army ppropriation act for the fiscal year 1918, cited above.

062. (Act May 12, 1917, c. 12.) Issue of field artillery ma- terial.

or the purpose of manufacturing and procuring field artillery erial for the National Guard of the several States, Territories, the District of Columbia, but to remain the property of the ted States and to be accounted for in the manner now pre- bed by law, the Secretary of War is hereby authorized, under ı regulations as he may prescribe, on the requisitions of the ernors of the several States and Territories or the command- general of the National Guard of the District of Columbia, ssue said artillery material to the National Guard; and the of $10,000,000 is hereby appropriated and made immediately lable for the manufacture, procurement, and issue of the arti- constituting the same. (40 Stat. 64.)

See note to § 3061a, ante.

§ 3062d. (Act May 12, 1917, c. 12.) Transfer of horses and pa mules to National Guard organizations.

The Secretary of War is hereby authorized to transfer to the organizations of the National Guard entitled thereto such numb of horses and pack mules purchased by the Quartermaster Co of the Army under the provisions of the Act of July first, ninete hundred and sixteen, not required for the proper equipment organizations of the Regular Army, that can be issued to Natio Guard organizations under the regulations prescribed by the S retary of War, all expenses incident to such transfer to be met fr appropriations made for and on behalf of the National Guard; pa mules so transferred may be issued not to exceed six to any o radio company, machine-gun troop or company, or four to any o ambulance company, under such regulations as the Secretary War may prescribe. (40 Stat. 65.)

This section and the section next following were provisions of the Army propriation act for the fiscal year 1918, cited above.

§ 3062e. (Act May 12, 1917, c. 12.) Detail of enlisted men care for matériel, etc.

To provide for the compensation of competent help for the ca of matériel, animals, and equipment thereof, under such regulatio as the Secretary of War may prescribe: Provided, That the men be compensated, not to exceed five for each battery, troop, or co pany, shall be duly enlisted therein and shall be detailed by t battery, troop, or company commander under such regulations the Secretary of War may prescribe, and shall be paid by t United States disbursing officer in each State, Territory, and t District of Columbia. (40 Stat. 65.)

See note to § 3062d, ante.

The deficiency appropriation act for the fiscal year 1917, Act April 17, 19 c. 3, § 1, contained a provision identical with this section.

§ 3064a. (Act June 3, 1916, c. 134, § 67, as amended, Act July 1918, c. 143, subc. III.) Property and disbursing officers.

The governor of each State and Territory and the Commandi General of the National Guard of the District of Columbia sh appoint, designate, or detail, subject to the approval of the Sec tary of War, the Adjutant General or an officer of the Nation Guard of the State, Territory, or District of Columbia, who sh be regarded as property and disbursing officer for the United Stat He shall receipt and account for all funds and property belongi to the United States in possession of the National Guard of h State, Territory, or District, and shall make such returns and repor concerning the same as may be required by the Secretary of Wa The Secretary of War is authorized, on the requisition of the go ernor of a State or Territory or the commanding general of t National Guard of the District of Columbia, to pay to the pro erty and disbursing officer thereof so much of its allotment out the annual appropriation for the support of the National Gua as shall, in the judgment of the Secretary of War, be necessary f the purposes enumerated therein. He shall render, through t War Department, such accounts of Federal funds intrusted to hi for disbursement as may be required by the Treasury Depar ment. Before entering upon the performance of his duties as pro erty and disbursing officer he shall be required to give good an sufficient bond to the United States, the amount thereof to b determined by the Secretary of War, for the faithful performan of his duties and for the safe-keeping and proper disposition of t Federal property and funds intrusted to his care. He shall, aft having qualified as property and disbursing officer, receive pay f his services at a rate to be fixed by the Secretary of War, and suc

pensation shall be a charge against the whole sum annually ropriated for the support of the National Guard: Provided, t when traveling in the performance of his official duties under ers issued by the proper authorities he shall be reimbursed for actual necessary traveling expenses, the sum to be made a rge against the allotment of the State, Territory, or District Columbia: Provided further, That the Secretary of War shall se an inspection of the accounts and records of the property disbursing officer to be made by an inspector general of the y at least once each year: And provided further, That the etary of War is empowered to make all rules and regulations essary to carry into effect the provisions of this section. (39 . 200. 40 Stat. 878.)

This section was amended by Act July 9, 1918, c. 143, cited above, by inerting in the first sentence thereof, after the words "approval of the Secreary of War," the words "the Adjutant General or."

71aa. (Act May 12, 1917, c. 12.) Rifle clubs, sale of ammunition for use of; detail of enlisted men as instructors.

he Secretary of War, in his discretion, and under such regulas as he may prescribe, may authorize the detail of enlisted men ne Army as temporary instructors in rifle practice to organized clubs requesting such instruction. (40 Stat. 64.)

This was a provision of the Army appropriation act for the fiscal year 1918, ited above.

71c. (Act May 12, 1917, c. 12.) Training camps; pay; mileage.

or the expense of maintaining, upon military reservations or where, camps for the military instruction and training of such ens physically capable of bearing arms as may be selected unsuch regulations as may be prescribed by the Secretary of War, for furnishing said citizens, at the expense of the United States, orms, subsistence, transportation by the most usual and di- route within said limits as to territory as may be prescribed; such expenditures as may be deemed necessary for water, fuel, t, temporary structures, not including quarters for officers nor acks for men, screening, and damages resulting from field exses, and other expenses incidental to maintaining said camps and theoretical winter instruction in connection therewith, includ- textbooks and stationery; for furnishing such equipments, age, field equipage, and transportation belonging to the United es as may be deemed necessary as authorized by section fifty- of the Act of Congress approved June third, nineteen hundred sixteen, $3,281,000: Provided, That the Secretary of War is by authorized out of this appropriation to pay to persons dested by him for training as officers in the Army during the pe- of their training the sum of not to exceed $100 per month in tion to the allowances authorized by said section fifty-four: vided, That they shall agree to accept appointment in the Ofs' Reserve Corps in such grade as may be tendered by the Secry of War.

rovided further, That so much of section fifty-four of the Act une third, nineteen hundred and sixteen, entitled "An Act for ing further and more effectual provision for the national de- e, and for other purposes," as relates to the transportation of ens who, conformably to such regulations as the Secretary of r may prescribe, attend training camps be, and the same is eby amended so as to provide that said citizens shall be paid as eling allowances three and one-half cents per mile for the dise by the shortest usually traveled route from the places from ch they are authorized to proceed to the camp and for the re-

turn travel thereto: Provided further, That the payment of trav pay for the return journey may be made in advance of the actu performance of travel. (40 Stat. 69.)

These were provisions of the Army appropriation act for the fiscal y 1918, cited above. See U. S. Comp. St. 1916, § 3071b.

§ 3071d. (Act July 9, 1918, c. 143, subc. XVIII.) Same; grad ates of Military Academy as instructors.

The service of graduates of the Military Academy may be ut ized during the months of June, July, August, and September of t year in which they graduate as instructors at the citizens' traini camps, and their graduation leave may be taken at the terminati of their services as instructors at these camps. (40 Stat. 892.)

This section was a provision of the Army appropriation act for the fis year 1919, cited above.

§ 3072a. (Act July 9, 1918, c. 143.) Training of National Guar camps.

To provide for the participation of the whole or any part of t National Guard in encampments, maneuvers, or other exercis including outdoor target practice and field and coast defense i struction, either independently or in conjunction with any part the Regular Army, and there may be set aside from the fun apportioned for that purpose and allotted to any State, Territor or the District of Columbia such portion of said funds as m be necessary for the payment, subsistence, transportation, and ot er proper expenses of such portion of the National Guard of sa State, Territory, or the District of Columbia as shall participa in such encampments, maneuvers, or other exercises, including ou door target practice and field and coast defense instruction; a the officers and enlisted men of such National Guard while so e gaged shall be entitled to the same pay, subsistence, and tran portation as officers and enlisted men of corresponding grad of the Regular Army are or hereafter may be entitled to by la To provide for camps of instruction for the instruction of of cers and enlisted men of the National Guard. Such camps sh be conducted by officers of the Regular Army detailed by the Se retary of War for the purpose, and may be located either with or without the State, Territory, or District of Columbia to whi the members of the National Guard designated to attend sa camps shall belong. Officers and enlisted men attending su camps shall be entitled to pay and transportation and enlist men to subsistence in addition at the same rate as for encam ments or maneuvers for field and coast defense instruction. (Stat. 874.)

This section was a part of the Army appropriation act for the fiscal ye 1919, cited above. It supersedes similar provisions of Act May 1 1917, c. 12, 40 Stat. 66.

§ 3072b. (Act July 9, 1918, c. 143.) Same; attendance at scho or attachment to organization of Regular Army.

To provide for the attendance of selected officers or enlisted m of the National Guard who pursue a regular course of study at a military service school of the United States, except the Unit States Military Academy; or to be attached to an organization the same arm, corps, or department to which such officers or e listed men shall belong, for routine practical instruction at or ne an Army post during a period of field training or other outdoor e ercises; and such officers or enlisted men shall receive, out of a National Guard allotment of funds available for the purpose, t same travel allowances and quarters or commutation of qua ters, and the same pay, allowance, and subsistence to which of

s or enlisted men of the Regular Army would be entitled for ending such school, college, or practical course of instruction ler orders from proper military authority while in actual at- dance at such school, college, or practical course of instruc- : Provided, That in no case shall the pay and allowances au- rized herein exceed those of a captain. * * (40 Stat. 874.)

This section was a part of the Army appropriation act for the fiscal year 1919, cited above. It supersedes similar provisions of Act May 12, 1917, c. 12, 40 Stat. 67.

072c. (Act May 12, 1917, c. 12.) Sale of land purchased for target ranges.

Vhen any land which has been heretofore or may be hereafter uired by purchase for a target range for the use of the National ard of any State, Territory, or the District of Columbia, shall e become useless or shall be found to be unavailable for such pose, the Secretary of War may cause the same to be sold either vhole or in two or more parts as he may deem best for the in- sts of the United States. In the disposal of such property, the retary of War shall cause the same to be appraised either as a ole or in two or more tracts, having due reference to the require- nts of any permanent improvements made thereon; and he shall se the property to be offered at public or private sale at not than the appraised value. The expenses for advertising, ap- isement, survey, and sale shall be paid from the proceeds of the ; and the net proceeds thereof shall be placed to the credit of State, Territory, or District of Columbia, as additional to its tment under section sixty-seven of the Act of June third, nine- hundred and sixteen. (40 Stat. 67.)

See note to § 3072a, ante.

074aa. (Act May 12, 1917, c. 12.) Offices for inspector in- structors.

Vhenever practicable inspector-instructors shall use the State ories or other public buildings for offices. (40 Stat. 68.)

This was a provision of the Army appropriation act for the fiscal year 918, cited above. It was repeated in the deficiency appropriation act for he fiscal year 1917, Act April 17, 1917, c. 3, § 1.

APTER B—NAVAL MILITIA AND NATIONAL NAVAL VOLUNTEERS

3078a, 3078b. [Repealed.]

All laws relating to the Naval Militia and the National Naval Volunteers vere repealed, by a provision of the Naval appropriation act for the fiscal year 919, Act July 1, 1918, c. 114, post, § 3078c.

78c. (Act July 1, 1918, c. 114.) Repeal of certain acts.

hat upon the approval of this Act all laws heretofore enacted the Congress relating to the Naval Militia and the National al Volunteers be, and the same hereby are, repealed; and the sident is authorized to transfer as a class all members of the ional Naval Volunteers to the class "the Naval Reserve," "the al Reserve Flying Corps," or "the Marine Corps Reserve" he Naval Reserve Force or the Marine Corps Reserve, for gen- service, in the confirmed rank, grade, or rating they now hold he National Naval Volunteers, regardless of their being mem- of a State military force, and without examination and the ssity of executing or filing a new oath and acceptance of e; that until such transfer is effected members of the Na- al Naval Volunteers shall retain their present status and be

entitled to receive the same pay, allowances, gratuities, and o
er benefits as heretofore provided by law, and shall continue s
ject to the laws prescribed for the government of the Navy.
Stat. 708.)

This section was a part of the Naval appropriation act for the fiscal
1919, cited above. See note under §§ 3078, 3078b.

**§ 3078d. (Act July 1, 1918, c. 114.) Appropriations for train
and equipping Naval Reserve Force.**

That the unexpended and unobligated portion of all mon
heretofore appropriated, and the appropriation authorized by
tion ten of Public Numbered Fifty-seven, Sixty-third Congr
approved February sixteenth, nineteen hundred and fourteen,
the training and equipment of the Naval Militia and the Natio
Naval Volunteers, for the clerical force and the office expenses
the Division of Naval Militia Affairs, and the property loaned
the Navy Department for the arming and equipping of the Na
Militia shall be, and hereby are, made available for training
equipping the Naval Reserve Force and for the purchase, ren
and maintenance of suitable armories therefor, including the
quisition of the necessary land upon which such armories may
located. (40 Stat. 712.)

This section was a part of the Naval appropriation act for the fiscal
1919, cited above.

**§ 3078e. (Act July 1, 1918, c. 114.) Clerical force of Division
Naval Militia Affairs transferred.**

The clerical force and office expenses provided for the Divis
of Naval Militia Affairs shall be transferred to the Bureau of N
igation. (40 Stat. 712.)

This section was a provision of the Naval appropriation act for the f
year 1919, cited above.

ITLE XVI A—SOLDIERS' AND SAILORS' CIVIL RELIEF

RTICLE I. GENERAL PROVISIONS

c.
78¼a. Protection to persons in military service; suspension of legal proceedings.
78¼aa. Definitions.
78¼aaa. Application of act; courts.
78¼b. Sureties, guarantors, and indorsers protected.

RTICLE II. GENERAL RELIEF

78¼bb. Default judgments; affidavits; bonds; attorneys for persons in service.
78¼c. Stay of actions.
78¼cc. Same; on contracts; fines or penalties.
78¼d. Executions; stay of attachments or garnishments.
78¼dd. Stay of actions; length of; codefendants not in service.
8¼e. Limitation of actions.

TICLE III. RENT, INSTALLMENT CONTRACTS, MORTGAGES

8¼ee. Rent; eviction; stay of proceedings; allotment of pay to discharge.
8¼f. Contracts for purchase of real or personal property; actions on.
3¼ff. Mortgages or trust deeds; actions; stay; sales under powers.

ARTICLE IV. INSURANCE

¼g. Definitions.
¼gg. Application for benefits of Article; forms.
¼h. Persons entitled to benefits of article.
¼i. Same; lists of.
¼j. Applications on policies totaling more than $5,000.

Sec.
3078¼jj. Lapse of policies for nonpayment of premiums.
3078¼k. Reports to Bureau of War Risk Insurance.
3078¼l. Verification of difference between premiums defaulted and paid.
3078¼ll. Bonds of United States for difference between premiums defaulted and paid.
3078¼m. Same; holding as security for payment of premiums.
3078¼mm. Deduction of unpaid premiums from proceeds of policies.
3078¼n. Payment of past due premiums on termination of service.
3078¼nn. Accounts stated between insurers and United States.
3078¼o. Payment of balances due insurers.
3078¼oo. Policies to which article not applicable.
3078¼p. Companies or associations to which applicable.

ARTICLE V. TAXES AND PUBLIC LANDS

3078¼pp. Application of article; sale of property.
3078¼q. Rights to public lands not to be forfeited.

ARTICLE VI. ADMINISTRATIVE REMEDIES

3078¼qq. Transfers to take advantage of act.
3078¼r. Certificates of military service; persons reported missing; presumption.
3078¼rr. Revocation of interlocutory orders.
3078¼s. Time of termination of act.
3078¼ss. Citation of act.

This Title, inserted here as additional to the original titles of the Revised tatutes, includes Act March 8, 1918, c. 20, entitled "An act to extend protection to the civil rights of members of the military and naval establishments of the United States engaged in the present war."

ARTICLE I. GENERAL PROVISIONS

78¼a. (Act March 8, 1918, c. 20, § 100.) Protection to persons in military service; suspension of legal proceedings.

or the purpose of enabling the United States the more successfully to prosecute and carry on the war in which it is at present engaged, protection is hereby extended to persons in military ice of the United States in order to prevent prejudice or injury to their civil rights during their term of service and to enable to devote their entire energy to the military needs of the on, and to this end the following provisions are made for the orary suspension of legal proceedings and transactions which

may prejudice the civil rights of persons in such service durin the continuance of the present war. (40 Stat. 440.)

§ 3078¼aa. (Act March 8, 1918, c. 20, § 101.) Definitions.

(1) The term "persons in military service," as used in this Act shall include the following persons and no others: All officers an enlisted men of the Regular Army, the Regular Army Reserve the Officers' Reserve Corps, and the Enlisted Reserve Corps; al officers and enlisted men of the National Guard and Nationa Guard Reserve recognized by the Militia Bureau of the War De partment; all forces raised under the Act entitled "An Act to au thorize the President to increase temporarily the Military Estab lishment of the United States," approved May eighteenth, ninetee hundred and seventeen; all officers and enlisted men of the Navy the Marine Corps, and the Coast Guard; all officers and enliste men of the Naval Militia, Naval Reserve force, Marine Corps Re serve, and National Naval Volunteers recognized by the Nav Department; all officers of the Public Health Service detailed b the Secretary of the Treasury for duty either with the Army o the Navy; any of the personnel of the Lighthouse Service an of the Coast and Geodetic Survey transferred by the Presiden to the service and jurisdiction of the War Department or of th Navy Department; members of the Nurse Corps; Army fiel clerks; field clerks, Quartermaster Corps; civilian clerks and em ployees on duty with the military forces detailed for service abroa in accordance with provisions of existing law; and members o any other body who have heretofore or may hereafter become part of the military or naval forces of the United States. Th term "military service," as used in this definition, shall signify ac tive service in any branch of service heretofore mentioned or re ferred to, but reserves and persons on the retired list shall not b included in the term "persons in military service" until ordere to active service. The term "active service" shall include the pe riod during which a person in military service is absent from dut on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service," as used in this Act shall include the time between the following dates: For person in active service at the date of the approval of this Act it shal begin with the date of approval of this Act; for persons enterin active service after the date of this Act, with the date of enterin active service. It shall terminate with the date of discharge fron active service or death while in active service, but in no case late than the date when this Act ceases to be in force.

(3) The term "person," as used in this Act, with reference to th holder of any right alleged to exist against a person in militar service or against a person secondarily liable under such righ shall include individuals, partnerships, corporations, and any othe forms of business association.

(4) The term "court" as used in this Act shall include any cour of competent jurisdiction of the United States or of any State whether or not a court of record.

(5) The term "termination of the war" as used in this Act shal mean the termination of the present war by the treaty of peace a proclaimed by the President. (40 Stat. 440.)

§ 3078¼aaa. (Act March 8, 1918, c. 20, § 102.) Application of act courts.

The provisions of this Act shall apply to the United State the several States and Territories, the District of Columbia, an all territory subject to the jurisdiction of the United States, an

proceedings commenced in any court therein, and shall be rced through the usual forms of procedure obtaining in such rts or under such regulations as may be by them prescribed.

2) When under this Act any application is required to be le to a court in which no proceeding has already been com- ced with respect to the matter, such application may be made ny court. (40 Stat. 441.)

078¼b. (Act March 8, 1918, c. 20, § 103.) Sureties, guaran- tors and indorsers protected.

Vhenever pursuant to any of the provisions of this Act the en- ement of any obligation or liability, the prosecution of any or proceeding, the entry or enforcement of any order, writ, gment, or decree, or the performance of any other act, may be ed, postponed, or suspended, such stay, postponement, or pension may, in the discretion of the court, likewise be granted ureties, guarantors, indorsers, and others subject to the obliga- or liability, the performance or enforcement of which is stayed, tponed, or suspended.

Vhen a judgment or decree is vacated or set aside in whole or part, as provided in this Act, the same may, in the discretion of court, likewise be set aside and vacated as to any surety, guar- or, indorser, or other person liable upon the contract or lia- y for the enforcement of which the judgment or decree was ered. (40 Stat. 441.)

ARTICLE II. GENERAL RELIEF

78¼bb. (Act March 8, 1918, c. 20, § 200.) Default judgments; affidavits; bonds; attorneys for persons in service.

n any action or proceeding commenced in any court if there l be a default of an appearance by the defendant the plaintiff ore entering judgment shall file in the court an affidavit set- forth facts showing that the defendant is not in military ice. If unable to file such affidavit plaintiff shall in lieu there- file an affidavit setting forth either that the defendant is in military service or that plaintiff is not able to determine ther or not defendant is in such service. If an affidavit is filed showing that the defendant is not in the military service, judgment shall be entered without first securing an order of rt directing such entry, and no such order shall be made if the ndant is in such service until after the court shall have ap- ted an attorney to represent defendant and protect his interest the court shall on application make such appointment. Un- it appears that the defendant is not in such service the court require as a condition before judgment is entered that the ntiff file a bond approved by the court conditioned to indemni- he defendant, if in military service, against any loss or damage he may suffer by reason of any judgment should the judg- t be thereafter set aside in whole or in part. And the court make such other and further order or enter such judgment as s opinion may be necessary to protect the rights of the defend- under this Act.

2) Any person who shall make or use an affidavit required un- this section knowing it to be false shall be guilty of a misde- nor and shall be punishable by imprisonment not to exceed year or by fine not to exceed $1,000, or both.

3) In any action or proceeding in which a person in military ice is a party if such party does not personally appear therein s not represented by an authorized attorney, the court may

appoint an attorney to represent him; and in such case a lik bond may be required and an order made to protect the rights such person. But no attorney appointed under this Act to pr tect a person in military service shall have power to waive an right of the person for whom he is appointed or bind him by h acts.

(4) If any judgment shall be rendered in any action or pr ceeding governed by this section against any person in militar service during the period of such service or within thirty day thereafter, and it appears that such person was prejudiced by re son of his military service in making his defense thereto, such judg ment may, upon application, made by such person or his leg representative, not later than ninety days after the termination such service, be opened by the court rendering the same and suc defendant or his legal representative let in to defend; provided is made to appear that the defendant has a meritorious or leg defense to the action or some part thereof. Vacating, settin aside, or reversing any judgment because of any of the provision of this Act shall not impair any right or title acquired by any bon fide purchaser for value under such judgment. (40 Stat. 441.)

Authority of attorney.—While appearance of attorney appointed by court pursuant to this section may be noted at any stage of proceeding, such attorney may not serve notice of appearance or an answer binding on the absentee. Davison v. Lynch (Sup.) 171 N. Y. S. 46, 103 Misc. Rep. 311.

Compensation of attorney.—An torney appointed by the court cann be awarded any compensation for b services which should be regarded a patriotic duty. Davison v. Lync 171 N. Y. S. 46, 103 Misc. Rep. 311.

§ 3078¼c. (Act March 8, 1918, c. 20, § 201.) Stay of actions.

At any stage thereof any action or proceeding commenced i any court by or against a person in military service during the p riod of such service or within sixty days thereafter may, in th discretion of the court in which it is pending, on its own motio and shall, on application to it by such person or some person c his behalf, be stayed as provided in this Act, unless, in the opi ion of the court, the ability of plaintiff to prosecute the action the defendant to conduct his defense is not materially affecte by reason of his military service. (40 Stat. 442.)

Proceedings which must be stayed.—Under this section proceedings on appeal from order denying motion of one plaintiff that action be discontinued as to him will be stayed till expiration of service of other plaintiff in Naval R serve, where success of appealing plai tiff would leave other solely liable f costs. Post v. Thomas (Sup.) 170 Y. S. 227, 183 App. Div. 525.

§ 3078¼cc. (Act March 8, 1918, c. 20, § 202.) Same; on contracts fines or penalties.

When an action for compliance with the terms of any contra is stayed pursuant to this Act no fine or penalty shall accrue b reason of failure to comply with the terms of such contract du ing the period of such stay, and in any case where a person fai to perform any obligation and a fine or penalty for such nonpe formance is incurred a court may, on such terms as may be jus relieve against the enforcement of such fine or penalty if it sha appear that the person who would suffer by such fine or penalt was in the military service when the penalty was incurred an that by reason of such service the ability of such person to pa or perform was thereby materially impaired. (40 Stat. 442.)

§ 3078¼d. (Act March 8, 1918, c. 20, § 203.) Executions; sta of attachments or garnishments.

In any action or proceeding commenced in any court again a person in military service, before or during the period of suc

vice, or within sixty days thereafter, the court may, in its dis-
tion, on its own motion, or on application to it by such person
some person on his behalf shall, unless in the opinion of the
urt the ability of the defendant to comply with the judgment
order entered or sought is not materially affected by reason of
military service:

(1) Stay the execution of any judgment or order entered against
ch person, as provided in this Act, and

(2) Vacate or stay any attachment or garnishment of property,
oney, or debts in the hands of another, whether before or after
lgment, as provided in this Act. (40 Stat. 442.)

3078¼dd. (Act March 8, 1918, c. 20, § 204.) Stay of actions; length of; codefendants not in service.

Any stay of any action, proceeding, attachment, or execution,
dered by any court under the provisions of this Act may, ex-
ot as otherwise provided, be ordered for the period of military
vice and three months thereafter or any part of such period, and
bject to such terms as may be just, whether as to payment in
stallments of such amounts and at such times as the court may
or otherwise. Where the person in military service is a code-
ndant with others the plaintiff may nevertheless by leave of court
oceed against the others. (40 Stat. 442.)

078¼e. (Act March 8, 1918, c. 20, § 205.) Limitation of actions.

The period of military service shall not be included in comput-
any period now or hereafter to be limited by any law for the
nging of any action by or against any person in military service
by or against his heirs, executors, administrators, or assigns,
ether such cause of action shall have accrued prior to or during
period of such service. (40 Stat. 443.)

ARTICLE III. RENT, INSTALLMENT CONTRACTS, MORTGAGES

3078¼ee. (Act March 8, 1918, c. 20, § 300.) Rent; eviction; stay of proceedings; allotment of pay to discharge.

1) No eviction or distress shall be made during the period of mili-
y service in respect of any premises for which the agreed rent
s not exceed $50 per month, occupied chiefly for dwelling pur-
es by the wife, children, or other dependents of a person in mil-
y service, except upon leave of court granted upon applica-
n therefor or granted in an action or proceeding affecting the
nt of possession.

2) On any such application or in any such action the court
y, in its discretion, on its own motion, and shall, on applica-
n, unless in the opinion of the court the ability of the tenant
ay the agreed rent is not materially affected by reason of such
itary service, stay the proceedings for not longer than three
nths, as provided in this Act, or it may make such other order
may be just.

3) Any person who shall knowingly take part in any eviction
distress otherwise than as provided in subsection (1) hereof
ll be guilty of a misdemeanor, and shall be punishable by im-
onment not to exceed one year or by fine not to exceed $1,000,
oth.

4) The Secretary of War or the Secretary of the Navy, as the
e may be, is hereby empowered, subject to such regulations as
may prescribe, to order an allotment of the pay of a person in
itary service in reasonable proportion to discharge the rent of
mises occupied for dwelling purposes by the wife, children, or
er dependents of such person. (40 Stat. 443.)

§ 3078¼f. (Act March 8, 1918, c. 20, § 301.) Contracts for pu chase of real or personal property; actions on.

(1) No person who has received, or whose assignor has r ceived, under a contract for the purchase of real or personal pro erty, or of lease or bailment with a view to purchase of such pro erty, a deposit or installment of the purchase price from a pers or from the assignor of a person who, after the date of payme of such deposit or installment, has entered military service, sh exercise any right or option under such contract to rescind or te minate the contract or resume possession of the property for no payment of any installment falling due during the period of su military service, except by action in a court of competent jur diction.

(1a) Any person who shall knowingly resume possession property which is the subject of this section otherwise than as pr vided in subsection (1) hereof shall be guilty of a misdemean and shall be punished by imprisonment not to exceed one year by fine not to exceed $1,000, or both.

(2) Upon the hearing of such action the court may order the r payment of prior installments or deposits or any part thereof, a condition of terminating the contract and resuming possessi of the property, or may, in its discretion, on its own motion, a shall, on application to it by such person in military service some person on his behalf order a stay of proceedings as provid in this Act unless, in the opinion of the court, the ability of the d fendant to comply with the terms of the contract is not material affected by reason of such service; or it may make such other d position of the case as may be equitable to conserve the interes of all parties. (40 Stat. 443.)

§ 3078¼ff. (Act March 8, 1918, c. 20, § 302.) Mortgages or tru deeds; actions; stay; sales under powers.

(1) The provisions of this section shall apply only to oblig tions originating prior to the date of approval of this Act and s cured by mortgage, trust deed, or other security in the nature of mortgage upon real or personal property owned by a person in mi tary service at the commencement of the period of the milita service and still so owned by him.

(2) In any proceeding commenced in any court during the p riod of military service to enforce such obligation arising out nonpayment of any sum thereunder due or out of any other brea of the terms thereof occurring prior to or during the period such service, the court may, after hearing, in its discretion, on own motion, and shall, on application to it by such person in mi tary service or some person on his behalf, unless in the opini of the court the ability of the defendant to comply with the ter of the obligation is not materially affected by reason of his m itary service—

(a) Stay the proceedings as provided in this Act; or

(b) Make such other disposition of the case as may be equitab to conserve the interests of all parties.

(3) No sale under a power of sale or under a judgment enter upon warrant of attorney to confess judgment contained in a such obligation shall be valid if made during the period of milita service or within three months thereafter, unless upon an order sale previously granted by the court and a return thereto made a approved by the court. (40 Stat. 444.)

Validity.—This section is constitutional as war measure, within power of Congress, and governs foreclosure of mortgages on realty in Massachuset Hoffman v. Charlestown Five Ce Sav. Bank (Mass.) 121 N. E. 15.

wnership of mortgaged property.—s section is not limited to owners ecord, or to cases where mortgagee fact knew, or had reason to know, owner was, but includes every e where legal or equitable title to tgaged property is owned by per- in military service, etc.; and as inst bank, which foreclosed mort- e on his property in violation there- person in military service was eq- ble owner of property, though trust eement with his mother, which cre- d his equitable ownership, was with- statute of frauds (Rev. Laws Mass. 74, § 1, and chapter 147, § 1); the ense of the statute being personal the maker of the contract. Hoff- n v. Charlestown Five Cents Sav. k (Mass.) 121 N. E. 15.

se of mortgaged property.—This tion is not limited to mortgaged perty used by a soldier or sailor, his dependents, for business or lling purposes. Hoffman v. Charles- n Five Cents Sav. Bank (Mass.) 121 E. 15.

liability for deficiency.—Court has power to stay mortgage foreclosure by reason of the fact that a sailor become liable, depending on a sible deficiency, under Soldiers' and Sailors' Civil Relief Act. Dietz v. Treupel (Sup.) 170 N. Y. S. 108.

Grounds for stay.—Under Soldiers' and Sailors' Civil Relief Act, an affidavit merely stating that defendant is a chief yeoman in the Naval Reserve, and has been obliged "to almost entirely relinquish his civil business," is insufficient to show that defendant is entitled to a stay. Dietz v. Treupel (Sup.) 170 N. Y. S. 108.

Sale under power.—Under this section, until termination of the time specified, no mortgage can be foreclosed on property of one in military service, except under order of court; act being aimed at foreclosures under power of sale. Knowledge, acquiescence, and approval of agent for care of property in and of any foreclosure under power is immaterial. Hoffman v. Charlestown Five Cents Sav. Bank (Mass.) 121 N. E. 15.

Powers of court.—If, except under special circumstances, there is no equitable jurisdiction in Massachusetts to foreclose power of sale mortgage, this section gives equity courts jurisdiction to foreclose such mortgages made within time specified in act. Hoffman v. Charlestown Five Cents Sav. Bank (Mass.) 121 N. E. 15.

ARTICLE IV. INSURANCE

078¼g. (Act March 8, 1918, c. 20, § 400.) Definitions.

n this Article the term "policy" shall include any contract of insurance on the level premium or legal reserve plan. It shall o include any benefit in the nature of life insurance arising out membership in any fraternal or beneficial association; the term emium" shall include membership dues or assessments in such ociation, and the date of issuance of policy as herein limited ll refer to the date of admission to membership in such asso- tion; the term "insured" shall include any person who is the der of a policy as defined in this Article; the term "insurer" ll include any corporation, partnership, or other form of associa- n which secures or provides insurance under any policy as de- d in this Article. (40 Stat. 444.)

078¼gg. (Act March 8, 1918, c. 20, § 401.) Application for benefits of Article; forms.

he benefits of this Article shall apply to any person in military vice who is the holder of a policy of life insurance, when such der shall apply for such benefits on a form prepared in ac- dance with regulations which shall be prescribed by the Sec- ary of the Treasury. Such form shall set forth particularly t the application therein made is a consent to such modification he terms of the original contract of insurance as are made nec- ary by the provisions of this Article and by receiving and g the same the insurer shall be deemed to have assented there- to the extent, if any, to which the policy on which the applica- n is made is within the provisions of this Article. The original of h application shall be sent by the insured to the insurer, and a y thereof to the Bureau of War Risk Insurance.

he Bureau of War Risk Insurance shall issue through suitable itary and naval channels a notice explaining the provisions of

this Article and shall furnish forms to be distributed to those des ing to make application for its benefits. (40 Stat. 444.)

§ 3078¼h. (Act March 8, 1918, c. 20, § 402.) Persons entitled benefits of article.

The benefits of this Act shall be available to any person in m itary service in respect of contracts of insurance in force und their terms up to but not exceeding a face value of $5,000, irrespe tive of the number of policies held by such person whether one or more companies, when such contracts were made and premium was paid thereon before September first, nineteen hu dred and seventeen; but in no event shall the provisions of th Article apply to any policy on which premiums are due and unpa for a period of more than one year at the time when applicati for the benefits of this Article is made or in respect of any poli on which there is outstanding a policy loan or other indebtedne equal to or greater than fifty per centum of the cash surrender va ue of the policy. (40 Stat. 444.)

§ 3078¼i. (Act March 8, 1918, c. 20, § 403.) Same; lists of.

The Bureau of War Risk Insurance shall, subject to regul tions, which shall be prescribed by the Secretary of the Treasur compile and maintain a list of such persons in military service have made application for the benefits of this Article, and sha (1) reject any applications for such benefits made by persons wh are not persons in military service; (2) reject any applicatio for such benefits in excess of the amount permitted by secti four hundred and two; and (3) reject any applications in respe of contracts of insurance otherwise not entitled to the benefits this Article. Said bureau shall immediately notify the insurer a the insured in writing of every rejection or approval. (40 Sta 445.)

§ 3078¼j. (Act March 8, 1918, c. 20, § 404.) Applications on pol cies totaling more than $5,000.

When one or more applications are made under this Artic by any one person in military service in respect of insurance e ceeding a total face value of $5,000, whether on one or more po icies or in one or more companies, and the insured shall not his application indicate an order of preference, the Bureau of W Risk Insurance shall reject such policies as have the inferior ca surrender value, so as to reduce the total benefits conferred with the face value of $5,000, and where necessary for this purpose sha direct the insurer to divide any policy into two separate policie The said bureau shall immediately notify the insurer and the i sured in writing of such selection. (40 Stat. 445.)

§ 3078¼jj. (Act March 8, 1918, c. 20, § 405.) Lapse of policies f nonpayment of premiums.

No policy which has not lapsed for the nonpayment of premiu before the commencement of the period of military service the insured, and which has been brought within the benefits of th Article, shall lapse or be forfeited for the nonpayment of premiu during the period of such service or during one year after th expiration of such period: Provided, That in no case shall th prohibition extend for more than one year after the terminatio of the war. (40 Stat. 445.)

§ 3078¼k. (Act March 8, 1918, c. 20, § 406.) Reports to Bureau War Risk Insurance.

Within the first fifteen days of each calendar month after th date of approval of this Act until the expiration of one year aft the termination of the war, every insurance corporation or ass

ion to which application has been made as herein provided, the benefits of this Article, shall render to the Bureau of War Insurance a report, duly verified, setting forth the following s:

irst. The names of the persons who have applied for such bene- and the face value of the policies in respect of which such bene- have been applied for by such persons, during the preceding ndar month;

econd. A list as far as practicable of the premiums in respect policies entitled to the benefits of this Article which remain aid on the last day of the preceding calendar month, which is at least thirty-one days after the due date of the premiums, vided such premiums have not previously been so reported as in ult;

hird. A list of premiums which, having been previously report- s in default, have been paid by the policyholder or some one his behalf in whole or in part during the preceding calendar th;

ourth. A computation of the difference between the total unt of defaulted premiums therein reported and the total unt of premiums paid as therein reported, after having been iously reported as in default. From this sum shall be deduct- he total sum of any premiums previously reported as in default, n policies in respect of which the Bureau of War Risk Insur- has, since the date of such report, rejected an application for benefits of this Article. The final sum so arrived at shall be de- inated the monthly difference. (40 Stat. 445.)

78¼*l*. (Act March 8, 1918, c. 20, § 407.) Verification of dif- ference between premiums defaulted and paid.

he Bureau of War Risk Insurance shall verify the computa- of monthly difference reported by each insurer, and shall ify it, as corrected, to the Secretary of the Treasury and the rer. (40 Stat. 446.)

78¼*ll*. (Act March 8, 1918, c. 20, § 408.) Bonds of United States for difference between premiums defaulted and paid.

he Secretary of the Treasury shall, within ten days thereafter, er each month to the proper officer of each insurer, bonds he United States to the amount of that multiple of $100 near- to the monthly difference certified in respect of each insurer. bonds shall be registered in the names of the respective in- rs, who shall be entitled to receive the interest accruing there- and such bonds shall not be transferred, or again registered, pt upon the approval of the Director of the Bureau of War Insurance, and shall remain in the possession of the insurer settlement is made in accordance with this Article: Provided, whenever the fact of insolvency shall be ascertained by the ctor of the Bureau of War Risk Insurance all obligation on part of the United States, under this Article, for future pre- ns on policies of such insurer shall thereupon terminate. An rer shall furnish semiannual statements to the Bureau of War Insurance. (40 Stat. 446.)

78¼m. (Act March 8, 1918, c. 20, § 409.) Same; holding as security for payment of premiums.

he bonds so delivered shall be held by the respective insurers curity for the payment of the defaulted premiums with inter- To indemnify it against loss the United States shall have st lien upon any policy receiving the benefits of this Article, ect only to any lien existing at the time the policy became sub-

ject to this Act, and no loan or settlement or payment of divider shall be made by the insurer on such policy which may prejudic the security of such lien. Before any dividend is paid or any loa or settlement is made the written consent of the Bureau of Wa Risk Insurance must be obtained. (40 Stat. 446.)

§ 3078¼mm. (Act March 8, 1918, c. 20, § 410.) Deduction of u paid premiums from proceeds of policies.

In the event that the military service of any person being th holder of a policy receiving the benefits of this Article shall b terminated by death, the amount of any unpaid premiums, wit interest at the rate provided for in the policy for policy loan shall be deducted from the proceeds of the policy and shall b included in the next monthly report of the insurer as premium paid. (40 Stat. 446.)

§ 3078¼n. (Act March 8, 1918, c. 20, § 411.) Payment of pa due premiums on termination of service.

If the insured does not within one year after the termination o his period of military service pay to the insurer all past due pr miums with interest thereon from their several due dates at th rate provided in the policy for policy loans, the policy shall at th end of such year immediately lapse and become void, and the in surer shall thereupon become liable to pay the cash surrender va ue thereof, if any: Provided, That if the insured is in the militar service at the termination of the war such lapse shall occur an surrender value be payable at the expiration of one year after th termination of the war. (40 Stat. 446.)

§ 3078¼nn. (Act March 8, 1918, c. 20, § 412.) Accounts state between insurers and United States.

At the expiration of one year after the termination of the wa there shall be an account stated between each insurer and th United States, in which the following items shall be credited to th insurer:

(1) The total amount of the monthly differences reported ur der this Article;

(2) The difference between the total interest received by th insurer upon the bonds held by it as security and the total inte est upon such monthly differences at the rate of five per centu per annum; and in which there shall be credited to the Unite States the amount of the cash surrender value of each policy lapse or forfeited as provided in section four hundred and eleven, bu not in any case a greater amount on any policy than the total o the unpaid premiums with interest thereon at the rate provided fo in the policy for policy loans. (40 Stat. 446.)

§ 3078¼o. (Act March 8, 1918, c. 20, § 413.) Payment of balance due insurers.

The balance in favor of the insurer shall, in each case, be paid t it by the United States upon the surrender by the insurer of th bonds delivered to it from time to time by the Secretary of th Treasury under the provisions of this Article. (40 Stat. 447.)

§ 3078¼oo. (Act March 8, 1918, c. 20, § 414.) Policies to whic article not applicable.

This Article shall not apply to any policy which is void or whic may at the option of the insurer be voidable, if the insured is i military service, either in this country or abroad, nor to an policy which as a result of being in military service, either in thi country or abroad, provides for the payment of any sum less tha the face thereof or for the payment of an additional amount a premium. (40 Stat. 447.)

§ 3078¼p. (Act March 8, 1918, c. 20, § 415.) Companies or associations to which applicable.

This Article shall apply only to insurance companies or associations which are required by the law under which they are organized or doing business to maintain a reserve, or, which if not so required, have made or shall make provision for the collection from all those insured in such insurer of a premium to cover the special war risk of those insured persons who are in military service. (40 Stat. 447.)

ARTICLE V. TAXES AND PUBLIC LANDS

§ 3078¼pp. (Act March 8, 1918, c. 20, § 500.) Application of article; sale of property.

(1) The provisions of this section shall apply when any taxes or assessments, whether general or special, falling due during the period of military service in respect of real property owned and occupied for dwelling or business purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

(2) When any person in military service, or any person in his behalf, shall file with the collector of taxes, or other officer whose duty it is to enforce the collection of taxes or assessments, an affidavit showing (a) that a tax or assessment has been assessed upon property which is the subject of this section, (b) that such tax or assessment is unpaid, and (c) that by reason of such military service the ability of such person to pay such tax or assessment is materially affected, no sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon an application made therefor by such collector or other officer. The court thereupon may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the war.

(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the termination of the war; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption.

(4) Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of six per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon. (40 Stat. 447.)

§ 3078¼q. (Act March 8, 1918, c. 20, § 501.) Rights to public lands not to be forfeited.

No right to any public lands initiated or acquired prior to entering military service by any person under the homestead laws, the desert-land laws, the mining-land laws, or any other laws of the United States, shall be forfeited or prejudiced by reason of his absence from such land, or of his failure to perform any work or make any improvements thereon, or to do any other act required by any such law during the period of such service. Nothing in this section contained shall be construed to deprive a person in military

service or his heirs or devisees of any benefits to which he or tl may be entitled under the Act entitled "An Act for the relief homestead entrymen or settlers who enter the military or na service of the United States in time of war," approved July twen eighth, nineteen hundred and seventeen; the Act entitled " Act for the protection of desert-land entrymen who enter the n itary or naval service of the United States in time of war," proved August seventh, nineteen hundred and seventeen; t Act entitled "An Act to provide further for the national secur and defense by stimulating agriculture and facilitating the dist bution of agricultural products," approved August tenth, ninete hundred and seventeen; the joint resolution "To relieve the ov ers of mining claims who have been mustered into the milita or naval service of the United States as officers or enlisted m from performing assessment work during the term of such se ice," approved July seventeenth, nineteen hundred and seventee or any other Act or resolution of Congress: Provided, That no ing in this section contained shall be construed to limit or aff the right of a person in the military service to take any acti during his term of service that may be authorized by law, or t regulations of the Interior Department thereunder, for the p fection, defense, or further assertion of rights initiated prior to t date of entering military service, and it shall be lawful for any p son while in military service to make any affidavit or subr any proof that may be required by law, or the practice of the Ge eral Land Office in connection with the entry, perfection, defen or further assertion of any rights initiated prior to entering m itary service, before the officer in immediate command and ho ing a commission in the branch of the service in which the party engaged, which affidavits shall be as binding in law and with li penalties as if taken before the Register of the United States La Office. (40 Stat. 448.)

ARTICLE VI. ADMINISTRATIVE REMEDIES

§ 3078¼qq. (Act March 8, 1918, c. 20, § 600.) Transfers to ta advantage of act.

Where in any proceeding to enforce a civil right in any cou it is made to appear to the satisfaction of the court that any int est, property, or contract has since the date of the approval this Act been transferred or acquired with intent to delay the ju enforcement of such right by taking advantage of this Act, t court shall enter such judgment or make such order as might la fully be entered or made the provisions of this Act to the contra notwithstanding. (40 Stat. 448.)

§ 3078¼r. (Act March 8, 1918, c. 20, § 601.) Certificates of mi tary service; persons reported missing; presumption.

(1) In any proceeding under this Act a certificate signed by T Adjutant General of the Army as to persons in the Army or in a branch of the United States Service while serving pursuant law with the Army, signed by the Chief of the Bureau of Na igation of the Navy Department as to persons in the Navy or any other branch of the United States service while serving pu suant to law with the Navy, and signed by the Major Gener Commandant, United States Marine Corps, as to persons in t Marine Corps, or in any other branch of the United States ser ice while serving pursuant to law with the Marine Corps, signed by an officer designated by any of them, respectively, f

e purpose, shall when produced be prima facie evidence as to y of the following facts stated in such certificate:

That a person named has not been, or is, or has been in mili- y service; the time when and the place where such person tered military service, his residence at that time, and the rank, anch, and unit of such service that he entered, the dates with- which he was in military service, the monthly pay received such person at the date of issuing the certificate, the time when d place where such person died in or was discharged from such vice.

It shall be the duty of the foregoing officers to furnish such cer- cate on application, and any such certificate when purporting be signed by any one of such officers or by any person purport- upon the face of the certificate to have been so authorized shall prima facie evidence of its contents and of the authority of the ner to issue the same.

(2) Where a person in military service has been reported miss- he shall be presumed to continue in the service until accounted , and no period herein limited which begins or ends with the ath of such person shall begin or end until the death of such rson is in fact reported to or found by the Department of War or vy, or any court or board thereof, or until such death is found a court of competent jurisdiction: Provided, That no period ein limited which begins or ends with the death of such person ll be extended hereby beyond a period of six months after the mination of the war. (40 Stat. 448.)

078¼rr. (Act March 8, 1918, c. 20, § 602.) Revocation of interlocutory orders.

Any interlocutory order made by any court under the provi- ns of this Act may, upon the court's own motion or otherwise, revoked, modified, or extended by it upon such notice to the ties affected as it may require. (40 Stat. 449.)

078¼s. (Act March 8, 1918, c. 20, § 603.) Time of termination of act.

This Act shall remain in force until the termination of the war, l for six months thereafter: Provided, That wherever under any tion or provision of this Act a proceeding, remedy, privilege, y, limitation, accounting, or other transaction has been author- d or provided, the due exercise or enjoyment of which may end beyond the period herein fixed for the termination of this t, such section or provision shall be deemed to continue in full ce and effect so long as may be necessary to the exercise or en- ment of the proceeding, remedy, privilege, stay, limitation, ac- nting, or transaction aforesaid. (40 Stat. 449.)

078¼ss. (Act March 8, 1918, c. 20, § 604.) Citation of act.

This Act may be cited as the Soldiers' and Sailors' Civil Relief t. (40 Stat. 449.)

TITLE XVI B—VOCATIONAL REHABILITATIOI OF SOLDIERS AND SAILORS

Sec.
3078½a. Citation of act; definitions.
3078½b. Persons to receive training; allowances and compensation.
3078½c. Cost of training.
3078½d. Instructors for and courses of training.
3078½e. Investigations and reports.
3078½f. Medical and surgical work; rules and regulations.
3078½g. Gifts and donations.
3078½gg. Appropriations.
3078½ggg. Special fund and appropri tions; expenditure fro for certain expenses.
3078½h. Accounts and reports.
3078½i. Employés not exempt fro draft.

§ 3078½a. (Act June 27, 1918, c. 107, § 1.) Citation of act; de initions.

This Act shall be known as the Vocational Rehabilitation Ac That the word "board," as hereinafter used in this Act, shall mea the "Federal Board for Vocational Education." That the wor "bureau," as hereinafter used in this Act, shall mean the "Burea of War-Risk Insurance." (40 Stat. 617.)

This section, and the nine sections next following, are sections 1–9, 11, an act entitled "An act to provide for vocational rehabilitation and return civil employment of disabled persons discharged from the military or nav forces of the United States, and for other purposes," cited above. Section of said act repealed § 304 of the War Risk Insurance Act.

§ 3078½b. (Act June 27, 1918, c. 107, § 2.) Persons to recei training; allowances and compensation.

Every person who is disabled under circumstances entitling hi after discharge from the military or naval forces of the Unit States, to compensation under Article III of the Act entitled "A Act to amend an Act entitled 'An Act to authorize the establis ment of a Bureau of War-Risk Insurance in the Treasury Depar ment,'" approved October sixth, nineteen hundred and seventee hereinafter referred to as "said Act," and who, after his discharg in the opinion of the board, is unable to carry on a gainful occup tion, to resume his former occupation, or to enter upon son other occupation, or having resumed or entered upon such occ pation is unable to continue the same successfully, shall be fu nished by the said board, where vocational rehabilitation is feasibl such course of vocational rehabilitation as the board shall pr scribe and provide.

The board shall have power, and it shall be its duty, to furnis the persons included in this section suitable courses of vocation rehabilitation to be prescribed and provided by the board, and eve person electing to follow such a course of vocational rehabilitatic shall, while following the same, receive monthly compensatic equal to the amount of his monthly pay for the last month of h active service, or equal to the amount to which he would be ent tled under Article III of said Act, whichever amount is the greate If such person was an enlisted man at the time of his discharge, f the period during which he is so afforded a course of rehabilitatio his family shall receive compulsory allotment and family allowan according to the terms of Article II of said Act in the same mann as if he were an enlisted man, and for the purpose of computi and paying compulsory allotment and family allowance his co pensation shall be treated as his monthly pay: Provided, That such person willfully fails or refuses to follow the prescribed cour of vocational rehabilitation which he has elected to follow, in manner satisfactory to the board, the said board in its discreti

may certify to that effect to the bureau and the said bureau shall, during such period of failure or refusal, withhold any part or all of the monthly compensation due such person and not subject to compulsory allotment which the said board may have determined should be withheld: Provided, however, That no vocational teaching shall be carried on in any hospital until the medical authorities certify that the condition of the patient is such as to justify such teaching.

The military and naval family allowance appropriation provided for in section eighteen of said Act shall be available for the payment of the family allowances provided by this section; and the military and naval compensation appropriation provided for in section nineteen of said Act shall be available for the payment of the monthly compensation herein provided. No compensation under Article III of said Act shall be paid for the period during which any such person is furnished by said board a course of vocational rehabilitation except as is hereinbefore provided. (40 Stat. 617.)

See note to § 3078½a.

§ 3078½c. (Act June 27, 1918, c. 107, § 3.) Cost of training.

The courses of vocational rehabilitation provided for under this Act shall, as far as practicable and under such conditions as the board may prescribe, be made available without cost for instruction for the benefit of any person who is disabled under circumstances entitling him, after discharge from the military or naval forces of the United States, to compensation under Article III of said Act and who is not included in section two hereof. (40 Stat. 618.)

See note to § 3078½a.

§ 3078½d. (Act June 27, 1918, c. 107, § 4.) Instructors for and courses of training.

The board shall have the power and it shall be its duty to provide such facilities, instructors, and courses as may be necessary to insure proper training for such persons as are required to follow such courses as herein provided; to prescribe the courses to be followed by such persons; to pay, when in the discretion of the board such payment is necessary, the expense of travel, lodging, subsistence, and other necessary expenses of such persons while following the prescribed courses; to do all things necessary to insure vocational rehabilitation; to provide for the placement of rehabilitated persons in suitable or gainful occupations. The board shall have the power to make such rules and regulations as may be necessary for the proper performance of its duties as prescribed by this Act, and is hereby authorized and directed to utilize, with the approval of the Secretary of Labor, the facilities of the Department of Labor, in so far as may be practicable, in the placement of rehabilitated persons in suitable or gainful occupations. (40 Stat. 618.)

See note to § 3078½a.

§ 3078½e. (Act June 27, 1918, c. 107, § 5.) Investigations and reports.

It shall also be the duty of the board to make or cause to have made studies, investigations, and reports regarding the vocational rehabilitation of disabled persons and their placement in suitable or gainful occupations. When the board deems it advisable, such studies, investigations, and reports may be made in cooperation with or through other departments and bureaus of the Government, and the board in its discretion may cooperate with such public or private agencies as it may deem advisable in performing the duties imposed upon it by this Act. (40 Stat. 618.)

See note to § 3078½a.

§ 3078½f. (Act June 27, 1918, c. 107, § 6.) Medical and surgica work; rules and regulations.

All medical and surgical work or other treatment necessary t give functional and mental restoration to disabled persons prio to their discharge from the military or naval forces of the Unite States shall be under the control of the War Department and th Navy Department, respectively. Whenever training is employe as a therapeutic measure by the War Department or the Nav Department a plan may be established between these agencies an the board acting in an advisory capacity to insure, in so far as med ical requirements permit, a proper process of training and the prop er preparation of instructors for such training. A plan may als be established between the War and Navy Departments and th board whereby these departments shall act in an advisory capacit with the board in the care of the health of the soldier and sailo after his discharge.

The board shall, in establishing its plans and rules and regula tions for vocational training, cooperate with the War Departmen and the Navy Department in so far as may be necessary to effec a continuous process of vocational training. (40 Stat. 618.)

See note to § 3078½a.

§ 3078½g. (Act June 27, 1918, c. 107, § 7.) Gifts and donations

The board is hereby authorized and empowered to receive suc gifts and donations from either public or private sources as ma be offered unconditionally. All moneys received as gifts or dona tions shall be paid into the Treasury of the United States, and sha constitute a permanent fund, to be called the "Special fund fo vocational rehabilitation," to be used under the direction of th said board, in connection with the appropriations hereby made o hereafter to be made, to defray the expenses of providing and main taining courses of vocational rehabilitation; and a full report o all gifts and donations offered and accepted, and all disbursement therefrom, shall be submitted annually to Congress by said board (40 Stat. 619.)

See note to § 3078½a.

§ 3078½gg. (Act June 27, 1918, c. 107, § 8.) Appropriations.

There is hereby appropriated, out of any money in the Treasur of the United States not otherwise appropriated, available imme diately and until expended, the sum of $2,000,000 or so much there of as may be necessary to be used by the Federal Board for Voca tional Education for the purposes of this Act, to wit, for rentin and remodeling buildings and quarters, repairing, maintaining, an equipping same, and for equipment and other facilities necessar for proper instruction of disabled persons, $250,000; for the prepara tion of instructors and salaries of instructors, supervisors, and othe experts, including necessary traveling expenses, $545,000; for trav eling expenses of disabled persons in connection with training an for lodging, subsistence, and other necessary expenses in specia cases of persons following prescribed courses, $250,000; for tui tion for disabled persons pursuing courses in existing institutions public or private, $545,000; for the placement and supervision aft er placement of vocationally rehabilitated persons, $45,000; fo studies, investigations, reports, and preparation of special course of instruction, $55,000; for miscellaneous contingencies, includin special mechanical appliances necessary in special cases for dis abled men, $110,000; and for the administrative expenses of sai board incident to performing the duties imposed by this Act, in cluding salaries of such assistants, experts, clerks, and other em ployees in the District of Columbia or elsewhere as the board ma

deem necessary, actual traveling and other necessary expenses incurred by the members of the board and by its employees under its orders, including attendance at meetings of educational associations and other organizations, rent and equipment of offices in the District of Columbia and elsewhere, purchase of books of reference, law books, and periodicals, stationery, typewriters and exchange thereof, miscellaneous supplies, postage on foreign mail, printing and binding to be done at the Government Printing Office, and all other necessary expenses, $200,000. (40 Stat. 619.)

See note to § 3078½a.

§ 3078½ggg. (Act Feb. 26, 1919, c. 46.) Special fund and appropriations; expenditure from, for certain expenses.

The special fund for vocational education, authorized by section seven of the vocational rehabilitation Act, approved June twenty-seventh, nineteen hundred and eighteen, together with the items of appropriation made by said Act, are hereby made available, in addition to the purposes therein prescribed, for such other expenses as in the discretion of the board is deemed necessary and proper for the payment of necessary travel, lodging, subsistence, and other expenses of disabled men while under investigation by the board to determine their eligibility for training under the Act, and the purchase of supplies, equipment, and clothing for disabled men when ready to enter employment, and the traveling expenses of such men to place of employment and for supplementing any or all of the other items of appropriation made by said Act. (40 Stat. 1179.)

This section is an act entitled "An act extending the use of the special fund for vocational education provided by section seven of the vocational rehabilitation act, approved June twenty-seventh, nineteen hundred and eighteen, and for other purposes," cited above.

§ 3078½h. (Act June 27, 1918, c. 107, § 9.) Accounts and reports.

Said board shall file with the Clerk of the House and the Secretary of the Senate on July first and every three months thereafter, for the information of the Congress, an itemized account of all expenditures made under this Act, including names and salaries of employees. Said board shall also make an annual report to the Congress of its doings under this Act on or before December first of each year. (40 Stat. 619.)

See note to § 3078½a.

§ 3078½i. (Act June 27, 1918, c. 107, § 11.) Employés not exempt from draft.

No person of draft age physically fit for military service shall be exempted from such service on account of being employed under the terms of this Act. (40 Stat. 620.)

See note to § 3078½a.

TITLE XVII—ARMS, ARMORIES, ARSENALS, ORDNANCE AND FORTIFICATIONS, AND NITRATE PLANTS

CHAPTER A—ARMS, ARMORIES, ARSENALS AND NITRATE PLANTS

§ 3084a. (Act May 12, 1917, c. 12.) Repeal of part of section 308

The following provision contained in the Act approved Ap twenty-third, nineteen hundred and four, "Hereafter all employe of the Ordnance Department whose compensation is annual sh be paid monthly," is hereby repealed. (40 Stat. 74.)

This was a provision of the Army appropriation act for the fiscal year 19 cited above. See U. S. Comp. St. 1916, § 3084.

§ 3084b. (Act July 9, 1918, c. 143.) Pay of civilian employés gun factories on leave of absence.

The Secretary of War is hereby authorized and empowered, d ing the period of the war, to make payment, under such regulatio as may be prescribed by him, in addition to and at the rate of p now provided by law to each and all civilians employed by t War Department in gun factories and arsenals for work perform on all days of leave of absence granted by law to such employe (40 Stat. 870.)

This section was a provision of the Army appropriation act for the fis year 1919, cited above.

§ 3092a. (Act July 8, 1918, c. 137, § 1.) Transfer of Naval or nance to the War Department.

Such naval ordnance and ordnance material as the Secretary War and the Secretary of the Navy may determine necessary authorized to be transferred from the Navy Department to t War Department: Provided, That if such ordnance and ordnan material is obsolete for naval purposes the transfer shall be ma without reimbursement and payment to the Navy for other or nance and ordnance material transferred hereunder shall be ma only after estimates shall have been submitted to Congress and specific appropriation for such payment shall have been made. (Stat. 817.)

This section was a provision of fortifications appropriation act, cited abo

§ 3093a. (Act June 14, 1917, c. 28.) Rifles and ammunition f Home Guards.

The Secretary of War during this existing emergency be, and is hereby, authorized, in his discretion, to issue from time to tir to the several States and Territories and the District of Columb for the equipment of such home guards having the character State police or constabulary as may be organized by the sever States and Territories and District of Columbia, and such oth home guards as may be organized under the direction of the go ernors of the several States and Territories and the Commissione of the District of Columbia or other State troops or militia, su rifles and ammunition therefor, cartridge belts, haversacks, ca teens, in limited amounts as available supplies will permit, provi ed that the property so issued shall remain the property of t United States and shall be receipted for by the governors of t several States and Territories and Commissioners of the District

Columbia and accounted for by them under such regulations and upon furnishing such bonds or security as the Secretary of War may prescribe, and that any property so issued shall be returned to the United States on demand when no longer needed for the purposes for which issued, or if, in the judgment of the Secretary of War, an exigency requires the use of the property for Federal purposes: Provided, That all home guards, State troops and militia receiving arms and equipments as herein provided shall have the use, in the discretion of the Secretary of War and under such regulations as he may prescribe, of rifle ranges owned or controlled by the United States of America. (40 Stat. 181.)

This was an act entitled "An act to authorize the issue to States and Territories and the District of Columbia of rifles and other property for the equipment of organizations of home guards," cited above.

COUNCIL OF NATIONAL DEFENSE

Sec.
3115ee. Powers and duties of Council not enlarged.

MOBILIZATION OF INDUSTRIES

3115f. Board on Mobilization of Essential Industries.
3115g. Procurement of military supplies in time of war; compulsory compliance with orders; seizure and operation of plants by government; penalty.
3115h. Lists and information of manufacturing plants capable of manufacturing arms or ammunition.

ADVISORY COMMITTEE FOR AERONAUTICS

3115ii. Office space.

WHARVES, DOCKS, PIERS, ETC.

3115jj. Acquisition of docks of certain corporations.

AIRCRAFT BOARD AND AIRCRAFT PATENTS

3115$^{1}/_{32}$a. Board; purpose of.
3115$^{1}/_{32}$b. Same; number; appointment.
3115$^{1}/_{32}$c. Same; terms of office; compensation.
3115$^{1}/_{32}$d. Same; powers and duties.
3115$^{1}/_{32}$e. Same; clerks and employés, etc.
3115$^{1}/_{32}$f. Purchase of patents.
3115$^{1}/_{32}$g. Aircraft production corporations; capital stock.
3115$^{1}/_{32}$h. Same; purchase of stock of by United States.
3115$^{1}/_{32}$i. Same; dissolution.
3115$^{1}/_{32}$j. Same; assignment of officers or men of military service to; civilian employés.
3115$^{1}/_{32}$k. Same; transfer of existing contracts to.

NATIONAL WAR LABOR BOARD

Proclamation.

SPECIAL PREPAREDNESS FUND

Act Repealed.

SHIPS AND WAR MATERIAL

3115$^{1}/_{16}$a. (a) Purchase in time of war or emergency; definitions.
3115$^{1}/_{16}$b. (b) Same; power of President; compliance with orders.
3115$^{1}/_{16}$c. (d) Same; compensation for requisitioning factories.
3115$^{1}/_{16}$d. Orders for ships or material; contracts; requisition of plants or outputs; purchase of ships already constructed; taking possession; orders; compensation.

Sec.
3115$^{1}/_{16}$dd. Same; compensation property taken.
3115$^{1}/_{16}$ddd. Contracts for acquisit or establishment plants.
3115$^{1}/_{16}$e. Same; powers extended.

CHARTERS, FREIGHT RAT AND REGULATION OF LOA ING, DISCHARGE, MOVEMEN ETC., OF VESSELS

3115$^{1}/_{16}$f. Definitions.
3115$^{1}/_{16}$ff. Exercise of powers throu agencies.
3115$^{1}/_{16}$fff. Termination of effect force of act.
3115$^{1}/_{16}$g. Powers additional to ot powers.
3115$^{1}/_{16}$gg. Approval of charters vessels; proclamatio alteration of charters
3115$^{1}/_{16}$ggg. Freight rates for tra portation on vesse filing; effect.
3115$^{1}/_{16}$h. Priority of carriage of go on vessels; regulations to loading, dischargi lighterage, storage, or f
3115$^{1}/_{16}$hh. Foreign vessels charte to citizens of Uni States.
3115$^{1}/_{16}$hhh. Voyages, protective vices, and prohibition vessels from dan zones.
3115$^{1}/_{16}$i. Charters of foreign vesse approval.
3115$^{1}/_{16}$ii. Requisition of vessels service thereof; chart therefor; damage to loss of vessels requ tioned.
3115$^{1}/_{16}$iii. Dry docks, wharves, lig erage systems, termi facilities or warehous priority of use of.
3115$^{1}/_{16}$j. Same; lease or requisit of use of; compensati
3115$^{1}/_{16}$jj. Suits against United Sta under act.
3115$^{1}/_{16}$jjj. Operation of requisitio vessels, dry do wharves, terminal fa ties, or warehouses; position of proceeds.
3115$^{1}/_{16}$k. Violations of act; puni ment.
3115$^{1}/_{16}$kk. Partial invalidity of ac

CONSERVATION OF FOOD

3115⅛a. Authority and powers con red.
3115⅛aa. Investigation by Secretary Agriculture.
3115⅛b. Purchase of seeds for crop
3115⅛bb. Co-operation with state local officials.
3115⅛c. Co-operation of governm agencies with Secretary Agriculture.

⅛cc. Definitions.
⅛d. Appropriations.
⅛d(1). Appropriations; revolving fund.
⅛dd. Termination of effective force of act.

SERVATION OF SUPPLY AND ONTROL OF DISTRIBUTION OF NECESSARIES

⅛e. Authority conferred; rules and regulations.
⅛ee. Use of agencies and services of persons without compensation.
⅛f. Interest of agents or employés in contracts.
⅛ff. Destruction, waste, or monopolies of necessaries; discriminations, unfair practices or unjust charges; conspiracies.
⅛g. Licenses to import, manufacture or distribute necessaries.
⅛gg. Hoarding necessaries; punishment.
⅛h. Same; seizure by libel.
⅛hh. Destroying necessaries to enhance price.
⅛i. Conspiring to limit distribution of necessaries.
⅛ii. Requisition of supplies for army or navy.
⅛j. Purchase and sale of wheat, flour, meal, beans and potatoes.
⅛jj. Same; requisition and operation of factories, packing houses, oil pipe lines or mines.
⅛k. Regulations to prevent "evil practices."
⅛kk. Stimulation of production of wheat; guaranteed price.
⅛kk(1). Guaranteed price of wheat; powers conferred.
⅛kk(2). Same; regulations; agencies.
⅛kk(3). Same; purchase of wheat crops; determination of price to be paid.
⅛kk(4). Same; evil practices; regulations respecting; offenses.
⅛kk(5). Same; licenses for importation, exportation, manufacture, storage, or distribution of wheat or wheat flour; revocation; offenses.
⅛kk(6). Same; regulation of importation or exportation of wheat or wheat flour; offenses; duties on imports.
⅛kk(7). Same; false statements; interference with enforcement of act.
⅛kk(8). Same; appropriation; revolving fund.

Sec.

3115⅛kk(9). Same; statements of receipts and disbursements; report of proceedings under act.
3115⅛kk(10). Same; definition; act of agent deemed act of principal.
3115⅛kk(11). Same; termination of effective force of act.
3115⅛*l*. Distilled spirits; use of; food, or food materials in production of.
3115⅛*ll*. Same; taking over by government.
3115⅛m. Interference, etc., with officers.
3115⅛mm. Appropriation for expenses.
3115⅛n. Appropriation for other uses.
3115⅛nn. Exemption of employés from military service.
3115⅛*o*. Annual reports of proceedings.
3115⅛*oo*. Partial invalidity of act.
3118⅛p. Definitions.
3115⅛pp. Time when act ceases to be operative.
3115⅛q. Coal and coke; fixing prices; regulation of production and sale.
3115⅛qq. Holding or destroying necessaries.
3115⅛r. Nitrate of soda; acquisition and sale of stocks of.
3115⅛rr. Same: proceeds of sale of; revolving fund.

CONSERVATION OF SUPPLY AND CONTROL OF DISTRIBUTION OF ORES, METALS, AND MINERALS

3115⅛s. Ores, metals and minerals included as necessaries.
3115⅛ss. Purchase, production and distribution of necessaries; import duties; funds.
3115⅛sss. Requisition and distribution of necessaries and mines; working mines; funds.
3115⅛ssss. Violations of orders or of act; punishment.
3115⅛sssss. Appropriation.
3115⅛t. Same; revolving fund; reports.
3115⅛tt. Exercise of powers by President; employés; compensation.
3115⅛ttt. Pecuniary interest in transactions under act.
3115⅛tttt. Corporations for enforcement of act.
3115⅛ttttt. Termination of operative force of act.
3115⅛u. Employés not exempt from selective draft.
3115⅛uu. Partial invalidity of act.

MANUFACTURE, ETC., OF EXPLOSIVES

3115¼a. Manufacture, distribution, storage, use or possession regulated in war time.
3115¼aa. Definitions.
3115¼aaa. Platinum, iridium, and palladium included.

Sec.
3115¼b. Ingredients defined.
3115¼bb. Person defined.
3115¼c. Purchase, possession, or sale contrary to act.
3115¼cc. Transportation.
3115¼d. License for manufacture.
3115¼dd. Information from licensee or applicant for license.
3115¼e. Records of sales.
3115¼ee. Licenses; to whom issuable.
3115¼f. Same; persons entitled to.
3115¼ff. Same; applications for.
3115¼fff. Licenses; cancellation.
3115¼g. Inspectors; appointment.
3115¼gg. False representations as to licenses.
3115¼h. Divulgence of information.
3115¼hh. Marking, defining and placarding premises.
3115¼i. Exclusion from premises where are manufactured or stored.
3115¼ii. Rules and regulations.
3115¼j. Violations of act.
3115¼jj. Investigation of explosions and fires.
3115¼k. Use of agencies of United States, States, etc.
3115¼kk. Appropriation.

TRADING WITH THE ENEMY

3115½a. Designation of act.
3115½aa. Definitions.
3115½b. Acts prohibited.
(a) Trading without license.
(b) Transporting without license.
(c) Sending into or from United States letters.
(d) Censorship of communications by mail.
3115½bb. (a) Licenses to enemy or ally of enemy insurance or reinsurance companies.
(b) Change of name; foreign insurance companies doing business in United States.
3115½c. (a) Suspension of provisions of act relating to ally of enemy.
(b) Regulation of transactions in foreign exchange of gold or silver.
3115½cc. Alien property custodian; general powers and duties.
3115½d. (a) Lists of enemy or ally of enemy officers, directors or stockholders of corporations in United States.
(b) Acts constituting trade with enemy prior to passage of act.
(c) Requiring property conveyed to alien property custodian.
(d) Voluntary payment of property to alien property custodian by holder.
(e) Acts under order, rule, or regulation of President.
3115½dd. (a) Contracts, mortgages, pledges against or w enemy or ally of ene
(b) Abrogation of contract
(c) Suspension of running statutes of limitatio
3115½e. Claims to property transfer to alien property custodi
3115½ee. Acts permitted.
(a) Applications for lett patent, or registrat of trade-mark or co right.
(b) Payment of tax in re tion to patents, tra marks or copyrights.
(c) Licenses to manufact or use, articles cov ed by patent or co right owned by ene or ally of enemy.
(d) Same; statements by censees.
(e) Same; term; cancel tion.
(f) Same; suits against censee.
(g) Restraining infringem of patents or copyrig by enemy or ally of emy.
(h) Powers of attorney.
(i) Keeping secret inventio
3115½f. Importations prohibited.
3115½ff. Property transferred to al property custodian.
3115½fff. Taxes on property held alien property custodian.
3115½g. Statements by masters of v sels and owners of carg before granting clearance
3115½gg. Same; refusal of clearan reports of gold or sil coin in cargoes for expo
3115½h. Appropriation for expense
3115½hh. Offenses; punishment; f feitures of property.
3115½i. Rules by district courts; peals.
3115½ii. Jurisdiction of courts of P ippines and Canal Zone offenses.
3115½j. Print, newspaper or publi tion in foreign languages.

FEDERAL CONTROLLED TRAN PORTATION SYSTEMS

3115¾a. Agreements as to compen tion; operating incon war taxes; maintenan railroads included.
3115¾b. Payment of compensat without agreements.
3115¾c. Claims for compensati agreements.
3115¾d. Increase of compensation.
3115¾e. Payment of dividends.
3115¾f. Revolving fund; additio betterments.
3115¾g. Bonds for maturing obli tions; reports.
3115¾h. Powers of President; adv of Interstate Commerce C mission.

i. Act Aug. 29, 1916, c. 418 to remain in force; further powers of President.
j. Liabilities of carriers; actions by and against.
k. Violations of act; punishment.
l. Operating receipts.
m. Pending cases against carriers.
n. Time of federal control.
o. Existing laws or powers of states.
p. Act declared emergency legislation.

RAL CONTROLLED TELEPH, TELEPHONE, MARINE LE, OR RADIO SYSTEMS

x. Authority of President to take possession of; compensation for; existing laws or powers of States.
xx. Tapping or interfering with lines or operation of systems; divulging contents of messages; punishment.
xxx. Stealing or destroying property of systems; punishment.
xxxx. Receiving or concealing property of systems; punishment.
y. Breaking into buildings of systems; punishment.
yy. Assaulting or robbing persons in control of property of systems; punishment.

FINANCE CORPORATION D CAPITAL ISSUES COMMITTEE

I—WAR FINANCE CORPORATION

a. Persons composing.
aa. Capital stock.
b. Directors.
c. Same; salaries.
cc. Office; branch offices.
d. Seal; corporate powers.
dd. Advances to banks, bankers, or trust companies.
e. Advances to savings banks, banking institutions or trust companies; security for.
ee. Advances to persons, firms or corporations.
f. Limitation of aggregate amount of advances.
ff. Purchase of bonds of United States.
g. Bonds of corporation; issue, etc.
gg. Same; discount by Reserve banks of obligations of member banks secured by.
h. Authorization to commence business.
hh. Net earnings to constitute reserve fund; depositaries and fiscal agents.
i. Bonds of corporation; exemption from taxation.
ii. Same; United States not liable for.

Sec.
3115⅝j. Offenses; punishment.
3115⅝k. Reports.
3115⅝k(1). Advances to exporters or persons making advances to exporters; amount; time limit for making.

TITLE II—CAPITAL ISSUES COMMITTEE

3115⅝kk. Members; interest of members.
3115⅝l. Officers and employees.
3115⅝ll. Expenses; office.
3115⅝m. Powers as to issue of securities by corporations.
3115⅝mm. Appropriation.
3115⅝n. Reports.
3115⅝nn. Time of effective operation of Title.

TITLE III—MISCELLANEOUS

3115⅝o. Offenses; punishment.
3115⅝p. Partial invalidity of act.
3115⅝pp. "Securities" defined.
3115⅝q. Amendment or repeal of act.
3115⅝qq. Short title of act.

HOUSING FOR WAR—INDUSTRY EMPLOYÉS

3115⅝a. Acquisition of lands, houses and furnishings.
3115⅝b. Compensation for property acquired.
3115⅝c. Possession and occupancy of property.
3115⅝d. "Person" defined.
3115⅝e. Disposition of property on termination of act.
3115⅝f. Reports to Congress.
3115⅝g. Contracts; letting.
3115⅝gg. Corporations to carry out act.
3115⅝h. Appropriation.
3115⅝hh. Appropriation; increase.
3115⅝i. Revolving fund.

WAR EMERGENCY SERVICES

3115⅞a. Appropriation for wages.

COMMITTEE ON PUBLIC INFORMATION

3115⅞b. Appropriation.

CONDEMNATION OF PROPERTY FOR GENERATING ELECTRIC ENERGY

$3115^{11}/_{12}$a. Authority to condemn; procedure.
$3115^{11}/_{12}$b. Submission of plans.
$3115^{11}/_{12}$c. Immediate possession on filing bond.
$3115^{11}/_{12}$d. Limitation on operative effect of provisions.

PROHIBITION ZONES

$3115^{11}/_{12}$e. Establishment of zones where sale, etc., of intoxicating liquors may be prohibited.

MANUFACTURE, SALE, ETC., OF INTOXICATING LIQUORS

Sec.
$3115^{11}/_{12}$f. Distilled spirits; sale or removal from bond for beverage purposes.
$3115^{11}/_{12}$ff. Malt or vinous liquors; use of food products for manufacture of for beverage purposes.
$3115^{11}/_{12}$fff. Same; sale for beverage purposes.
$3115^{11}/_{12}$g. Distilled spirits, and wine for sacramental purposes; regulations for manufacture, sale, or removal from bond.
$3115^{11}/_{12}$gg. Intoxicating liquors; import.
$3115^{11}/_{12}$ggg. Violations of five preceding sections; punishment.
$3115^{11}/_{12}$gggg. Distilled spirits; import from Porto Rico.
$3115^{11}/_{12}$h. Effect on powers under Act Aug. 10, 1917, c. 53, § 15.

ADJUSTMENT OF WAR CONTRACTS

Sec.
$3115^{14}/_{15}$a. Adjustment of contrac not executed accordi to law; limitation amount of awards; ti limit; report to Co gress; effect of adju ment; witnesses.
$3115^{14}/_{15}$b. Same; jurisdiction Court of Claims.
$3115^{14}/_{15}$c. Adjustment of agreemen with foreign governmen or nationals thereof.
$3115^{14}/_{15}$d. Protection of subcontra tors on adjustment contracts.
$3115^{14}/_{15}$e. Adjustment of net losses persons supplying ce tain minerals; limit tion on amounts; appr priation; time for fili claims; effect of adju ments; report to Co gress.

COUNCIL OF NATIONAL DEFENSE

§ 3115ee. (Act June 15, 1917, c. 29, § 1.) Powers and duties Council not enlarged.

Council of National Defense. For expenses of experiment work and investigations undertaken by the Council of Nation Defense, employment of experts, and at rates of compensation a thorized by section one hundred and sixty-seven of the Revise Statutes of the United States of clerical and other assistance, su plies, including books of reference and periodicals, and for nece sary expenses of members of the council, of the advisory commi sion, or subordinate bodies going to and attending meetings of t commission or subordinate bodies, $500,000: Provided, That of t appropriations herein and heretofore made for the Council of N tional Defense there may be expended for rental of quarters in t District of Columbia not to exceed $25,000 in the aggregate for t fiscal year nineteen hundred and seventeen and not to exceed $50 000 for the fiscal year nineteen hundred and eighteen: Provide further, That in the expenditure of said moneys the existence of state of war shall not be construed as enlarging the powers or d ties of the Council of National Defense, but that such powers an duties shall remain as prescribed by the Act creating said counc approved August twenty-ninth, nineteen hundred and sixteen. (4 Stat. 182.)

These were provisions of the urgent deficiency appropriation act for t military and naval establishments on account of war expenses, cited above.

MOBILIZATION OF INDUSTRIES

§ 3115f. (Act June 3, 1916, c. 134, § 120.) Board on Mobilizatio of Essential Industries.

Cited without definite application.—Niles-Bement-Pond Co. v. Iron Molders' Union, Local No. 68 (D. C.) 246 F. 851.

115g. (Act June 3, 1916, c. 134, § 120.) Procurement of military supplies in time of war; compulsory compliance with orders; seizure and operation of plants by government; penalty.

alidity.—In view of the paramount -making power of Congress, Nation- Defense Act, § 120 (Comp. St. 1916, 3115f–3115h), is valid. Moore & rney v. Roxford Knitting Co. (D. C.) F. 278; William Moore Knitting v. Same, Id. 288.

owers of President.—In performance contract with government, even for tary supplies, precedence over civil- contracts does not necessarily in- e, nor may be imported or imposed erwise than as provided by act of gress, notwithstanding Const. U. S. 2, § 2, making the President com- nder-in-chief of the army and navy. whinney v. Millbrook Woolen Mills p.) 172 N. Y. S. 461.

resumptions.—As great publicity given to National Defense Act, § (Comp. St. 1916, §§ 3115f–3115h), Navy Appropriation Act March 4, 7, c. 180, post, § $3115^{1}/_{13}$b, which horizes the government in time of to place compulsory orders with ufacturers and for supplies, manu- urers and private persons with om they contract must be presumed have contracted with reference to h laws. Moore & Tierney v. Rox- l Knitting Co. (D. C.) 250 F. 278; liam Moore Knitting Co. v. Same, 288.

he power of the government to com- ndeer being a power to be resorted only where public danger is immedi- imminent, and impending, the exer- of such power under this section not be presumed until it clearly ap- rs that such power was intended to be exercised. Mawhinney v. Millbrook Woolen Mills (Sup.) 172 N. Y. S. 461.

Placing of order.—Where a manufacturer voluntarily enters into contracts with the United States, which prevent him from carrying out earlier contracts, he is not relieved from an action of damages for breach; but where, after communication with a member of the Advisory Board of National Defense, he contracted to supply underwear for the Navy, the order must be deemed to have been placed in accordance with this section, and Navy Appropriation Act March 4, 1917, c. 180, post, § $3115^{1}/_{16}$b, making compliance obligatory; so the manufacturer was not liable for breach of contracts with private persons, which he was unable to carry out because of the navy contract. Moore & Tierney v. Roxford Knitting Co. (D. C.) 250 F. 278; William Moore Knitting Co. v. Same, Id. 288.

This section is not self-executing, but requires the government to place an order, within the meaning of the act, in order to obtain precedence over other orders, and the making of a contract between the government and a private corporation for military supplies, in form an ordinary contract, although referred to as an order, does not constitute the "placing of an order" with the corporation, within its purview. Mawhinney v. Millbrook Woolen Mills (Sup.) 172 N. Y. S. 461.

Cited without definite application, Niles-Bement-Pond Co. v. Iron Molders' Union, Local No. 68 (D. C.) 246 F. 851.

115h. (Act June 3, 1916, c. 134, § 120.) Lists and information of plants capable of manufacturing arms or ammunition.

Cited without definite application, Niles-Bement-Pond Co. v. Iron Molders' Union, Local No. 68 (D. C.) 246 F. 851.

ADVISORY COMMITTEE FOR AERONAUTICS

115ii. (Act July 1, 1918, c. 113, § 1.) Office space.

The Secretary of War is authorized and directed to furnish of- e space to the National Advisory Committee for Aeronautics in vernmental buildings occupied by the Signal Corps. (40 Stat. .)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

WHARVES, DOCKS, PIERS, ETC.

115jj. (Act March 28, 1918, c. 28, § 1.) Acquisition of docks of certain corporations.

The President is authorized to acquire the title to the docks, rs, warehouses, wharves, and terminal equipment and facilities the Hudson River now owned by the North German Lloyd Dock mpany and the Hamburg-American Line Terminal and Naviga-

tion Company, two corporations of the State of New Jersey, if shall deem it necessary for the national security and defense: Pr vided, That if such property can not be procured by purchase, th the President is authorized and empowered to take over for t United States the immediate possession and title thereof. If a such property shall be taken over as aforesaid, the United Stat shall make just compensation therefor to be determined by t President. Upon the taking over of said property by the Pre dent, as aforesaid, the title to all such property so taken over sh immediately vest in the United States: Provided further, Th section three hundred and fifty-five of the Revised Statutes of t United States shall not apply to any expenditures herein or her after authorized in connection with the property acquired. (Stat. 459.)

This was a provision of the urgent deficiency appropriation act for the fis year 1918, and prior years, on account of war expenses, cited above.

Proclamation, issued under this section, dated June 28, 1918, taking poss sion of the property of the North German Lloyd Dock Company and the Ha burg-American Line Terminal & Navigation Company.

AIRCRAFT BOARD AND AIRCRAFT PATENTS

§ 3115¹/₃₂a. (Act Oct. 1, 1917, c. 61, § 1.) Board; purpose of.

For the purpose of expanding and coordinating the industrial a tivities relating to aircraft, or parts of aircraft, produced for a purpose in the United States, and to facilitate generally the dev opment of air service, a board is hereby created, to be known as t Aircraft Board, hereinafter referred to as the board. (40 Stat. 29

This section and the four sections next following were an act entitled " act to create the Aircraft Board and provide for its maintenance," cited abo

§ 3115¹/₃₂b. (Act Oct. 1, 1917, c. 61, § 2.) Same; number; a pointment.

The board shall number not more than nine in all, and shall i clude a civilian chairman, the Chief Signal Officer of the Army, a two other officers of the Army, to be appointed by the Secretary War; the Chief Constructor of the Navy and two other officers the Navy, to be appointed by the Secretary of the Navy; and tv additional civilian members. The chairman and civilian membe shall be appointed by the President, by and with the advice a consent of the Senate. (40 Stat. 296.)

See note to § 3115¹/₃₂a.

§ 3115¹/₃₂c. (Act Oct. 1, 1917, c. 61, § 3.) Same; terms of offic compensation.

Said board and tenure of office of the members thereof shall co tinue during the pleasure of the President, but not longer than s months after the present war. The civilian members of the boa shall serve without compensation. (40 Stat. 297.)

See note to § 3115¹/₃₂a.

§ 3115¹/₃₂d. (Act Oct. 1, 1917, c. 61, § 4.) Same; powers a duties.

The board is hereby empowered, under the direction and contr of and as authorized by the Secretary of War and the Secretary the Navy, respectively, on behalf of the Departments of War a Navy, to supervise and direct, in accordance with the requiremen prescribed or approved by the respective departments, the purchas production, and manufacture of aircraft, engines, and all ordnan and instruments used in connection therewith, and accessories a materials therefor, including the purchase, lease, acquisition, construction of plants for the manufacture of aircraft, engines, a accessories: Provided, That the board may make recommend

ons as to contracts and their distribution in connection with the regoing, but every contract shall be made by the already consti- ted authorities of the respective departments. (40 Stat. 297.)

See note to § 3115¹/₃₂a.

3115¹/₃₂e. (Act Oct. 1, 1917, c. 61, § 5.) Same; clerks and employés, etc.

The board is also empowered to employ, either in the District of olumbia or elsewhere, such clerks and other employees as may be cessary to the conduct of its business, including such technical perts and advisers as may be found necessary, and to fix their laries. Such salaries shall conform to those usually paid by the overnment for similar service: Provided, That by unanimous ap- oval of the board higher compensation may be paid to technical perts and advisers. The board may rent suitable offices in the strict of Columbia or elsewhere, purchase necessary office equip- ent and supplies, including scientific publications and printing, d may incur necessary administrative and contingent expenses, d for all of the expenses enumerated in this paragraph there shall allotted by the Chief Signal Officer of the Army for the fiscal ar nineteen hundred and seventeen and nineteen hundred and hteen the sum of $100,000, or so much thereof as shall be neces- y, from any appropriation now existing for or hereinafter made the Signal Corps of the Army, and such appropriation is hereby de available for these purposes: Provided further, That except on the joint and concurrent approval of the Secretary of War d the Secretary of the Navy there shall not be established or intained under the board any office or organization duplicating replacing, in whole or in part, any office or organization now ex- ing that can be properly established or maintained by appropria- ns made for or available for the military or naval services: Pro- led further, That a report shall be made to Congress on the first of each regular session of the salaries paid from this appropria- n to clerks and employees by grades, and the number in each h grade. (40 Stat. 297.)

See note to § 3115¹/₃₂a.

115¹/₃₂f. (Act March 4, 1917, c. 180.) Purchase of patents.

To enable the Secretary of War and the Secretary of the Navy secure by purchase, condemnation, donation, or otherwise, such ic patent or patents as they may consider necessary to the manu- ture and development of aircraft in the United States and its de- ndencies, for governmental and civil purposes, under such regu- ons as the Secretary of War and the Secretary of the Navy may scribe, $1,000,000.

Provided, That such arrangements may be made in relation to purchase of any basic patent connected with the manufacture l development of aircraft in the United States as in the judgment the Secretary of War and the Secretary of the Navy will be of greatest advantage to the Government and to the development the industry.

Provided further, That in the event there shall be pending in rt litigation involving the validity of said patent or patents, d, with good and approved security in an amount sufficient to emnify the United States, shall be required, payable to the ited States, conditioned to repay to the United States the amount d for said patent or patents in the event said patent or patents finally adjudged invalid. (39 Stat. 1169.)

These were provisions of the naval appropriation act for the fiscal year 1918, cited above.

§ 3115¹/₃₂g. (Act July 9, 1918, c. 143, subchapter XVI, § 1.) Ai craft production corporations; capital stock.

The Director of Aircraft Production may, whenever in his judg ment it will facilitate and expedite the production of aircraft, aircra equipment, or materials therefor, for the United States and Gover ments allied with it in the prosecution of the present war, form unde the laws of the District of Columbia or under the laws of any Stat one or more corporations for the purchase, production, manufac ture, and sale of aircraft, aircraft equipment, or materials therefo and to build, own, and operate railroads in connection therewitl The total capital stock of the corporation or corporations so form ed, together with any bonds, notes, debentures, or other securitie issued by them, shall not at any one time exceed $100,000,000. (4 Stat. 888.)

This section, and the four sections next following, were a part of the Arm appropriation act for the fiscal year 1919, cited above.

§ 3115¹/₃₂h. (Act July 9, 1918, c. 143, subchapter XVI, § 2. Same; purchase of stock of by United States.

The Director of Aircraft Production may, for and on behalf c the United States, subscribe, purchase, and vote not less than majority of the voting capital stock of any such corporation, an may purchase for and on behalf of the United States all or any pa of the preferred nonvoting stock, bonds, notes, debentures, or othe securities issued by such corporations, and do all things necessar to protect the interest of the United States and to carry out th purpose of this chapter; and, with the approval of the Secretar of War, may sell any or all of the stock, bonds, notes, debentures, c other securities of the United States in such corporation: Provide That at no time shall the United States be a minority holder c voting stock therein. Any sums heretofore or hereafter appropr ated for the purchase or procurement of aircraft, aircraft equi ment, or materials therefor, for the Army shall be available for th purchase of the capital stock of such corporation or corporations c their bonds, notes, debentures, or other securities. (40 Stat. 888

See note to § 3115¹/₃₂g.

§ 3115¹/₃₂i. (Act July 9, 1918, c. 143, subchapter XVI, § 3.) Sam dissolution.

Within one year from the signing of a treaty of peace with th Imperial German Government the Director of Aircraft Productic shall, on behalf of the United States as a stockholder, institute suc proceedings as are necessary to dissolve such corporation or co porations under the laws of the District of Columbia or the Sta or States under which such corporation or corporations are o ganized. Upon the dissolution of the corporation or corporatio the same shall be liquidated and the assets distributed in accor ance with the laws of the District of Columbia or the State c States under which such corporation or corporations are organize (40 Stat. 889.)

See note to § 3115¹/₃₂g.

§ 3115¹/₃₂j. (Act July 9, 1918, c. 143, subchapter XVI, § 4.) Sam assignment of officers or men of military service to; civili employés.

The Secretary of War is hereby authorized to assign for dut under the direction of the Director of Aircraft Production, any e listed men or commissioned officers, from time to time, in the mi tary organization as he shall deem necessary or desirable to car on the work of such corporation or corporations: Provided, Th nothing in this chapter shall prevent such corporation or corpor tions from employing civilians in the manner customary in the co

ct of ordinary business under corporate organization. (40 Stat. 9.)

See note to § 3115¹/₃₂g.

3115¹/₃₂k. (Act July 9, 1918, c. 143, subchapter XVI, § 5.) Same; transfer of existing contracts to.

The Secretary of War, acting through the Director of Aircraft oduction, is authorized to transfer, by appropriate instruments, any such corporation as may be found under this chapter, any terest of the United States in any existing contracts for aircraft, rcraft equipment, or materials therefor, and the title to any lands, ants, railroads, or equipment used in or in connection with the oduction of aircraft, aircraft equipment, or materials therefor, on ch terms as the Secretary of War, acting through the Director of rcraft Production, shall deem fit. (40 Stat. 889.)

See note to § 3115¹/₃₂g.

NATIONAL WAR LABOR BOARD

Proclamation issued by the President, April 8, 1918, relating to National War Labor Board, as follows:

"Whereas, in January nineteen hundred and eighteen, the Secretary of Labor, upon the nomination of the President of the American Federation of Labor and the President of the National Industrial Conference Board, appointed a War Labor Conference Board for the purpose of devising for the period of the war a method of labor adjustment which would be acceptable to employers and employees; and

"Whereas, said Board has made a report recommending the creation for the period of the war of a National War Labor Board with the same number of members as, and to be selected by the same agencies that created, the War Labor Conference Board, whose duty it shall be to adjust labor disputes in the manner specified, and in accordance with certain conditions set forth in the said report; and

"Whereas, the Secretary of Labor has, in accordance with the recommendation contained in the report of said War Labor Conference Board dated March 29, 1918, appointed as members of the National War Labor Board Hon. William Howard Taft and Hon. Frank P. Walsh, representatives of the General Public of the United States; Messrs. Loyall A. Osborne, L. F. Loree, W. H. Van Dervoort, C. E. Michael and B. L. Worden, representatives of the employers of the United States; and Messrs. Frank J. Hayes, William L. Hutcheson, William H. Johnston, Victor A. Olander and T. A. Rickert, representatives of the employees of the United States:

"Now, therefore, I, Woodrow Wilson, President of the United States of America, do hereby approve and affirm the said appointments and make due proclamation thereof and of the following for the information and guidance of all concerned:

"The powers, functions, and duties of the National War Labor Board shall be: To settle by mediation and conciliation controversies arising between employers and workers in fields of production necessary for the effective conduct of the war, or in other fields of national activity, delays and obstructions in which might, in the opinion of the National Board, affect detrimentally such production; to provide, by direct appointment, or otherwise, for committees or boards to sit in various parts of the country where controversies arise and secure settlement by local mediation and conciliation; and to summon the parties to controversies for hearing and action by the National Board in event of failure to secure settlement by mediation and conciliation.

"The principles to be observed and the methods to be followed by the National Board in exercising such powers and functions and performing such duties shall be those specified in the said report of the War Labor Conference Board dated March 29, 1918, a complete copy of which is hereunto appended.

"The National Board shall refuse to take cognizance of a controversy between employer and workers in any field of industrial or other activity where there is by agreement or Federal law a means of settlement which has not been invoked.

"And I do hereby urge upon all employers and employees within the United States the necessity of utilizing the means and methods thus provided for the adjustment of all industrial disputes, and request that during the pendency of mediation or arbitration through the said means and methods, there shall be no discontinuance of industrial operations which would result in curtailment of the production of war necessities."

Report referred to in above proclamation as follows:

"The following report and recommendations are presented by the War La Conference Board, representing employers and employees, appointed in acco ance with the suggestion of Secretary of Labor William B. Wilson, to aid the formation of a national labor program for the period of the war:

"Washington, March 29, 191

"Hon. William B. Wilson,

"Secretary of Labor.

"Sir: The commission of representatives of employers and workers, lected in accord with the suggestion of your letter of January 28, 1918, aid in the formulation, in the present emergency, of a national labor progr present to you, as a result of their conferences, the following:

"(a) That there be created, for the period of the war, a National War bor Board of the same number and to be selected in the same manner by the same agencies as the commission making this recommendation:

"Functions and Powers of Board

"(b) That the functions and powers of the national board shall be as lows:

"1. To bring about a settlement, by mediation and conciliation of every troversy arising between employers and workers in the field of product necessary for the effective conduct of the war.

"2. To do the same thing in similar controversies in other fields of tional activity, delays and obstructions in which may, in the opinion of the tional board, affect detrimentally such production.

"3. To provide such machinery by direct appointment, or otherwise, selection of committees or boards to sit in various parts of the country wh controversies arise, to secure settlement by local mediation and conciliatio

"4. To summon the parties to the controversy for hearing and action by national board in case of failure to secure settlement by local mediation conciliation.

"Provision for Umpire

"(c) If the sincere and determined effort of the national board shall fai bring about a voluntary settlement, and the members of the board shall be able unanimously to agree upon a decision, then and in that case and as a last resort, an umpire appointed in the manner provided in the next pa graph shall hear and finally decide the controversy under simple rules procedure prescribed by the national board.

"(d) The members of the national board shall choose the umpire by una mous vote. Failing such choice, the name of the umpire shall be drawn lot from a list of 10 suitable and disinterested persons to be nomina for the purpose by the President of the United States.

"(e) The national board shall hold its regular meetings in the city of Wa ington, with power to meet at any other place convenient for the board the occasion.

"May Alter Methods

"(f) The national board may alter its methods and practice in settlement controversies hereunder, from time to time as experience may suggest.

"(g) The national board shall refuse to take cognizance of a controversy tween employer and workers in any field of industrial or other activity wh there is by agreement or Federal law a means of settlement which has been invoked.

"(h) The place of each member of the national board unavoidably detai from attending one or more of its sessions may be filled by a substitute be named by such member as his regular substitute. The substitute sl have the same representative character as his principal.

"(i) The national board shall have power to appoint a secretary, and create such other clerical organization under it as may be in its judgm necessary for the discharge of its duties.

"(j) The national board may apply to the Secretary of Labor for autho to use the machinery of the department in its work of conciliation and med tion.

"How Action May Be Invoked

"(k) The action of the national board may be invoked in respect to cont versies within its jurisdiction by the Secretary of Labor or by either side a controversy or its duly authorized representative. The board, after su mary consideration, may refuse further hearing if the case is not of s character or importance to justify it.

"(l) In the appointment of committees of its own members to act for board in general or local matters, and in the creation of local committees, employers and the workers shall be equally represented.

"(m) The representatives of the public in the board shall preside alternately at successive sessions of the board or as agreed upon.

"(n) The board in its mediating and conciliatory action, and the umpire in his consideration of a controversy, shall be governed by the following principles:

"*Principles to be Observed*

"There should be no strikes or lockouts during the war.

"Right to Organize

"1. The right of workers to organize in trade-unions and to bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employers in any manner whatsoever.

"2. The right of employers to organize in associations of groups and to bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the workers in any manner whatsoever.

"3. Employers should not discharge workers for membership in trade-unions, nor for legitimate trade-union activities.

"4. The workers, in the exercise of their right to organize, shall not use coercive measures of any kind to induce persons to join their organizations, nor to induce employers to bargain or deal therewith.

"Existing Conditions

"1. In establishments where the union shop exists the same shall continue and the union standards as to wages, hours of labor, and other conditions of employment shall be maintained.

"2. In establishments where union and nonunion men and women now work together, and the employer meets only with employees or representatives engaged in said establishments, the continuance of such condition shall not be deemed a grievance. This declaration, however, is not intended in any manner to deny the right or discourage the practice of the formation of labor unions or the joining of the same by the workers in said establishments, as guaranteed in the last paragraph, nor to prevent the War Labor Board from urging, or any umpire from granting, under the machinery herein provided, improvement of their situation in the matter of wages, hours of labor, or other conditions, as shall be found desirable from time to time.

"3. Established safeguards and regulations for the protection of the health and safety of workers shall not be relaxed.

"Women in Industry

"If it shall become necessary to employ women on work ordinarily performed by men, they must be allowed equal pay for equal work and must not be allotted tasks disproportionate to their strength.

"Hours of Labor

"The basic eight-hour day is recognized as applying in all cases in which existing law requires it. In all other cases the question of hours of labor shall be settled with due regard to governmental necessities and the welfare, health, and proper comfort of the workers.

"Maximum Production

"The maximum production of all war industries should be maintained, and methods of work and operation on the part of employers or workers which operate to delay or limit production, or which have a tendency to artificially increase the cost thereof, should be discouraged.

"Mobilization of Labor

"For the purpose of mobilizing the labor supply with a view to its rapid and effective distribution, a permanent list of the number of skilled and other workers available in different parts of the Nation shall be kept on file by the Department of Labor, the information to be constantly furnished:

"1. By the trade unions.

"2. By State employment bureaus and Federal agencies of like character.

"3. By the managers and operators of industrial establishments throughout the country.

"These agencies should be given opportunity to aid in the distribution of labor, as necessity demands.

"Custom of Localities

"In fixing wages, hours, and conditions of labor regard should always be had to the labor standards, wage scales, and other conditions prevailing in the localities affected.

"The Living Wage

"1. The right of all workers, including common laborers, to a living wag is hereby declared.

"2. In fixing wages minimum rates of pay shall be established which wi insure the subsistence of the worker and his family in health and reasonabl comfort.

Loyall A. Osborne.	Frank J. Hayes.
L. F. Loree.	Wm. L. Hutcheson.
W. H. Van Dervoort.	Thomas J. Savage.
C. E. Michael.	Victor A. Olander.
B. L. Worden.	T. A. Rickert.
Wm. H. Taft.	Frank P. Walsh.

"Statement of Ex-President Taft

"I am profoundly gratified that the conference appointed under the dire tion of Secretary Wilson has reached an agreement upon the plan for a N tional Labor Board to maintain maximum production by settling obstructi controversies between employers and workers. It certainly is not too much t say that it was due to the self-restraint, tact, and earnest patriotic desire the representatives of the employers and the workers to reach a conclusio I can say this with due modesty, because I was not one of such represent tives. Mr. Walsh and I were selected as representatives of the public. Pe sonally it was one of the pleasant experiences of my life. It brought me int contact with leaders of industry and leaders of labor, and my experien gives me a very high respect for both. I am personally indebted to all of t board, but especially to Mr. Walsh, with whom as the only other lawyer the board it was necessary for me to confer frequently in the framing of t points which step by step the conference agreed to. Of course the next que tion is 'Will our plan work?' I hope and think it will, if administered the spirit in which it was formulated and agreed upon.

"Statement of Frank P. Walsh

"The plan submitted represents the best thought of capital and labor as what the policy of our Government with respect to industrial relations du ing the war ought to be. Representing capital were five of the largest emplo ers in the Nation, but one of whom had ever dealt with trade unions, advis and counseled by ex-President Taft, one of the world's proven great admini trators and of the very highest American type of manhood. The represent tives of the unions upon the board were the national officers of unions e gaged in war production and numbering in their ranks considerably over o million men and women.

"The principles declared might be called an industrial chart for the Gover ment securing to the employer maximum production, and to the worker t strongest guaranty of his right to organization and the healthy growth of t principles of democracy as applied to industry, as well as the highest prote tion of his economic welfare while the war for human liberty everywhere being waged. If the plan is adopted by the Government, I am satisfied th there will be a ready and hearty acquiescence therein, by the employers a workers of the country so that the volume of production may flow with t maximum of fruitfulness and speed. This is absolutely essential to an car victory. The industrial army, both planners and workers, which are but ot er names for employers and employees, is second only in importance and n cessity to our forces in the theater of war. Their loyal cooperation and e thusiastic effort will win the war."

Notes of Decisions

Wages of public utility employés.—Where increase in rates was just enough to enable railway to meet increased expense, forced upon it by order of War Labor Board of federal government, prosecutor who offered no evidence to contradict evidence of railway, but contents himself with urging th there was no evidence of the value property of the railway, is in no po tion to complain. O'Brien v. Board Public Utility Com'rs (N. J. Sup.) 1 A. 132.

SPECIAL PREPAREDNESS FUND

Section 1 of Act March 3, 1917, c. 159, entitled "An act to provide increas revenue to defray the expenses of the increased appropriations for the Ar and Navy and the extension of fortifications, and for other purposes," whi section constituted Title I of said act, entitled, "Special Preparedness Fun provided as follows: "The receipts from the tax imposed by Title II a one-third of the receipts from the tax imposed by Title III of this Act sh

constitute a separate fund in the Treasury to be used only for the expenditures incurred under the Act entitled 'An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,' approved August twenty-ninth, nineteen hundred and sixteen; the Act entitled 'An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,' approved August twenty-ninth, nineteen hundred and sixteen; and the Act entitled 'An Act making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes,' approved July sixth, nineteen hundred and sixteen, or any other Act or Acts subsequent thereto making appropriations for Army, Navy, or fortification purposes. In addition to such receipts from the taxes imposed under Titles II and III of this Act, there shall be credited annually, beginning with the fiscal year ending June thirtieth, nineteen hundred and eighteen, to such separate fund, the sum of $175,000,000, such sum being the estimated additional revenue to be derived under the Act entitled "An Act to increase the revenue. and for other purposes,' approved September eighth, nineteen hundred and sixteen, in excess of the revenue to be derived under then existing laws: Provided, That the Secretary of the Treasury may use such fund for other purposes, but such fund shall be reimbursed for any portion thereof so used."

Said section was repealed by Act Oct. 3, 1917, c. 63, § 1301, as follows: "That Title I of the Act entitled 'An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extension of fortifications, and for other purposes,' approved March third, nineteen hundred and seventeen, be, and the same is hereby, repealed."

SHIPS AND WAR MATERIAL

3115 1/16a. (Act July 1, 1918, c. 114.) (a) Purchase in time of war or emergency; definitions.

(a) The word "person" as used in paragraph (b), (c), next here-
er shall include any individual, trustee, firm, association, com-
ny, or corporation. The word "ship" shall include any boat, ves-
l, submarine, or any form of aircraft, and the parts thereof. The
ords "war material" shall include arms, armament, ammunition,
ores, supplies, and equipment for ships and airplanes, and every-
ing required for or in connection with the production thereof.
e word "factory" shall include any factory, workshop, engine
orks, building used for manufacture, assembling, construction, or
y process, and any shipyard or dockyard. The words "United
ates" shall include the Canal Zone and all territory and waters.
ntinental and insular, subject to the jurisdiction of the United
ates. (40 Stat. 719.)

This section was a provision of the Naval appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of Act March 4, 1917, c. 180, 39 Stat. 1192.

3115 1/16b. (Act July 1, 1918, c. 114.) (b) Same; power of President; compliance with orders.

(b) The President is hereby authorized and empowered, within
e limits of the amounts appropriated therefor:
First. To place an order with any person for such ships or war
aterial as the necessities of the Government, to be determined by
e President, may require and which are of the nature, kind, and
antity usually produced or capable of being produced by such
rson. Compliance with all such orders shall be obligatory on
y person to whom such order is given, and such order shall take
ecedence over all other orders and contracts theretofore placed
th such person. If any person owning, leasing, or operating any
ctory equipped for the building or production of ships or war
aterial for the Navy shall refuse or fail to give to the United
ates such preference in the execution of such an order, or shall
use to build, supply, furnish, or manufacture the kind, quantity,
quality of ships of war materials so ordered at such reasonable

price as shall be determined by the President, the President ma take immediate possession of any factory of such person, or of an part thereof without taking possession of the entire factory, an may use the same at such times and in such manner as he may co sider necessary or expedient.

Second. Within the limit of the amounts appropriated therefo to modify or cancel any existing contract for the building, produ tion, or purchase of ships or war material; and if any contracto shall refuse or fail to comply with the contract as so modified, th President may take immediate possession of any factory of suc contractor, or any part thereof without taking possession of th entire factory, and may use the same at such times and in suc manner as he may consider necessary or expedient.

Third. To require the owner or occupier of any factory in whic ships or war material are built or produced to place at the dispos of the United States the whole or any part of the output of suc factory, and within the limit of the amounts appropriated therefo to deliver such output or parts thereof in such quantities and such times as may be specified in the order at such reasonable pric as shall be determined by the President.

Fourth. To requisition and take over for use or operation by th Government any factory, or any part thereof, without taking po session of the entire factory, whether the United States has or ha not any contract with the owner or occupier of such factory.

That all authority granted to the President herein or by hi delegated shall cease six months after a final treaty of peace sha be proclaimed between this Government and the German Empir (40 Stat. 720.)

This section was a part of the Naval appropriation act for the fiscal ye 1919, cited above. It supersedes similar provisions of Act March 4, 1917, 180, 39 Stat. 1193.

Notes of Decisions

Validity.—In view of the paramount war-making power of Congress, National Defense Act, § 120 (Comp. St. 1916, §§ 3115f–3115h), and this section, are valid. Moore & Tierney v. Roxford Knitting Co. (D. C.) 250 F. 278; William Moore Knitting Co. v. Same, Id. 288.

Placing order.—Where a manufacturer voluntarily enters into contracts with the United States, which prevent him from carrying out earlier contracts, he is not relieved from an action of damages for breach; but where, after communication with a member of the Advisory Board of National Defense, he contracted to supply underwear for the Navy, held, that the order must be deemed to have been placed in accordance with National Defense Act, § 120 (Comp. St. 1916, §§ 3115f–3115h), and this section, so the manufacturer was not liable for breach of contracts with private persons, which he was unab to carry out because of the navy co tract. Moore & Tierney v. Roxfo Knitting Co. (D. C.) 250 F. 278; W liam Moore Knitting Co. v. Same, I 288.

Stores and supplies.—Within this se tion, underwear for the crews of w vessels is part of the "stores and su plies." Moore & Tierney v. Roxfo Knitting Co. (D. C.) 250 F. 278; W liam Moore Knitting Co. v. Same, I 288.

Presumptions.—As great publici was given to National Defense A § 120 (Comp. St. 1916, §§ 3115f–3115h and this section, manufacturers a private persons with whom they co tract must be presumed to have co tracted with reference to such lav Moore & Tierney v. Roxford Knitti Co. (D. C.) 250 F. 278; William Moo Knitting Co. v. Same, Id. 288.

§ 3115¹/₁₆c. (Act July 1, 1918, c. 114.) (d) Same; compensatic for requisitioning factories.

(d) Whenever the United States shall cancel or modify ar contract, make use of, assume, occupy, requisition, or take ov any factory or part thereof, or any ships or war material, in accor ance with the provisions of paragraph (b), it shall make just cor pensation therefor, to be determined by the President, and if tl amount thereof so determined by the President is unsatisfactor

the person entitled to receive the same, such person shall be paid venty-five per centum of the amount so determined by the Presi- nt and shall be entitled to sue the United States to recover such rther sum as added to said seventy-five per centum shall make up ch amount as will be just compensation therefor, in the manner ovided for by section twenty-four, paragraph twenty, and section e hundred and forty-five of the Judicial Code. (40 Stat. 720.)

This section was a part of the Naval appropriation act for the fiscal year 1919, cited above. It supersedes similar provision of Act March 4, 1917, c. 180, 39 Stat. 1193.

3115 1/16d. (Act June 15, 1917, c. 29, § 1, as amended, Act April 22, 1918, c. 62, §§ 1, 2, and Act Nov. 4, 1918, c. 201, § 1.) Orders for ships or material; contracts; requisition of plants or outputs; purchase of ships already constructed; taking possession; orders; compensation.

The President is hereby authorized and empowered, within the its of the amounts herein authorized—

(a) To place an order with any person for such ships or ma- ial as the necessities of the Government, to be determined by President, may require during the period of the war and which of the nature, kind and quantity usually produced or capable being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or ure contract for the building, production, or purchase of ships material, or take possession, lease or assume control of, any eet railroad, interurban railroad, or part thereof, cars and other uipment necessary to operation.

(c) To require the owner or occupier of any plant in which ships materials are built or produced to place at the disposal of the ited States the whole or any part of the output of such plant, deliver such output or part thereof in such quantities and at such es as may be specified in the order.

(d) To acquire, construct, establish, or extend any plant, and in rsuance thereof, to purchase, requisition, or otherwise acquire ti- to or use of land improved or unimproved or interest therein; d to requisition and take over for use or operation by the United tes any plant, or any part thereof without taking possession of entire plant, whether the United States has or has not any ntract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the pos- sion of, for use or operation by the United States any ship now nstructed or in the process of construction or hereafter con- ucted, or any part thereof, or charter of such ship.

(f) To take possession of, lease or assume control of, or to ex- d, improve, or increase, or cause to be extended, improved, or reased any street railroad, interurban railroad, or part thereof erever operated, and all cars, appurtenances, and franchises or ts thereof commonly used in connection with the operation reof necessary for the transfer and transportation of employees shipyards or plants engaged or that may hereafter be engaged the construction of ships or equipment therefor for the United tes.

(g) In pursuance of the foregoing powers, or any of them, to ke advance payments or loans of such amounts and upon such ms as the President may deem necessary and proper.

Compliance with all orders issued hereunder shall be obligatory any person to whom such order is given, and such order shall e precedence over all other orders and contracts placed with h person. If any person owning any ship, charter, or material,

or owning, leasing, or operating any plant equipped for the buil ing or production of ships or material shall refuse or fail to comp therewith or to give to the United States such preference in t execution of such order, or shall refuse to build, supply, furnis or manufacture the kind, quantities or qualities of the ships material so ordered, at such reasonable price as shall be determin by the President, the President may take immediate possession any ship, charter, material or plant of such person, or any pa thereof without taking possession of the entire plant, and may u the same at such times and in such manner as he may consider ne essary or expedient.

Whenever the United States shall cancel, modify, suspend requisition any contract, make use of, assume, occupy, requisitio acquire or take over any plant or part thereof, or any ship, chart or material in accordance with the provisions hereof, it shall ma just compensation therefor, to be determined by the President; a if the amount thereof, so determined by the President, is unsat factory to the person entitled to receive the same, such person sh be paid seventy-five per centum of the amount so determined the President and shall be entitled to sue the United States to r cover such further sum as, added to said seventy-five per centu will make up such amount as will be just compensation theref in the manner provided for by section twenty-four, paragraph twe ty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority herel vested in him, and expend the money herein and hereafter appr priated through such agency or agencies as he shall determine fro time to time: Provided, That all money turned over to the Unit States Shipping Board Emergency Fleet Corporation may be e pended as other moneys of said corporation are now expended. A ships constructed, purchased, or requisitioned under authority her in, or heretofore or hereafter acquired by the United States, sh be managed, operated, and disposed of as the President may dire

The word "person" as used herein, shall include any individu trustee, firm, association, company, corporation, or contractor.

The word "ship" shall include any boat, vessel, or submarine a the parts thereof.

The word "material" shall include stores, supplies, and equi ment for ships, and everything required for or in connection wi the production thereof.

The word "plant" shall include any factory, workshop, war house, engine works; buildings used for manufacture, assemblin construction, or any process; any shipyard, dry-dock, marine ra way, pier or dockyard and discharging terminal and any faciliti or improvements connected with any of the foregoing descriptio of property.

The words "United States" shall include all lands and wate subject to the jurisdiction of the United States of America.

All authority granted to the President herein, or by him delega ed, shall cease six months after a final treaty of peace is proclaim between this Government and the German Empire.

The cost of purchasing, requisitioning, or otherwise acquiri plants, material, charters, or ships now constructed or in the cour of construction and the expediting of construction of ships th under construction shall not exceed the sum of $250,000,000, excl sive of the cost of ships turned over to the Army and Navy, the e penditure of which is hereby authorized, and in executing the a thority granted by this Act for such purpose the President sh not expend or obligate the United States to expend more than t

id sum; and there is hereby appropriated for said purpose, $150,-00,000: Provided, That this appropriation shall be reimbursed om available funds under the War and Navy Departments for essels turned over for the exclusive use of those departments or ther of them.

The cost of construction of ships authorized herein shall not ex-eed the sum of $500,000,000, the expenditure of which is hereby uthorized, and in executing the authority granted herein for such urpose the President shall not expend or obligate the United tates to expend more than said sum; and there is hereby appro-riated for said purpose, $250,000,000.

For the operation of the ships herein authorized or in any way quired by the United States, except those acquired for the Army Navy, and for every expenditure incident thereto, $5,000,000. 0 Stat. 182, 535, 1022.)

This section was a provision of the urgent deficiency appropriation act for the military and naval establishments on account of war expenses for the fiscal year 1917, cited above. It was amended by Act April 22, 1918, c. 62, § 1, also cited above, by adding thereto paragraph (f). It was further amended by Act April 22, 1918, c. 62, § 2, also cited above, by adding to paragraph (b), after the word "material," the words "or take possession, lease or assume control," etc., as set forth above.

This section was again amended by Act Nov. 4, 1918, c. 201, § 1, 40 Stat. 1022, cited above, by adding to subdivision (d) of paragraph one, at the beginning thereof, the words: "To acquire, construct, establish, or extend any plant, and in pursuance thereof, to purchase, requisition, or otherwise acquire title to or use of land improved or unimproved or interest therein"; and, by inserting in subdivision (f) of said paragraph one, after the words "or assume control of," the words "or to extend, improve, or increase, or cause to be extended, improved, or increased"; by inserting in said paragraph one a new subdivision, lettered (g); by inserting in paragraph eight, after the words "any shipyard," the words "dry-dock, marine railway, pier"; and by striking out from said paragraph eight, at the end thereof, the words "or other facilities connected therewith," and inserting in lieu thereof the words "and any facilities or improvements connected with any of the foregoing descriptions of property."

Proclamation issued under this section, dated March 20, 1918, as follows:

"Whereas, the law and practice of nations accords to a belligerent power the right in time of military exigency and for purposes essential to the prosecution of war, to take over and utilize neutral vessels lying within its jurisdiction:

"And whereas the Act of Congress of June 15, 1917, entitled, 'An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,' confers upon the President power to take over the possession of any vessel within the jurisdiction of the United States for use or operation by the United States:

"Now therefore I, Woodrow Wilson, President of the United States of America, in accordance with international law and practice, and by virtue of the Act of Congress aforesaid, and as Commander-in-Chief of the Army and Navy of the United States, do hereby find and proclaim that the imperative military needs of the United States require the immediate utilization of vessels of Netherlands registry, now lying within the territorial waters of the United States; and I do therefore authorize and empower the Secretary of the Navy to take over on behalf of the United States the possession of and to employ all such vessels of Netherlands registry as may be necessary for essential purposes connected with the prosecution of the war against the Imperial German Government. The vessels shall be manned, equipped and operated by the Navy Department and the United States Shipping Board, as may be deemed expedient; and the United States Shipping Board shall make to the owners thereof full compensation, in accordance with the principles of international law."

3115 1/16 dd. (Act April 22, 1918, c. 62, § 3.) Same; compensation for property taken.

Upon taking possession of such property, or leasing or assuming ntrol thereof, just compensation shall be made therefor, to be de-mined by the President, and if the amount thereof so determined

by the President is unsatisfactory to the person entitled to recei the same, such person shall be paid seventy-five per centum of t amount so determined by the President and shall be entitled to s the United States of America to recover such further sums added to seventy-five per centum will make up such amount will be just compensation therefor, in the manner provided for section twenty-four, paragraph twenty, and section one hundr and forty-five of the Judicial Code.

The President may exercise the power and authority hereby ves ed in him through the several departments of the Government, a through such agency or agencies as he shall determine from ti to time. (40 Stat. 535.)

This was section 3 of an act entitled "An Act to amend the emergency shi ping fund provisions of the urgent deficiency appropriation Act approved Ju fifteenth, nineteen hundred and seventeen, so as to empower the President a his designated agents to take over certain transportation systems for the tra portation of shipyard and plant employees, and for other purposes," cit above. Sections 1 and 2 of said Act amended provisions of Act June 15, 191 c. 29, § 1, ante, § 3115 1/16d.

§ 3115 1/16ddd. (Act Nov. 4, 1918, c. 201, § 1.) Contracts for a quisition or establishment of plants.

For the acquisition or establishment of plants suitable for shi building or ship maintenance or repair, or of materials essenti thereto, and for the enlargement or extension of such plants as a now or may be hereafter acquired or established, authority is gran ed to enter into contracts or otherwise to incur obligations for n to exceed $34,662,500 in addition to the amounts heretofore appr priated: Provided, That obligations incurred hereunder may b met from appropriations made or to be made for the constructio of ships. (40 Stat. 1022.)

This was a provision of the "First Deficiency Appropriation Act, 1919 cited above.

The United States Shipping Board shall not require payment from the W Department for the charter hire of vessels furnished or to be furnished fro July 1, 1918, to June 30, 1919, when the vessels are owned by the governme by a further provision of First Deficiency Appropriation Act 1919, § 1, post, 8146ddd.

§ 3115 1/16e. (Act July 1, 1918, c. 113, § 1.) Same; powers e tended.

The power and authority granted the President under the eme gency shipping fund in the deficiency appropriation Act approve June fifteenth, nineteen hundred and seventeen, are extended a made applicable to the appropriations and authorizations ma herein under the emergency shipping fund. (40 Stat. 651.)

This section was a provision of the sundry civil appropriation act for t fiscal year 1919, cited above. The appropriations referred to are those ma by said act under the caption "Emergency Shipping Fund." The provisio of the deficiency appropriation act of 1917, referred to, are set forth ante, 3115 1/16d.

CHARTERS, FREIGHT RATES, AND REGULATION OF LOADING, DISCHARGE, MOVEMENT, ETC., OF VESSELS

§ 3115 1/16f. (Act July 18, 1918, c. 157, § 1.) Definitions.

When used in this Act—

(a) The term "United States" includes any State, Territory, District of the United States, the insular possessions, the Can Zone, and all lands or waters subject to the jurisdiction of t United States.

(b) The term "person" includes corporations, partnerships, a sociations, and States, municipalities, and other subdivisions thereo

(c) The term "charter" means any agreement, contract, lease,

ommitment by which the possession or services of a vessel are se-
ured for a period of time, or for one or more voyages, whether or
ot a demise of the vessel. (40 Stat. 913.)

This section, and the sixteen sections next following, were an act entitled "An act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes," cited above.

3115 1/16ff. (Act July 18, 1918, c. 157, § 2.) Exercise of powers through agencies.

The President may exercise the power and authority hereby vest-
l in him through such agency or agencies as he shall determine
om time to time. (40 Stat. 913.)

See note to § 3115 1/16f.

See proclamation of the President, under § 3115 1/16gg, post.

3115 1/16fff. (Act July 18, 1918, c. 157, § 3.) Termination of effective force of act.

All power and authority hereby vested in the President or by
m delegated and all restrictions imposed in this Act shall cease
on the proclamation of the final treaty of peace between the
nited States and the Imperial German Government: Provided,
hat if, in the judgment of the President, the tonnage shortage at
ch time is so severe that national interests of the United States
e jeopardized, he may, by proclamation, extend the provisions of
is Act for a further period of not exceeding nine months. (40
at. 913.)

See note to § 3115 1/16f.

3115 1/16g. (Act July 18, 1918, c. 157, § 4.) Powers additional to other powers.

The powers herein conferred shall be without prejudice to any
wer heretofore conferred on the President, or by him delegated.
0 Stat. 913.)

See note to § 3115 1/16f.

3115 1/16gg. (Act July 18, 1918, c. 157, § 5.) Approval of charters of vessels; proclamations; alteration of charters.

The President may, by proclamation, require that vessels of the
nited States of any specified class or description, or in any speci-
d trade or trades, shall not be chartered unless the instrument in
hich such charter is embodied, and the rates, terms, and condi-
ons thereof are first approved by him. Whenever any vessel is
mprised in any such proclamation, it shall be unlawful to make
y charter thereof, or comply with or perform any of the rates,
rms, or conditions of any charter thereof, or to operate such ves-
l under any charter, without first obtaining the approval thereof
the President.

Whenever any charter of such vessel is approved, it shall be un-
wful, without the approval of the President first obtained, to
ake any alterations in such charter, or additions thereto or dele-
ons therefrom, or to make or receive any payment or do any act
ith respect to such vessel, except in accordance with such charter.
0 Stat. 913.)

See note to § 3115 1/16f.

Proclamation, issued under this section, dated July 29, 1918, as follows, omitting formal portions:

"Now, therefore, I, Woodrow Wilson, President of the United States of America, acting under authority conferred in Section 5 of said Act, do proclaim that hereafter vessels of the United States, being full power driven vessels of 250 tons gross burden, or over, or sailing vessels with or without auxiliary power of 50 tons gross burden, or over, excepting vessels plying exclusively on the inland rivers and canals of the United States, vessels operating in the Great Lakes or other inland waters, and vessels operating exclusively in the coastwise trade of the United States, shall not hereafter be chartered unless

the instrument in which such charter is embodied, and the rates, terms and conditions thereof, are first approved by the President.

"Under authority conferred in Section 8 of said Act, I do further proclaim that the provisions of said Section 5, and of this Proclamation, shall be and they are hereby extended to any vessel of foreign nationality under charter to a citizen of the United States or other person subject to the jurisdiction thereof.

"Under authority conferred in Section 10 of said Act, I do further proclaim that hereafter no citizen of the United States or other person subject to the jurisdiction thereof, shall charter any vessel of foreign nationality unless the instrument in which such charter is embodied and the rates, terms and conditions thereof, are first approved by the President.

"I do hereby designate the United States Shipping Board as the agency through which shall be exercised all power and authority conferred upon the President in Sections 5, 8 and 10 of said Act with respect to the classes or descriptions of vessels and the trades specified in this Proclamation. Such power and authority may be exercised by said United States Shipping Board through such agents or agencies as it may create or designate.

"Nothing contained in this Proclamation shall be deemed to withdraw from the United States Shipping Board or the War Trade Board any authority now exercised, directly or indirectly, over foreign or American vessels, by virtue of powers conferred under Title VII of an Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June 15, 1917."

§ 3115 1/16ggg. (Act July 18, 1918, c. 157, § 6.) Freight rates for transportation on vessels; filing; effect.

The President shall have power to determine, prescribe, and enforce reasonable freight rates and the terms and conditions of affreightment which shall govern the transportation of goods on vessels of the United States, which shall be filed with the United States Shipping Board and open to public inspection. It shall be unlawful to charge or collect any compensation for the transportation of goods on any such vessel, or to enforce or attempt to enforce any terms or conditions of affreightment, or to make or receive any payment or do any act with respect to such transportation, not in accordance with the rates, terms, and conditions so prescribed, anything in any contract, whether heretofore or hereafter made, to the contrary notwithstanding. (40 Stat. 914.)

See note to § 3115 1/16f.

§ 3115 1/16h. (Act July 18, 1918, c. 157, § 7.) Priority of carriage of goods on vessels; regulations as to loading, discharging, lighterage, storage, or fuel.

The President shall have power to prescribe the order of priority in which goods shall be carried or other services performed by any vessel of the United States and to specify goods which shall be carried or to direct the voyage or employment of any such vessel and to make such rules, regulations, and orders, with respect to any such vessel, relating to the loading, discharging, lighterage, or storage of goods, or the procurement of bunker fuel, or any other matter relating to the receiving, handling, transporting, storing, or delivering of goods, as may in his judgment be necessary and proper for the efficient utilization of transportation facilities and the effective conduct of the war. (40 Stat. 914.)

See note to § 3115 1/16f.

§ 3115 1/16hh. (Act July 18, 1918, c. 157, § 8.) Foreign vessels chartered to citizens of United States.

The President may by proclamation extend the provisions of sections five, six, and seven, or any of them, to any vessel of foreign nationality under charter to a citizen of the United States or other person subject to the jurisdiction thereof. (40 Stat. 914.)

See note to § 3115 1/16f.

See proclamation of the President, under § 3115 1/16gg, ante.

§ 3115 1/16hhh. (Act July 18, 1918, c. 157, § 9.) Voyages, protective devices, and prohibition of vessels from danger zones.

The President shall have power to make such rules, regulations, and orders regarding voyages, courses, the use of protective devices, and any other matters affecting the navigation, equipment, fueling, painting, or arming of vessels of the United States as may, in his judgment, be conducive to the protection of such vessels from submarines, mines, or other war perils, any expense so incurred to be allowed for in determining freight and charter rates under this Act. If in his judgment any vessel or class of vessels on account of size, speed, structure, method of propulsion, or for any other reason is unfit for service in any waters which he may declare to be a danger zone, he may, by order, exclude such vessel or vessels from such danger zone. It shall be unlawful to violate any order, rule, or regulation made under this section. Rules, regulations, or orders issued under this section may, in the discretion of the President, be issued confidentially, in which event they shall be binding only on such persons as have notice thereof. (40 Stat. 914.)

See note to § 3115 1/16f.

§ 3115 1/16i. (Act July 18, 1918, c. 157, § 10.) Charters of foreign vessels; approval.

The President may by proclamation require that no citizen of the United States, or other person subject to the jurisdiction thereof, shall charter any vessel of foreign nationality unless the instrument in which such charter is embodied and the rates, terms, and conditions thereof are first approved by the President. After the making of such proclamation it shall be unlawful for any such citizen or person to make any charter of any such vessel, or comply with or perform any of the rates, terms, or conditions of any charter thereof, or to operate any such vessel under any charter, without first obtaining the approval thereof by the President.

Whenever any such charter is approved it shall be unlawful, without the approval of the President first obtained, to make any alterations in such charter or additions thereto or deletions therefrom, or to make or receive any payment or do any act with respect to such vessel, except in accordance with such charter. (40 Stat. 914.)

See note to § 3115 1/16f.
See proclamation of the President, under § 3115 1/16gg, ante.

§ 3115 1/16ii. (Act July 18, 1918, c. 157, § 11.) Requisition of vessels or service thereof; charters therefor; damage to or loss of vessels requisitioned.

The President shall have power to requisition for military purposes, or for any other national purpose connected with or arising out of the present war, the temporary possession of any vessel, or, without taking actual possession, to requisition the services of any vessel and to require the person entitled to the possession thereof to issue to the master such instructions as may be necessary to place the vessel at the service of the United States.

Upon requisitioning such possession or services, or as soon thereafter as the exigencies of the situation may permit, the President shall transmit to the person entitled to the possession of such vessel a charter setting forth the terms which, in his judgment, should govern the relations between the United States and such person and a statement of the rental or rate of hire which, in his judgment, will be just compensation for the use of such vessel and for the services required under the terms of such charter. If such person does not execute and deliver such charter and accept such rental or rate of hire, the President shall pay to such person a sum equal to seventy-five per centum of such rental or rate of hire as the same may from

time to time be due under the terms of the charter, and such person shall be entitled to sue the United States to recover such further sum as added to such seventy-five per centum will make up such amount as will be just compensation for the use of the vessel and for the services required. In the event of loss of or damage to such vessel, due to the operation of a risk assumed by the United States under the terms of such charter (in the event that no valuation of such vessel or mode of compensation has been agreed to), the United States shall pay just compensation for such loss or damage to be determined by the President; and if the amount so determined is not satisfactory to the person entitled to receive just compensation, the President shall pay to such person seventy-five per centum of the amount so determined, and such person shall be entitled to sue the United States to recover such further sum as added to such seventy-five per centum will make up such amount as will be just compensation. (40 Stat. 915.)

See note to § 3115 1/16 f.

§ 3115 1/16 iii. (Act July 18, 1918, c. 157, § 12.) Dry docks, wharves lighterage systems, terminal facilities, or warehouses; priority of use of.

The President shall have power to prescribe the order of priority in which persons in possession of dry docks, wharves, lighterage systems, or loading or discharging terminal facilities in any port of the United States, or warehouses, equipment or terminal railways connected therewith, shall serve vessels and shippers, and to determine, prescribe, and enforce the rates, terms, and conditions charged or required for the furnishing of such services, including stevedoring and handling of cargo, and the handling, dispatching and bunkering of vessels, and to make such rules and regulations with respect to the conduct of any such business as may be necessary and proper. It shall be unlawful to charge, collect, or claim any compensation, or to enforce or attempt to enforce any terms or conditions, or to make or receive any payment or do any act, with respect to any such service not in accordance with the rates, terms and conditions so prescribed, any thing in any contract, whether heretofore or hereafter made, to the contrary notwithstanding. (40 Stat. 915.)

See note to § 3115 1/16 f

§ 3115 1/16 j. (Act July 18, 1918, c. 157, § 13.) Same; lease or requisition of use of; compensation.

The President shall have power to lease or requisition the use or temporary possession of, or to assume temporary control of, any dry docks, wharves, or loading or discharging terminal facilities in any port of the United States, or warehouses, equipment, or terminal railways connected therewith.

Whenever the President requisitions or assumes control of any such property, the United States shall pay just compensation therefor, to be determined by the President. If the amount so determined is not satisfactory to the person entitled to receive just compensation, the President shall pay to such person seventy-five per centum of the amount so determined and such person shall be entitled to sue the United States to recover such further sum as added to such seventy-five per centum will make up such amount as will be just compensation.

Whenever the President acquires by purchase, lease, or requisition, or assumes control of any such property immediate possession may be taken thereof to the extent of the interest acquired therein and such property may be immediately occupied and used without

regard to the provisions of section three hundred and fifty-five of the Revised Statutes.

Nothing in this section shall authorize the President to requisition the title to any such property owned by any State, municipality, or subdivision thereof. (40 Stat. 915.)

See note to § 3115 1/16 f.

§ 3115 1/16 jj. (Act July 18, 1918, c. 157, § 14.) Suits against United States under act.

Whenever by this Act permission is given to sue the United States such suit shall be brought in the manner provided in section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. (40 Stat. 916.)

See note to § 3115 1/16 f.

§ 3115 1/16 jjj. (Act July 18, 1918, c. 157, § 15.) Operation of requisitioned vessels, dry docks, wharves, terminal facilities, or warehouses; disposition of proceeds.

All vessels of which the possession or services are requisitioned under this Act, and all dry docks, wharves, loading or discharging terminal facilities, warehouses, equipment, or terminal railways, of which the President may acquire the title or possession or of which he may assume control under this Act, may be operated and managed as the President may from time to time direct. The net proceeds derived from any activity authorized in this Act or the joint resolution of May twelfth, nineteen hundred and seventeen (Public Numbered Two), or the division entitled "Emergency shipping fund" of the Act of June fifteenth, nineteen hundred and seventeen (Public Numbered Twenty-three), shall be deposited in the Treasury in a separate and distinct fund and may be expended by the President in carrying out the purposes of this Act, and within the limits of the amounts heretofore or hereafter authorized, for the construction, requisitioning, or purchasing of vessels: Provided, That none of the provisions of this Act shall apply to vessels plying exclusively on the inland rivers and canals of the United States. (40 Stat. 916.)

See note to § 3115 1/16 f.

§ 3115 1/16 k. (Act July 18, 1918, c. 157, § 16.) Violations of act; punishment.

Whoever does or attempts to do anything in this Act declared to be unlawful, or willfully violates any rule, regulation, or order issued under authority conferred herein, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both: Provided, That the district court of the Canal Zone shall have jurisdiction of offenses committed against the provisions of this Act within the Canal Zone. (40 Stat. 916.)

See note to § 3115 1/16 f.

§ 3115 1/16 kk. (Act July 18, 1918, c. 157, § 17.) Partial invalidity of act.

If any provision of this Act, or the application of such provision to certain circumstances, is held unconstitutional, the remainder of the Act, and the application of such provision to circumstances other than those as to which it is held unconstitutional, shall not be affected thereby. (40 Stat. 916.)

See note to § 3115 1/16 f.

CONSERVATION OF FOOD

§ 3115⅛a. (Act Aug. 10, 1917, c. 52, § 1.) Authority and power conferred.

For the purpose of more effectually providing for the nationa security and defense and carrying on the war with Germany b gathering authoritative information concerning the food supply, b increasing production, by preventing waste of the food supply, b regulating the distribution thereof, and by such other means an methods as are hereinafter provided, the powers, authorities, du ties, obligations, and prohibitions hereinafter set forth are con ferred and prescribed. (40 Stat. 273.)

This section and the seven sections next following were sections 1–4, 6– and 12 of an act entitled "An act to provide further for the national sec rity and defense by stimulating agriculture and facilitating the distributic of agricultural products," cited above. Section 5 of said act provides for add tional Assistant Secretaries of Agriculture, and is set forth, ante, § 790a.

Act Nov. 21, 1918, c. 212, 40 Stat. 1045, entitled "An Act to enable the Se retary of Agriculture to carry out, during the fiscal year ending June thirtiet nineteen hundred and nineteen, the purposes of the Act entitled 'An Act t provide further for the national security and defense by stimulating agricultu and facilitating the distribution of agricultural products,' and for other pu poses," making appropriations to carry out the provisions of this act, provid that no part of the money therein appropriated shall be used in paying sala or expenses of any man who, on account of employment in which he is or may b engaged under the provisions of the act, has been certified by the Secretary Agriculture or by any other official of the Department of Agriculture for d ferred classification, or by action of any other federal official or authority h been or may be placed in a deferred classification under Act May 18, 1917, 15, 40 Stat. 76, or any act amendatory thereof.

§ 3115⅛aa. (Act Aug. 10, 1917, c. 52, § 2.) Investigation by Se retary of Agriculture.

The Secretary of Agriculture, with the approval of the Presiden is authorized to investigate and ascertain the demand for, the sup ply, consumption, costs, and prices of, and the basic facts relatin to the ownership, production, transportation, manufacture, storag and distribution of, foods, food materials, feeds, seeds, fertilizer agricultural implements and machinery, and any article required i connection with the production, distribution, or utilization of foo It shall be the duty of any person, when requested by the Secr tary of Agriculture, or any agent acting under his instructions, t answer correctly, to the best of his knowledge, under oath or oth erwise, all questions touching his knowledge of any matter au thorized to be investigated under this section, or to produce a books, letters, papers, or documents in his possession, or under hi control, relating to such matter. Any person who shall, within reasonable time to be prescribed by the Secretary of Agricultur not exceeding thirty days from the date of the receipt of the re quest, willfully fail or refuse to answer such questions or to pro duce such books, letters, papers, or documents, or who shall wil fully give any answer that is false or misleading, shall be guilty c a misdemeanor, and upon conviction thereof, shall be punished b a fine not exceeding $1,000 or by imprisonment not exceeding on year, or both. (40 Stat. 273.)

See note to § 3115⅛a, ante.

§ 3115⅛b. (Act Aug. 10, 1917, c. 52, § 3.) Purchase of seeds fo crops.

Whenever the Secretary of Agriculture shall find that there or may be a special need in any restricted area for seeds suitabl for the production of food or feed crops, he is authorized to pu chase, or contract with persons to grow such seeds, to store then

d to furnish them to farmers for cash, at cost, including the ex-
nse of packing and transportation. (40 Stat. 274.)

See note to § 3115⅛a, ante.

3115⅛bb. (Act Aug. 10, 1917, c. 52, § 4.) Cooperation with state and local officials.

The Secretary of Agriculture is authorized to cooperate with
ch State and local officials, and with such public and private
encies, or persons, as he finds necessary, and to make such rules
d regulations as are necessary effectively to carry out the pre-
ding sections of this Act. (40 Stat. 274.)

See note to § 3115⅛a, ante.

3115⅛c. (Act Aug. 10, 1917, c. 52, § 6.) Cooperation of government agencies with Secretary of Agriculture.

The President is authorized to direct any agency or organiza-
on of the Government to cooperate with the Secretary of Agri-
lture in carrying out the purposes of this Act and to coordinate
eir activities so as to avoid any preventable loss or duplication of
ork. (40 Stat. 274.)

See note to § 3115⅛a, ante.

3115⅛cc. (Act Aug. 10, 1917, c. 52, § 7.) Definitions.

Words used in this Act shall be construed to import the plural
the singular as the case demands, and the word "person," wher-
er used in this Act, shall include individuals, partnerships, as-
ciations, and corporations. (40 Stat. 274.)

See note to § 3115⅛a, ante.

3115⅛d. (Act Aug. 10, 1917, c. 52, § 8.) Appropriations.

For the purposes of this Act, the following sums are hereby ap-
opriated, out of any moneys in the Treasury not otherwise ap-
opriated, available immediately and until June thirtieth, nineteen
undred and eighteen: For the prevention, control, and eradica-
on of the diseases and pests of live stock; the enlargement of live-
ock production; and the conservation and utilization of meat,
ultry, dairy, and other animal products, $885,000.

For procuring, storing, and furnishing seeds, as authorized by
ction three of this Act, $2,500,000, and this fund may be used as a
volving fund until June thirtieth, nineteen hundred and eighteen.

For the prevention, control, and eradication of insects and plant
seases injurious to agriculture, and the conservation and utiliza-
on of plant products, $441,000.

For increasing food production and eliminating waste and pro-
oting conservation of food by educational and demonstrational
ethods, through county, district, and urban agents and others,
,348,400.

For gathering authoritative information in connection with the
mand for, and the production, supply, distribution, and utilization
food, and otherwise carrying out the purpose of section two of
is Act; extending and enlarging the market news service; and
eventing waste of food in storage, in transit, or held for sale; ad-
se concerning the market movement or distribution of perishable
oducts; for enabling the Secretary of Agriculture to investigate
d certify to shippers the condition as to soundness of fruits, vege-
bles and other food products, when received at such important
ntral markets as the Secretary of Agriculture may from time to
ne designate and under such rules and regulations as he may pre-
ribe: Provided, That certificates issued by the authorized agents
the department shall be received in all courts as prima facie evi-
nce of the truth of the statements therein contained; and other-
ise carrying out the purposes of this Act, $2,522,000: Provided

further, That the Secretary of Agriculture shall, so far as practica ble, engage the services of women for the work herein provided fo

For miscellaneous items, including the salaries of Assistant Sec retaries appointed under this Act; special work in crop estimating aiding agencies in the various States in supplying farm labor; en larging the informational work of the Department of Agriculture and printing and distributing emergency leaflets, posters, and othe publications requiring quick issue or large editions, $650,000.

Provided, That the employment of any person under the prov sions of this Act shall not exempt any such person from militar service under the provisions of the selective draft law approve May eighteenth, nineteen hundred and seventeen.

It shall be the duty of the Secretary of Agriculture to submit t Congress at its regular session in December of each year a detaile report of the expenditure of all moneys herein appropriated. (4 Stat. 274.)

See note to § 3115⅛a, ante.

§ 3115⅛d. (1). (Act Nov. 21, 1918, c. 212, § 1.) Appropriations revolving fund.

For procuring, storing, and furnishing seeds, as authorized b section three of the Act, the appropriations for said purposes c $2,500,000 in section eight of the Act and $4,000,000 under th heading "Department of Agriculture," in the Act approved Marc twenty-eight, nineteen hundred and eighteen, entitled "An Ac making appropriations to supply urgent deficiencies in appropri tions for the fiscal year ending June thirtieth, nineteen hundre and eighteen, and prior fiscal years, on account of war expense and for other purposes," shall be available until the date when sai Act of August tenth, nineteen hundred and seventeen, shall ceas to be in effect, and any moneys heretofore or hereafter receive by the United States for furnishing such seeds may be used as revolving fund until said date. (40 Stat. 1045.)

This was a provision of an act entitled "An Act to enable the Secretary Agriculture to carry out, during the fiscal year ending June thirtieth, ninete hundred and nineteen, the purposes of the Act entitled 'An Act to provi further for the national security and defense by stimulating agriculture a facilitating the distribution of agricultural products,' and for other purposes cited above.

§ 3115⅛dd. (Act Aug. 10, 1917, c. 52, § 12.) Termination of e fective force of act.

The provisions of this Act shall cease to be in effect when th national emergency resulting from the existing state of war sha have passed, the date of which shall be ascertained and proclaime by the President; but the date when this Act shall cease to be i effect shall not be later than the beginning of the next fiscal yea after the termination, as ascertained by the President, of the prese war between the United States and Germany. (40 Stat. 276.)

See note to § 3115⅛a, ante.

CONSERVATION OF SUPPLY AND CONTROL OF DISTRIBUTION O NECESSARIES

§ 3115⅛e. (Act Aug. 10, 1917, c. 53, § 1.) Authority conferre rules and regulations.

That by reason of the existence of a state of war, it is essential the national security and defense, for the successful prosecution the war, and for the support and maintenance of the Army an Navy, to assure an adequate supply and equitable distribution, an to facilitate the movement, of foods, feeds, fuel including fuel o and natural gas, and fertilizer and fertilizer ingredients, tools, ute

, implements, machinery, and equipment required for the actual ›duction of foods, feeds, and fuel, hereafter in this Act called essaries; to prevent, locally or generally, scarcity, monopoliza-ı, hoarding, injurious speculation, manipulations, and private ıtrols, affecting such supply, distribution, and movement; and to ablish and maintain governmental control of such necessaries ring the war. For such purposes the instrumentalities, means, thods, powers, authorities, duties, obligations, and prohibitions einafter set forth are created, established, conferred, and pre-ibed. The President is authorized to make such regulations and ssue such orders as are essential effectively to carry out the pro-ions of this Act. (40 Stat. 276.)

This section and the twenty-six sections next following were an act entitled "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," cited above.

Notes of Decisions

ffect of regulations.—The war sures embodied in the rules of the ing Division of the United States d Administration did not invalidate prior contracts to purchase flour. J. C. Lysle Milling Co. v. Sharp (Mo. App.) 207 S. W. 72.

115⅛ee. (Act Aug. 10, 1917, c. 53, § 2.) Use of agencies and services of persons without compensation.

n carrying out the purposes of this Act the President is author-d to enter into any voluntary arrangements or agreements, to ate and use any agency or agencies, to accept the services of any son without compensation, to cooperate with any agency or per-, to utilize any department or agency of the Government, and to rdinate their activities so as to avoid any preventable loss or du-ation of effort or funds. (40 Stat. 276.)

See note to § 3115⅛e, ante.

On September 2, 1917, the President made the following executive order:

"Now, in order more effectively to enforce the provisions of said Act, and to avoid preventable duplication of effort and funds, I hereby direct that the Treasury Department shall henceforth supervise, direct and carry into effect the provisions of Sections 15 and 16 of said Act of August 10, 1917, and exercise the powers and authority therein given to the President, subject to such instructions and regulations as may from time to time be issued by the President. For this purpose the Secretary of the Treasury is hereby authorized to assign such duties to the Commissioner of Internal Revenue, the Internal Revenue officers of the United States, and the Division of Customs, and to employ such additional assistants as he may deem necessary therefor.

"The Executive Order dated August 10, 1917, providing for the organization of the United States Food Administration, so far as it is inconsistent herewith, is hereby modified."

115⅛f. (Act Aug. 10, 1917, c. 53, § 3.) Interest of agents or employés in contracts.

Io person acting either as a voluntary or paid agent or employee the United States in any capacity, including an advisory capaci-shall solicit, induce, or attempt to induce any person or officer ıorized to execute or to direct the execution of contracts on be-f of the United States to make any contract or give any order for furnishing to the United States of work, labor, or services, or of terials, supplies, or other property of any kind or character, if h agent or employee has any pecuniary interest in such contract order, or if he or any firm of which he is a member, or corpora-ı, joint-stock company, or association of which he is an officer stockholder, or in the pecuniary profits of which he is directly indirectly interested, shall be a party thereto. Nor shall any ıt or employee make, or permit any committee or other body of ch he is a member to make, or participate in making, any rec-

ommendation concerning such contract or order to any cour board, or commission of the United States, or any member or s ordinate thereof, without making to the best of his knowledge belief a full and complete disclosure in writing to such cour board, commission, or subordinate of any and every pecuniary in est which he may have in such contract or order and of his inte in any firm, corporation, company, or association being a pa thereto. Nor shall he participate in the awarding of such cont or giving such order. Any willful violation of any of the provisi of this section shall be punishable by a fine of not more than $ 000, or by imprisonment of not more than five years, or both: P vided, That the provisions of this section shall not change, alte repeal section forty-one of chapter three hundred and twenty-c Thirty-Fifth Statutes at Large. (40 Stat. 276.)

See note to § 3115⅛e, ante.

§ 3115⅛ff. (Act Aug. 10, 1917, c. 53, § 4.) Destruction, waste, monopolies of necessaries; discriminations, unfair practices unjust charges; conspiracies.

It is hereby made unlawful for any person willfully to dest any necessaries for the purpose of enhancing the price or restrict the supply thereof; knowingly to commit waste or willfully to p mit preventable deterioration of any necessaries in or in connect with their production, manufacture, or distribution; to hoard, defined in section six of this Act, any necessaries; to monopolize attempt to monopolize, either locally or generally, any necessari to engage in any discriminatory and unfair, or any deceptive wasteful practice or device, or to make any unjust or unreasona rate or charge, in handling or dealing in or with any necessari to conspire, combine, agree, or arrange with any other person, to limit the facilities for transporting, producing, harvesting, ma facturing, supplying, storing, or dealing in any necessaries; (b) restrict the supply of any necessaries; (c) to restrict distributio any necessaries; (d) to prevent, limit, or lessen the manufacture production of any necessaries in order to enhance the price ther or (e) to exact excessive prices for any necessaries; or to aid or a the doing of any act made unlawful by this section. (40 Stat. 2

See note to § 3115⅛e, ante.

Notes of Decisions

Unlawful acts as ground for injunction.—The action of employés of a company conducting 140 retail grocery stores in St. Louis, in going on a strike at a time when they knew it would necessitate the closing for the time of a majority of the stores, and would result in the loss of a large quantity of perishable foodstuffs (which in fact amounted to $36,000 in value), in afterward entering the stores and using opprobrious epithets and threatening language to the employés, and in congregating in numbers in front of the stores and using harsh, offensive, and insulting language to customers and intending customers, many of whom were women and children, to enforce a boycott, held unlawful, and to authorize a federal court to grant an injunct under Clayton Act Oct. 15, 1914 323, § 20, on the ground that it "necessary to prevent irreparable jury to property, or to a prop right," of the employer, and also cause such acts were in violation the Food Conservation Act Aug. 1917, c. 53, § 4, which makes it unl ful "knowingly to commit waste willfully to permit preventable d rioration of any necessaries in o connection with their product manufacture, or distribution," or conspire or combine "to restrict dis bution of any necessaries." Kro Grocery & Baking Co. v. Retail Cle International Protective Ass'n (D. 250 F. 890.

§ 3115⅛g. (Act Aug. 10, 1917, c. 53, § 5.) Licenses to impo manufacture, or distribute necessaries.

From time to time, whenever the President shall find it essent to license the importation, manufacture, storage, mining, or d tribution of any necessaries, in order to carry into effect any of t

rposes of this Act, and shall publicly so announce, no person ll, after a date fixed in the announcement, engage in or carry on y such business specified in the announcement of importation, nufacture, storage, mining, or distribution of any necessaries as forth in such announcement, unless he shall secure and hold a ense issued pursuant to this section. The President is authorized issue such licenses and to prescribe regulations for the issuance licenses and requirements for systems of accounts and auditing accounts to be kept by licensees, submission of reports by them, th or without oath or affirmation, and the entry and inspection the President's duly authorized agents of the places of business licensees. Whenever the President shall find that any storage rge, commission, profit, or practice of any licensee is unjust, or reasonable, or discriminatory and unfair, or wasteful, and shall ler such licensee, within a reasonable time fixed in the order, to continue the same, unless such order, which shall recite the facts nd, is revoked or suspended, such licensee shall, within the time scribed in the order, discontinue such unjust, unreasonable, dis- minatory and unfair storage charge, commission, profit, or prac- e. The President may, in lieu of any such unjust, unreasonable, criminatory, and unfair storage charge, commission, profit, or ctice, find what is a just, reasonable, nondiscriminatory and fair rage charge, commission, profit, or practice, and in any proceed- brought in any court such order of the President shall be prima ie evidence. Any person who, without a license issued pursuant this section, or whose license shall have been revoked, knowingly gages in or carries on any business for which a license is required ler this section, or willfully fails or refuses to discontinue any ust, unreasonable, discriminatory and unfair storage charge, nmission, profit, or practice, in accordance with the requirement an order issued under this section, or any regulation prescribed ler this section, shall, upon conviction thereof, be punished by a e not exceeding $5,000, or by imprisonment for not more than o years, or both: Provided, That this section shall not apply to farmer, gardener, cooperative association of farmers or garden- , including live-stock farmers, or other persons with respect to products of any farm, garden, or other land owned, leased, or tivated by him, nor to any retailer with respect to the retail busi- s actually conducted by him, nor to any common carrier, nor ll anything in this section be construed to authorize the fixing or position of a duty or tax upon any article imported into or ex- rted from the United States or any State, Territory, or the Dis- ct of Columbia: Provided further, That for the purposes of this t a retailer shall be deemed to be a person, copartnership, firm, poration, or association not engaging in the wholesale business ose gross sales do not exceed $100,000 per annum. (40 Stat. .)

See note to § 3115⅛e, ante.

The President has issued the following proclamations under this section:

August 14, 1917, declaring:

"It is essential in order to carry into effect the purposes of said Act, to license the storage and distribution of wheat and rye and the manufacture, storage, and distribution of all products derived therefrom to the extent hereinafter specified.

"All persons, firms, corporations and associations engaged in the business of either storing or distributing wheat or rye, as owners, lessees or operators of warehouses or elevators, and all persons, firms, corporations and associations engaged in the business of manufacturing any products derived from wheat or rye, (except those operating mills and manufacturing plants of a daily capacity of one hundred barrels or less, and farmers and cooperative association of farmers) are hereby required to secure on or before September

1st, 1917, a license, which license will be issued under such rules and re lations governing the conduct of the business as may be prescribed.

"Applications for licenses must be made to the United States Food Adm istrator, Washington, D. C., upon forms prepared by him for that purpose.

"Any person, firm, corporation or association, other than those herein fore excepted, who shall engage in, or carry on the business of either st ing or distributing wheat or rye as owners, lessees or operators of wa houses or elevators, or manufacturing any products derived from wheat rye after September 1st, 1917, without first securing such license, will liable to the penalties prescribed by said Act of Congress."

September 7, 1917, declaring:

"All persons, firms, corporations and associations engaged in the busin either of importing sugar, of manufacturing sugar from sugar cane or bee or of refining sugar or of manufacturing sugar syrups or molasses, (exc those specifically exempted by said Act of Congress), are hereby required secure on or before October 1, 1917, a license, which license will be issu under such rules and regulations governing the conduct of the business may be prescribed. Applications for licenses must be made to the Uni States Food Administrator, Washington, D. C., upon forms prepared by h for that purpose."

October 8, 1917, declaring:

"All persons, firms, corporations and associations engaged in the busin either of (1) operating cold storage warehouses (a cold storage warehou for the purposes of this proclamation, being defined as any place artificia or mechanically cooled to or below a temperature of 45 degrees above z Fahrenheit, in which food products are placed and held for thirty days more), (2) operating elevators, warehouses or other places for the storage corn, oats, barley, beans, rice, cotton seed, cottonseed cake, cottonseed m or peanut meal, or (3) importing, manufacturing (including milling, mix or packing), or distributing (including buying and selling) any of the follow commodities:

"Wheat, wheat flour, rye or rye flour,

"Barley or barley flour,

"Oats, oatmeal or rolled oats,

"Corn, corn grits, cornmeal, hominy, corn flour, starch from corn, co oil, corn syrup or glucose,

"Rice, rice flour,

"Dried beans,

"Pea seed or dried peas,

"Cotton seed, cottonseed oil, cottonseed cake or cottonseed meal,

"Peanut oil or peanut meal,

"Soya bean oil, soya bean meal, palm oil or copra oil.

"Oleomargarine, lard, lard substitutes, oleo oil or cooking fats,

"Milk, butter or cheese,

"Condensed, evaporated or powdered milk,

"Fresh, canned or cured beef, pork or mutton,

"Poultry or eggs,

"Fresh or frozen fish,

"Fresh fruits or vegetables,

"Canned: Peas, dried beans, tomatoes, corn, salmon or sardines,

"Dried: Prunes, apples, peaches or raisins,

"Sugar, syrups or molasses,

"Excepting, however,

"(1) Operators of elevators or warehouses handling wheat or rye, and ma ufacturers of the derivative products of wheat or rye, who have already be licensed,

"(2) Importers, manufacturers and refiners of sugar, and manufacture of sugar syrups and molasses, who have already been licensed,

"(3) Retailers whose gross sales of food commodities do not exceed $10 000.00 per annum,

"(4) Common carriers,

"(5) Farmers, gardeners, cooperative associations of farmers or garde ers, including live stock farmers, and other persons with respect to the pro ucts of any farm, garden or other land owned, leased or cultivated by the

"(6) Fishermen whose business does not extend beyond primary consig ment,

"(7) Those dealing in any of the above commodities on any exchange, boa of trade or similar institution as defined by Section 13 of the Act of Augu 10th, 1917, to the extent of their dealings on such exchange or board of trad

"(8) Millers of corn, oats, barley, wheat, rye or rice operating only plan of a daily capacity of less than seventy-five barrels,

"(9) Canners of peas, dried beans, corn, tomatoes, salmon or sardines who gross production does not exceed 5,000 cases per annum,

"(10) Persons slaughtering, packing and distributing fresh, canned or cur

eef, pork or mutton, whose gross sales of such commodities do not exceed 100,000.00 per annum,

"(11) Operators of poultry or egg packing plants, whose gross sales do not xceed $50,000.00 per annum,

"(12) Manufacturers of maple syrup, maple sugar and maple compounds,

"(13) Ginners, buyers, agents, dealers or other handlers of cotton seed ho handle yearly, between September 1st and August 31st, less than one undred and fifty tons of cotton seed,

re hereby required to secure on or before November 1, 1917, a license, which icense will be issued under such rules and regulations governing the conduct f the business as may be prescribed.

"Application for license must be made to the United States Food Adminisration, Washington, D. C., Law Department—License Division, on forms repared by it for that purpose, which may be secured on request."

November 7, 1917, declaring:

"All persons, firms, corporations and associations, who manufacture for ale bread in any form, cake, crackers, biscuits, pastry or other bakery prodcts (excepting, however, those whose consumption of any flour and meal in the anufacture of such products is, in the aggregate, less than ten barrels a onth), are hereby required to procure a license on or before December 10, 917. This includes hotels, restaurants, other public eating places, and clubs, ho serve bread or other bakery products of their own baking."

November 15, 1917, declaring:

"All persons, firms, corporations and associations (except those specifically xempted by said Act of Congress) engaged in the business of importing, anufacturing, storing or distributing white arsenic, or engaged in the busiess of manufacturing other insecticides containing arsenic, are hereby reuired to secure a license on or before November 20, 1917, and all those enaged in the business of importing, storing or distributing other insecticides ontaining arsenic, are hereby required to secure a license on or before Deember 10, 1917, which licenses will be issued under such rules and reguations governing the conduct of the business as may be prescribed.

"The United States Food Administrator shall supervise, direct and carry nto effect the provisions of said Act, and the powers and authority thereby iven to the President as far as the same apply to white arsenic and other nsecticides containing arsenic, and to any and all practices, procedure and egulations authorized or required under the provisions of said Act, includg the issuance, regulation and revocation, in the name of said Food Adminstrator, of licenses under said Act, and in this behalf he shall do and perorm such acts and things as may be authorized or required of him from me to time by direction of the President and under such rules and regulaons as may be prescribed by the President from time to time.

"And for all the purposes aforesaid he may make use of the Governmental rganization called the United States Food Administration."

January 3, 1918, as follows:

"Now, therefore, I, Woodrow Wilson, President of the United States of merica, by virtue of the powers conferred on me by said Act of Congress, ereby find and determine and by this proclamation do announce that it is ssential in order to carry into effect the purposes of said Act, to license the nportation, manufacture, storage and distribution of the following necesaries: ammonia, ammoniacal liquors, and ammonium sulphate from whatever ource produced.

"All persons, firms, corporations and associations (except those specifically xempted by said Act of Congress) engaged in the business of importing, manuacturing, storing or distributing ammonia, ammoniacal liquors or ammonium ulphate from whatever source produced are hereby required to secure a license n or before January 21, 1918, which will be issued under such rules and regutions governing the conduct of the business as may be prescribed.

"The Secretary of Agriculture shall supervise, direct and carry into effect he provisions of said Act, and the powers and authority thereby given to he President as far as the same apply to ammonia, ammoniacal liquors and mmonium sulphate from whatever source produced, and to any and all pracces, procedure and regulations applicable thereto, authorized or required nder the provisions of said Act, and in this behalf he shall do and perform uch acts and things as may be authorized or required of him from time to me by direction of the President and under such rules and regulations as ay be prescribed by the President from time to time. All departments and gencies of the Government are hereby directed to cooperate with the Secreary of Agriculture in the performance of the duties hereinbefore set forth.

"Applications for licenses must be made to the Law Department—License ivision, United States Food Administration, Washington, D. C., upon forms repared for that purpose.

"Any person, firm, corporation or association, other than those hereinbefore xcepted, who shall engage in the business of importing, manufacturing, storing

or distributing ammonia, ammoniacal liquors or ammonium sulphate from whatever source produced after the date aforesaid, without first securing such license, will be liable to the penalties prescribed by said Act of Congress."

January 10, 1918, as follows:

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers conferred upon me by said Act of Congress hereby find and determine and by this proclamation do announce that it is essential, in order to carry into effect the purposes of said Act, to license the importation, manufacture, storage, and distribution of feeds, and certain other food commodities, to the extent hereinafter specified.

"(1) All persons, firms, corporations and associations engaged in the business of

"(a) Importing, manufacturing (including mixing and processing of all kinds), storing or distributing any commercial mixed feeds (including dairy feeds, horse and mule feeds, stock feeds, hog feeds, and poultry feeds);

"(b) Manufacturing feeds from any of the following commodities or importing, storing or distributing any of the following commodities as feeds or feed ingredients:

buckwheat	linseed oil meal
kaffir	beans
milo	peas
feterita	dried brewers grains
broom corn	dried distillers grains
cane seed	dried yeast grains
spelt	malt sprouts
emmer	baled hay
millet	baled alfalfa
sunflower seed	baled straw
grain and seed screenings	animal or fish products or by-products
lentils	tankage;
linseed oil cake	

"(c) Importing, manufacturing, storing or distributing as feed any product or by-products of any of the following commodities except products or by-products whose importation, manufacture, storage or distribution is already covered by a license held by any such person, firm, corporation or association

shelled corn	velvet beans
ear corn	peas
oats	peanuts
barley	copra
wheat	palm nut
rye	palm kernel
buckwheat	sugar beets
sorghum grains	sugar cane
rice	hay
grain and seed screenings	alfalfa
soya beans	straw;

"(2) All persons, firms, corporations, and associations engaged in the business of malting barley, or other grains, or in the business of storing or distributing malt, except brewers of malt liquor who do not malt their own grain

"(3) All persons, firms, corporations and associations engaged in the business of importing, manufacturing or distributing copra, palm kernels, palm kernel oil, and peanuts;

"(4) All salt water fishermen not already licensed by the United States Food Administration, whether fishing independently or on shares, engaged at any period of the year, in the commercial distribution, including catching and selling, of any or all varieties of salt water fish including menhaden and other shellfish and crustaceans;

"(5) All persons, firms, corporations, and associations engaged in the business of canning peas, dried beans, corn, tomatoes, salmon or sardines not already licensed whose gross production is more than five hundred (500) cases per annum, except home canners and bona fide boys' and girls' canning clubs recognized by the Departments of Agriculture of the several States in the United States;

"(6) All persons, firms, corporations and associations, not already licensed engaged in the business of manufacturing tomato soup, tomato catsup, or other tomato products;

"(7) All persons, firms, corporations and associations engaged in the business of manufacturing alimentary paste;

"(8) All persons, firms, corporations and associations, not already licensed engaged in the business of manufacturing any products derived from wheat or rye, Excepting, however,

"(1) Retailers whose gross sales of food commodities do not exceed One Hundred Thousand Dollars ($100,000) per annum;

"(2) Common carriers as to operations necessary to the business of common carriage;

"(3) Farmers, gardeners, cooperative associations of farmers or gardeners, including live stock farmers, and other persons with respect to the products of any farm, garden or other land owned, leased or cultivated by them;

"Are hereby required to secure on or before February 15, 1918, a license, which license will be issued under such rules and regulations governing the conduct of the business as may be prescribed.

"All persons hereby made subject to license must apply, specifying the kind of license desired, to the United States Food Administration, License Division, Washington, D. C., on forms prepared by it for that purpose which may be secured on request.

"Any person, firm, corporation or association other than those hereinbefore excepted, who shall engage in or carry on any business hereinbefore specified after February 15, 1918, without first securing such license, will be liable to the penalty prescribed by said Act of Congress."

January 30, 1918, as follows:

"Now, therefore, I, Woodrow Wilson, President of the United States of of America, by virtue of the powers conferred upon me by said Act of Congress, hereby find and determine and by this proclamation do announce that it is essential, in order to carry into effect the purpose of said Act, to license the importation, manufacture, and distribution of necessaries, to the extent hereinafter specified.

"All persons, firms, corporations, and associations, who manufacture for sale bread in any form, cake, crackers, biscuits, pastry or other bakery products (excepting, however, those already licensed and those whose consumption of any flour and meal in the manufacture of such product is, in the aggregate, less than three barrels a month), are hereby required to procure a license on or before February 4, 1918. This includes hotels, restaurants, other public eating places, and clubs, which serve bread or other bakery products of their own baking.

"All persons, firms, corporations, and associations engaged in the business of importing or distributing green coffee are hereby required to procure a license on or before February 4, 1918.

"Application for license must be made to the United States Food Administration, Washington, D. C., License Division, on forms prepared by it for that purpose, which may be obtained on request.

"Any person, firm, corporation, or association, other than those hereinbefore excepted, who shall engage in or carry on any business hereinbefore specified after February 4, 1918, without first procuring such license, will be liable to the penalty prescribed by said Act of Congress."

January 31, 1918, as follows:

"Now, Therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers conferred upon me by said Act of Congress, hereby find and determine and by this proclamation do announce that it is essential, in order to carry into effect the purposes of said Act, to license the importation, manufacture, storage and distribution of fuel oil to the extent hereinafter specified.

"All persons, firms, corporations, and associations engaged in the business of both manufacturing and distributing fuel oil (including gas oil), whose gross sales of fuel oil (including gas oil) amount to more than One hundred thousand (100,000) barrels per annum, are hereby required to secure on or before February 11, 1918, a license, which license will be issued under such rules and regulations governing the conduct of the business as may be prescribed. Application for license must be made to the United States Fuel Administration, Washington, D. C., License Division.

"Any person, firm, corporation or association other than those hereinbefore excepted who shall engage in or carry on any business hereinbefore specified on and after February 11, 1918, without first securing such license, will be liable to the penalty prescribed by said Act of Congress."

February 25, 1918, as follows:

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers conferred on me by said Act of Congress, hereby find and determine and by this proclamation do announce, that it is essential, in order to carry into effect the purposes of said Act, to license the importation, manufacture, storage and distribution of the following necessaries: fertilizers and fertilizer ingredients, including sulphuric acid, phosphate rock, acid phosphate, bones (raw, ground or steamed), bone black, basic slag, sodium nitrate, ammonia sulphate, cottonseed meal, slaughter house tankage, garbage tankage, castor pomace, fish scrap, base goods, cyanamid, calcium nitrate, dried blood, acidulated leather, hair, hoof meal, horn dust, ground leather, other unacidulated ammoniates, potash salts, cement dust, blast furnace dust, kelp ash, kelp char, dried kelp, wood ashes, cottonseed hull ashes, potassium

nitrate, tobacco waste, mixed fertilizers, sulphur, and all other fertilizers a fertilizer ingredients.

"All individuals, partnerships, associations, and corporations engaged in t business of importing, manufacturing, storing or distributing fertilizers fertilizer ingredients (except those specifically exempted by said Act of Co gress, and except to the extent to which licenses have been issued under t Proclamation of the President of January 3, 1918, relating to ammonia, a moniacal liquors and ammonium sulphate) are hereby required to secure lice es on or before March 20, 1918, which will be issued under such rules and r ulations governing the conduct of the business as may be prescribed.

"The Secretary of Agriculture shall carry into effect the provisions of s Act, and shall supervise and direct the exercise of the powers and author thereby given to the President, as far as the same apply to fertilizers and f tilizer ingredients, and to any and all practices, procedure and regulati applicable thereto, authorized or required under the provisions of said A and in this behalf he shall do and perform such acts and things as may authorized or required of him from time to time by direction of the Presid and under such rules and regulations as may be prescribed by the Presid from time to time. All departments and agencies of the Government are he by directed to cooperate with the Secretary of Agriculture in the performa of the duties hereinbefore set forth.

"Applications for licenses must be made to the Law Department—Lice Division, United States Food Administration, Washington, D. C., upon for prepared for that purpose.

"Any individual, partnership, association or corporation, other than as he inbefore excepted, who shall engage in or carry on the business of importi manufacturing, storing or distributing fertilizers or fertilizer ingredients af the date aforesaid, without first securing such license, will be liable to the p alties prescribed by said Act of Congress."

March 15, 1918, as follows (see, also, §§ 3115⅛ee, 3115⅛q):

"Now, therefore, I, Woodrow Wilson, President of the United States America, by virtue of the powers conferred on me by said act of Congre hereby find and determine and by this proclamation do announce that it essential in order to carry into effect the purposes of said act, to lice certain classes of distributors of coal and coke to the extent hereinaf provided:

"All persons, firms, corporations and associations (except those specifica exempted by said act of Congress, producers and miners of coal and ma facturers of coke, distributing exclusively their own product, and ret dealers, as defined in the United States Fuel Administrator's Order of Oc ber 1, 1917, Publication No. 7) engaged in the business of distributing c or coke as jobber, broker, selling agent, purchasing agent, wholesaler, or any capacity whatsoever, are hereby required to secure a license on or bef April 1, 1918, which license will be issued under such rules and regulati governing the conduct of the business, as may from time to time be prescri by the President of the United States or by the United States Fuel Adm istrator acting by virtue of the authority heretofore as aforesaid, or here delegated to him by the President.

"The United States Fuel Administrator shall supervise, direct and carry i effect the provisions of said act, and the powers and authority thereby gi to the President, as the same applies to coal, coke, and other fuel, and to a and all practices, procedure and regulations authorized or required un the provisions of said act, including issuance, regulation, and revocation, the name of said Fuel Administrator, of licenses under said act, and in t behalf he shall also do and perform such other acts and things as may be thorized or required of him from time to time by direction of the Preside and under such rules and regulations as may be prescribed by the Presid from time to time.

"For all the purposes aforesaid the United States Fuel Administrator n make use of the said governmental organization called the United States F Administration.

"Application for licenses may be made to the United States Fuel Admi trator, Washington, D. C., upon forms prepared by him for that purpose.

"Any person, firm, corporation or association, other than those hereinbef excepted, who, without a license, issued pursuant to this proclamation, whose license shall have been revoked, knowingly engages in or carries after the date aforesaid, any business for which a license is required un this proclamation, will be liable to the penalties prescribed by said act Congress."

May 14, 1918, omitting formal portions, as follows:

"And, whereas, it is essential, in order to carry into effect the provisi of the said act, that the powers conferred upon the President by said act at this time exercised, to the extent hereinafter set forth.

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers conferred upon me by said act of Congress, hereby find and determine and by this proclamation do announce that it is essential, in order to carry into effect the purposes of said act, to license the importation, manufacture, storage and distribution of necessaries, to the extent hereinafter specified.

"All persons, firms, corporations and associations engaged in business as:

"(1) Packers of canned tuna.

"(2) Packers of mild cured, hard cured, salted, dried, smoked, pickled or otherwise preserved salmon.

"(3) Operators of poultry and egg packing plants not already licensed by the United States Food Administration.

"(4) Ginners, buyers, agents, dealers or other handlers of cotton seed not already licensed by the United States Food Administration who handle yearly between September 1 and August 31 more than twenty (20) tons of cotton seed.

"(5) Importers, manufacturers or distributors of cottonseed hulls, and owners of elevators, warehouses or other places for the storage of cottonseed hulls.

"(6) Manufacturers of fermented beverages containing less than one-half of one per cent of alcohol.

"Excepting, however,

"(1) Retailers whose gross sales of food commodities do not exceed one hundred thousand dollars ($100,000) per annum;

"(2) Common carriers as to operations necessary to the business of common carriage;

"(3) Farmers, gardeners, co-operative associations of farmers or gardeners, including live stock farmers, and other persons with respect to the products of any farm, garden or other land owned, leased or cultivated by them;

"Are hereby required to secure on or before June 1, 1918, license, which license will be issued under such rules and regulations governing the conduct of the business as may be prescribed.

"Application for license must be made to the United States Food Administration. Washington, D. C., License Division, on forms prepared by it for that purpose, which may be secured on request.

"Any person, firm, corporation or association who shall carry on any business hereinbefore specified after June 1, 1918, without first securing such license, will be liable to the penalty prescribed by said act of Congress."

May 14, 1918, as follows:

"And whereas it is essential, in order to carry into effect the purposes of said act and in order to secure an adequate supply and equitable distribution and to facilitate the movement of certain necessaries hereafter in this proclamation specified, that the license powers conferred upon the President by said act be at this time exercised to the extent hereinafter set forth;

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers conferred on me by said act of Congress, do hereby find and determine, and by this proclamation do announce, that it is essential, in order to carry into effect the purposes of said act, to license the importation, manufacture, storage, and distribution of certain necessaries, hereinafter called farm equipment, including attachments and repair parts thereof, required for farm use in the actual production of foods and feeds, as follows: Binders, boilers, brooders, bunchers, carriers, carts, cleaners, covers, crushers, cultivators, diggers, distributors, drills, elevators, evaporators, fencing, forges, forks, fountains, gates, graders, grinders, grind-stones, harrows, harvesters, headers, hillers, hitches, hullers, huskers, incubators, jacks, listers, loaders, markers, milkers, mills, mowers, pens, pickers, planters, plows, powers, presses, pullers, pulleys, pulverizers, pumps, racks, rakes, rollers, scales, seeders, separators, shellers, shredders, silos, sleds, slings, sorters, sowers, sprayers, spreaders, stalls, stanchions, tanks, tedders, testers, threshers, towers, tractors, trailers, troughs, trucks, wagons, weeders, weighers, windmills and all other tools, utensils, implements, and machinery, required for farm use in the actual production of foods and feeds.

"All individuals, partnerships, associations, and corporations engaged in the business of importing, manufacturing, storing, or distributing the said farm equipment (except those specifically exempted by said act of Congress), are hereby required to secure licenses on or before June 20, 1918, which will be issued under such rules and regulations governing the conduct of the business as may be prescribed under said act.

"The Secretary of Agriculture shall carry into effect the provisions of said act, and shall supervise and direct the exercise of the powers and authority thereby given to the President, as far as the same apply to the said farm equipment, and to any and all practices, procedure, and regulations applicable thereto, authorized or required under the provisions of said Act, and in this

behalf he shall do and perform such acts and things as may be authoriz or required of him from time to time by direction of the President and und such rules and regulations as may be prescribed by the President from tin to time. All departments and agencies of the government are hereby direct to co-operate with the Secretary of Agriculture in the performance of the d ties hereinbefore set forth.

"Applications for licenses must be made to the Law Department, Licen Division, United States Food Administration, Washington, D. C., upon forn prepared for that purpose.

"Any individual, partnership, association, or corporation, other than hereinbefore excepted, who shall engage in or carry on the business of i porting, manufacturing, storing, or distributing such farm equipment, aft the date aforesaid, without first securing such license, will be liable to t penalty prescribed by said act of Congress."

June 18, 1918, as follows:

"Now, therefore, I, Woodrow Wilson, President of the United States of Ame ca, by virtue of the powers conferred on me by said Act of Congress, hereby fi and determine and by this proclamation do announce, that it is essential, in c der to carry into effect the purposes of said Act, to license the importation, st age, and distribution of certain necessaries, to the extent hereinafter specifie

"All individuals, partnerships, associations, and corporations engaged in t business of conducting or operating, for compensation or profit, places, establis ments, or facilities, commonly known as stockyards, consisting of pens or oth enclosures, and their appurtenances, in which live cattle, sheep, swine, or goa are received, held, or kept for sale, feeding, watering, or shipment, and all i dividuals, partnerships, associations, and corporations, commonly known as co mission men, order buyers, traders, speculators, and scalpers, engaged in t business of handling or dealing in live cattle, sheep, swine, or goats in or in co nection with such stockyards (except as exempted by said Act of Congres are hereby required to secure licenses on or before July 25, 1918, which will issued under such rules and regulations governing the conduct of the busine as may be prescribed under said Act.

"The Secretary of Agriculture shall carry into effect the provisions of s Act, and shall supervise and direct the exercise of the powers and authori thereby given to the President, as far as the same apply to the said business, a to any and all practices, procedure, and regulations applicable thereto, auth ized or required under the provisions of said Act, and in this behalf he shall and perform such acts and things as may be authorized or required of him fr time to time by direction of the President and under such rules and regulatio as may be prescribed by the President from time to time. All departments a agencies of the Government are hereby directed to cooperate with the Sec tary of Agriculture in the performance of the duties hereinbefore set for

"Applications for licenses must be made to the Law Department, License Di sion, United States Food Administration, Washington, D. C., upon forms p pared for that purpose.

"Any individual, partnership, association, or corporation, other than as he inbefore excepted, who shall engage in or carry on any business described here without first securing the license required therefor, will be liable to the penalt prescribed by said Act of Congress."

September 6, 1918, as follows:

"Now, therefore, I, Woodrow Wilson, President of the United States America, by virtue of the powers conferred on me by said act of Congress, he by find and determine, and by this proclamation do announce, that it is ess tial. in order to carry into effect the purposes of said Act, to license the i portation, storage, and distribution of certain necessaries, to the extent he inafter specified.

"All individuals, partnerships, associations, and corporations (except as empted by said Act of Congress and except those required to be licensed p suant to my proclamation dated June 18, 1918, under said Act), engaged in t business of handling, buying, selling, or otherwise dealing in live or dead cat sheep, swine, or goats in or in connection with places, establishments, or fac ties, commonly known as stockyards, consisting of pens or other inclosures, a their appurtenances, in which cattle, sheep, swine, or goats are received, he or kept for sale, feeding, watering, or shipment, are hereby required to sec licenses on or before September 19, 1918, which will be issued under such ru and regulations governing the conduct of the business as may be prescri under said Act.

"The Secretary of Agriculture shall carry into effect the provisions of s Act, and shall supervise and direct the exercise of the powers and author thereby given to the President, as far as the same apply to the said busin including the purchase of live or dead cattle, sheep or swine in or in connect with stockyards, as a part of the business of packing fresh, canned or cured b pork or mutton licensed under the provisions of the Proclamation of Octobe

1917, and to any and all practices, procedure, and regulations applicable thereto authorized or required under the provisions of said Act, and in this behalf he shall do and perform such acts and things as may be authorized or required of him from time to time by direction of the President and under such rules and regulations as may be prescribed by the President from time to time. All departments and agencies of the Government are hereby directed to cooperate with the Secretary of Agriculture in the performance of the duties hereinbefore set forth.

"Applications for licenses must be made to the law department, license division, United States Food Administration, Washington, D. C., upon forms prepared for that purpose.

"Any individual, partnership, association, or corporation, other than as hereinbefore excepted, who shall engage in or carry on any business described herein, without first securing the license required therefor, will be liable to the penalties prescribed by said Act of Congress."

September 16, 1918, as follows:

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers conferred on me by said act of Congress, hereby find and determine and by this proclamation do announce that it is essential in order to carry into effect the purposes of said act, to license the importation, manufacture, storage, and distribution of certain necessaries to the extent hereinafter specified:

"All persons, firms, corporations, and associations engaged in business as:

"(a) Importers of crude oil, fuel oil, gas oil, kerosene or gasoline;

"(b) Manufacturers of fuel oil, gas oil, kerosene or gasoline;

"(c) Distributors or marketers of crude oil, fuel oil, gas oil, kerosene or gasoline;

"(d) Transporters of crude oil, fuel oil, gas oil, kerosene or gasoline (except those specifically exempted by said act of Congress);

"(e) Producers of natural gas who also distribute and market their product;

"(f) Distributors or marketers of natural gas;

"(g) Transporters of natural gas (except those specifically exempted by said act of Congress);

excepting, however, retailers of crude oil, fuel oil, gas oil, kerosene, gasoline or natural gas whose gross sales of crude oil, fuel oil, gas oil, kerosene, gasoline and natural gas do not exceed One hundred thousand dollars ($100,000) per annum, are hereby required to secure on or before October 1, 1918, a license, which license will be issued under such rules and regulations governing the conduct of the business as may from time to time be prescribed by the President of the United States, or by the United States Fuel Administrator acting by virtue of the authority heretofore as aforesaid, or hereby, delegated to him by the President.

"The United States Fuel Administrator shall supervise, direct, and carry into effect the provisions of said Act and the powers and authority thereby given to the President, as the same applies to crude oil, fuel oil, gas oil, kerosene, gasoline or natural gas, and to any and all practices, procedure and regulations authorized or required under the provisions of said act, including issuance, regulation, and revocation, in the name of said Fuel Administrator, of licenses under said act, and in this behalf he shall also do and perform such other acts and things as may be authorized or required of him from time to time by direction of the President, and under such rules and regulations as may be prescribed by the President from time to time.

"For all the purposes aforesaid the United States Fuel Administrator may make use of the said governmental organization called the United States Fuel Administration.

"Application for licenses must be made to the United States Fuel Administration, Oil Division, Washington, D. C., upon forms approved by the Fuel Administrator for that purpose. The holders of existing licenses issued by the United States Fuel Administration are not required to secure a new license.

"Any such person, firm, corporation, or association who, without a license, or whose license shall have been revoked, knowingly engages in or carries on any business for which a license is required under this proclamation, will be liable to the penalties prescribed by said act of Congress."

November 2, 1918, as follows:

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers conferred upon me by said Act of Congress, hereby find and determine and by this proclamation do announce that it is essential in order to carry into effect the purposes of said Act, to license the manufacture, storage and distribution of certain necessaries, to the extent hereinafter specified.

"All persons, firms, corporations and associations, not already so licensed, engaged in the business of milling corn, oats, barley or rice;

"All persons, firms, corporations and associations, not already so lice engaged in the business of importing, manufacturing or distributing cas made from the intestines of animals, for sausage and other food commoditi

"All persons, firms, corporations and associations, not already so lice engaged in the business of manufacturing near-beers or other similar c beverages;

"All persons, firms, corporations and associations, engaged in the busine importing, manufacturing or distributing oat flour, raw corn flakes, buckw or buckwheat products.

"All persons, firms, corporations and associations, not already so licensed gaged in the business of operating warehouses or other places in which food or feed commodities are stored for hire;

"All persons, firms, corporations and associations, not already so licensed gaged in the business of importing, manufacturing or distributing:

Chinese vegetable tallow	Mutton tallow
Coconut stearine	Neatsfoot oil
Coconut olein	Neutral lard
Cod oil	Oleo stearine
Cod liver oil	Oleo stock
Cohune oil	Olive oil
Fish and marine animal oils	Rape seed oil
Lard oil	Sesame oil
Lard stearine	Shea nut oil
Linseed oil	Sunflour seed oil
Mustard seed oil	Tallow

And all other animal or vegetable fats and oils, including hydrogen fats or oils, which are in whole or part edible, or which may be r edible;

"except those specifically exempted by said Act of Congress, are hereby quired to secure, on or before November 15, 1918, a license, which license be issued under such rules and regulations governing the conduct of the b ness as may be prescribed.

"All persons hereby made subject to license must apply, specifying the of license desired, to the United States Food Administration, License Divis Washington, D. C., on forms prepared by it for that purpose, which ma secured on request.

"Any person, firm, corporation or association other than those hereinbe excepted, who shall engage in or carry on any business hereinbefore spec after November 15, 1918, without first securing such license, will be liabl the penalty prescribed by said Act of Congress."

January 7, 1919, as follows:

"Now, Therefore, I, Woodrow Wilson, President of the United State America, by virtue of the powers conferred upon me by said Act of Cong hereby find and determine and by this Proclamation do announce that it i longer essential in order to carry into effect the purposes of the Act that importation, manufacture, storage or distribution of certain necessaries be ject to license, to the extent hereinafter specified.

"Licenses heretofore required for the importation, manufacture, storag distribution of certain necessaries are hereby cancelled, effective January 1919, with respect to the following:

"All persons, firms, corporations or associations engaged in the busines importing, manufacturing (including milling, mixing or packing), storing distributing (including buying and selling)

"Syrups and molasses

"Dried beans, pea seed or dried peas

"Poultry

"Fresh or frozen fish (except salt water fishermen licensed under Procla tion of January 10, 1918)

"Fresh fruits or vegetables

"Canned: peas, dried beans, tomatoes, corn, salmon, sardines or tuna

"Mild cured, hard cured, salted, dried, smoked, pickled or otherwise served salmon

"Dried: prunes, apples, peaches or raisins

"Bread in any form and cake, crackers, biscuit, pastry or other bal products

"White arsenic or other insecticides containing arsenic

"Tomato soup, tomato catsup and other tomato products

"Alimentary paste

"Green coffee

"Casings, made from the intestines of animals, for sausage and for other f commodities

"Feeds from any of the following commodities or any of the following commodities as feed or feed ingredients:

"Buckwheat	Linseed oil cake
"Kaffir	Linseed oil meal
"Milo	Beans
"Feterita	Peas
"Broom corn	Dried brewers' grains
"Cane seed	" distillers' grains
"Spelt	Dried yeast grains
"Emmer	Malt sprouts
"Millet	Baled hay
"Sunflower seed	Baled alfalfa
"Grain and seed	Baled straw
"Screenings	Animal or fish products or by-products.
"Lentils	Tankage

"Products or by-products of any of the following commodities as feeds:

"Shelled corn	Peas
"Ear corn	Peanuts
"Oats	Copra
"Barley	Palm nut
"Rye	Palm kernel
"Buckwheat	Sugar beets
"Sorghum grains	Sugar cane
"Rice	Hay
"Grain and seed screenings	Alfalfa
"Soya beans	Straw
"Velvet beans	

"Peanut meal and soya bean meal
"All commercial mixed feeds
"Condensed, evaporated or powdered milk
"Buckwheat or buckwheat products
"All products of wheat or rye other than wheat or rye flour or wheat mill feeds

"All persons, firms, corporations or associations engaged in the business of distributing the following commodities:

"Oatmeal, rolled oats, oat flour
"Corn grits, corn meal, hominy, corn flour, starch from corn, corn syrup, glucose and raw corn flakes
"Wheat flour and rye flour and barley flour
"Rice and rice flour
"Any feeds produced from wheat
"Raw milk

"All persons, firms, corporations or associations engaged in the business of storing any food or feed commodities except persons, firms, corporations or associations engaged in the business of storing wheat, corn, oats, rye, barley or rice, as owners or lessees or operators of warehouses or elevators, or persons, firms, corporations or associations operating cold storage warehouses.

"All regulations issued under the said Act covering licensees so dealing in these commodities are hereby cancelled, effective January 10, 1919.

"This Proclamation shall in no way affect licenses heretofore required for the importation, manufacture, storage or distribution of necessaries, or regulations governing licensees, other than as indicated above."

January 25, 1919, as follows:

"Now, Therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers conferred upon me by said Act of Congress, hereby find and determine and by this Proclamation do announce that it is no longer essential in order to carry into effect the purposes of the Act that the importation, manufacture, storage or distribution of certain necessaries be subject to license, to the extent hereinafter specified.

"Licenses heretofore required for the importation, manufacture, storage or distribution of certain necessaries are hereby cancelled, effective February 1, 1919, with respect to the following:

"'All persons, firms, corporations or associations heretofore required to be licensed whose license have not already been cancelled engaged in the business of importation, manufacturing (including milling, mixing or packing) or distributing oatmeal, rolled oats, oat flour, corn grits, corn meal, hominy, corn flour, starch corn syrup, glucose or raw corn flakes, rye flour, barley flour, milk, cheese, near beer, or other similar cereal beverages, malt, copra, palm kernels, peanuts, oleomargarine, or butter substitutes, lard substitutes except cotton seed products; animal or vegetable fats or oils except butter, lard and cotton seed oil; all salt water fishermen.'

"All regulations issued under the said Act covering licensees so dealing in these commodities are hereby cancelled, effective February 1, 1919.

"This Proclamation shall in no way affect licenses heretofore required for

the importation manufacture, storage or distribution of necessaries, or r lations governing licensees, other than as indicated above."

February 11, 1919, as follows:

"Now, Therefore, I, Woodrow Wilson, President of the United State America, by virtue of the powers conferred upon me by said Act of Cong hereby find and determine and by this Proclamation do announce that it i longer essential in order to carry into effect the purposes of the Act that importation, manufacture, storage or distribution of certain necessaries subject to license, to the extent hereinafter specified.

"Licenses heretofore required for the importation, manufacture, storag distribution of certain necessaries are hereby cancelled, effective February 1919, with respect to the following:

"All persons, firms, corporations or associations engaged in the busines importation, manufacturing, or distributing butter or eggs, or engaged in business of operating cold storage warehouses.

"All regulations issued under the said Act covering licensees so dea in these commodities are hereby cancelled, effective February 22, 1919.

"This Proclamation shall in no way affect licenses heretofore required the importation, manufacture, storage or distribution of necessaries, or reg tions governing licensees, other than as indicated above."

Notes of Decisions

Failure to procure license.—Vessel being prevented from carrying shipment of varnish to war zone by failure of shipper to procure license, required by President's proclamation, for exportation, carrier could retain prepaid freight under contract, declaring it is to be considered as earned on shipment of goods, and is to be retained by vessel's owners if there be a forced interruption or abandonment of voyage, and exempting carrier from loss by restraint of princes, rulers, and peoples. The Bris, 39 S. Ct. 150, 63 L. Ed. —.

Authority of state commissio Public Service Commission has ju diction, under Public Service Com sions Law, § 66, to regulate the r to consumers within the state, of ural gas; the only act of Congres relation to natural gas, under su vision 18, being this Act Aug. 10, 1 delegating to President power to con disposition thereof under which he taken no action. In re Pennsylv Gas Co. (Sup.) 171 N. Y. S. 1028.

§ 3115⅛gg. (Act Aug. 10, 1917, c. 53, § 6.) Hoarding necessari punishment.

Any person who willfully hoards any necessaries shall upon c viction thereof be fined not exceeding $5,000 or be imprisoned not more than two years, or both. Necessaries shall be deemed be hoarded within the meaning of this Act when either (a) h contracted for, or arranged for by any person in a quantity in cess of his reasonable requirements for use or consumption by h self and dependents for a reasonable time; (b) held, contracted or arranged for by any manufacturer, wholesaler, retailer, or ot dealer in a quantity in excess of the reasonable requirements of business for use or sale by him for a reasonable time, or reasona required to furnish necessaries produced in surplus quantities s sonally throughout the period of scant or no production; or withheld, whether by possession or under any contract or arran ment, from the market by any person for the purpose of unreaso bly increasing or diminishing the price: Provided, That this s tion shall not include or relate to transactions on any exchan board of trade, or similar institution or place of business as desc ed in section thirteen of this Act that may be permitted by the P ident under the authority conferred upon him by said section t teen: Provided, however, That any accumulating or withhold by any farmer or gardener, cooperative association of farmers gardeners, including live-stock farmers, or any other person, of products of any farm, garden, or other land owned, leased, or cu vated by him shall not be deemed to be hoarding within the me ing of this Act. (40 Stat. 278.)

See note to § 3115⅛e, ante.

§ 3115⅛h. (Act Aug. 10, 1917, c. 53, § 7.) Same; seizure by libel.

Whenever any necessaries shall be hoarded as defined in section six they shall be liable to be proceeded against in any district court of the United States within the district where the same are found and seized by a process of libel for condemnation, and if such necessaries shall be adjudged to be hoarded they shall be disposed of by sale in such manner as to provide the most equitable distribution thereof as the court may direct, and the proceeds thereof, less the legal costs and charges, shall be paid to the party entitled thereto. The proceedings of such libel cases shall conform as near as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. It shall be the duty of the United States attorney for the proper district to institute and prosecute any such action upon presentation to him of satisfactory evidence to sustain the same. (40 Stat. 278.)

See note to § 3115⅛e, ante.

§ 3115⅛hh. (Act Aug. 10, 1917, c. 53, § 8.) Destroying necessaries to enhance price.

Any person who willfully destroys any necessaries for the purpose of enhancing the price or restricting the supply thereof shall, upon conviction thereof, be fined not exceeding $5,000 or imprisoned for not more than two years, or both. (40 Stat. 279.)

See note to § 3115⅛e, ante.

§ 3115⅛i. (Act Aug. 10, 1917, c. 53, § 9.) Conspiring to limit distribution of necessaries.

Any person who conspires, combines, agrees, or arranges with any other person (a) to limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any necessaries; (b) to restrict the supply of any necessaries; (c) to restrict the distribution of any necessaries; (d) to prevent, limit, or lessen the manufacture or production of any necessaries in order to enhance the price thereof shall, upon conviction thereof, be fined not exceeding $10,000 or be imprisoned for not more than two years, or both. (40 Stat. 279.)

See note to § 3115⅛e, ante.

§ 3115⅛ii. (Act Aug. 10, 1917, c. 53, § 10.) Requisition of supplies for army or navy.

The President is authorized, from time to time, to requisition foods, feeds, fuels, and other supplies necessary to the support of the Army or the maintenance of the Navy, or any other public use connected with the common defense, and to requisition, or otherwise provide, storage facilities for such supplies; and he shall ascertain and pay a just compensation therefor. If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount as will be just compensation for such necessaries or storage space, and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies: Provided, That nothing in this section, or in the section that follows, shall be construed to require any natural person to furnish to the Government any necessaries held by him and reasonably required for consumption or use by himself and dependents, nor shall any person, firm, corporation, or association be required to furnish to the Government any

seed necessary for the seeding of land owned, leased, or cultiva by them. (40 Stat. 279.)

See note to § 3115⅛e, ante.

§ 3115⅛j. (Act Aug. 10; 1917, c. 53, § 11.) Purchase and sale wheat, flour, meal, beans and potatoes.

The President is authorized from time to time to purchase, store, to provide storage facilities for, and to sell for cash at reas able prices, wheat, flour, meal, beans, and potatoes: Provided, T if any minimum price shall have been theretofore fixed, pursuant the provisions of section fourteen of this Act, then the price p for any such articles so purchased shall not be less than such m mum price. Any moneys received by the United States from or connection with the disposal by the United States of necessa under this section may, in the discretion of the President, be u as a revolving fund for further carrying out the purposes of t section. Any balance of such moneys not used as part of such volving fund shall be covered into the Treasury as miscellane receipts. (40 Stat. 279.)

See note to § 3115⅛e, ante.

§ 3115⅛jj. (Act Aug. 10, 1917, c. 53, § 12.) Same; requisition a operation of factories, packing houses, oil pipe lines, or min

Whenever the President shall find it necessary to secure an a quate supply of necessaries for the support of the Army or maintenance of the Navy, or for any other public use connec with the common defense, he is authorized to requisition and t over, for use or operation by the Government, any factory, pack house, oil pipe line, mine, or other plant, or any part thereof, in through which any necessaries are or may be manufactured, p duced, prepared, or mined, and to operate the same. Whenever President shall determine that the further use or operation by Government of any such factory, mine, or plant, or part thereof not essential for the national security or defense, the same shall restored to the person entitled to the possession thereof. The U ed States shall make just compensation, to be determined by President, for the taking over, use, occupation, and operation by Government of any such factory, mine, or plant, or part thereof. the compensation so determined be unsatisfactory to the person titled to receive the same, such person shall be paid seventy-five centum of the amount so determined by the President, and shall entitled to sue the United States to recover such further sum added to said seventy-five per centum, will make up such amount will be just compensation, in the manner provided by section tw ty-four, paragraph twenty, and section one hundred and forty- of the Judicial Code. The President is authorized to prescribe s regulations as he may deem essential for carrying out the purpo of this section, including the operation of any such factory, mine, plant, or part thereof, the purchase, sale, or other disposition of ticles used, manufactured, produced, prepared, or mined ther and the employment, control, and compensation of employees. A moneys received by the United States from or in connection w the use or operation of any such factory, mine, or plant, or p thereof, may, in the discretion of the President, be used as a revo ing fund for the purpose of the continued use or operation of a such factory, mine, or plant, or part thereof, and the accounts each such factory, mine, plant, or part thereof, shall be kept se rate and distinct. Any balance of such moneys not used as part such revolving fund shall be paid into the Treasury as miscella ous receipts. (40 Stat. 279.)

See note to § 3115⅛e, ante.

§ 3115⅛k. (Act Aug. 10, 1917, c. 53, § 13.) Regulations to prevent "evil practices."

Whenever the President finds it essential in order to prevent undue enhancement, depression, or fluctuation of prices of, or in order to prevent injurious speculation in, or in order to prevent unjust market manipulation or unfair and misleading market quotations of the prices of necessaries, hereafter in this section called evil practices, he is authorized to prescribe such regulations governing, or may either wholly or partly prohibit, operations, practices, and transactions at, on, in, or under the rules of any exchange, board of trade, or similar institution or place of business as he may find essential in order to prevent, correct, or remove such evil practices. Such regulations may require all persons coming within their provisions to keep such records and statements of account, and may require such persons to make such returns, verified under oath or otherwise, as will fully and correctly disclose all transactions at, in, or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, including the making, execution, settlement, and fulfillment thereof. He may also require all persons acting in the capacity of a clearing house, clearing association, or similar institution, for the purpose of clearing, settling, or adjusting transactions at, in, or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions, and he may appoint agents to conduct the investigations necessary to enforce the provisions of this section and all rules and regulations made by him in pursuance thereof, and may fix and pay the compensation of such agents. Any person who willfully violates any regulation made pursuant to this section, or who knowingly engages in any operation, practice, or transaction prohibited pursuant to this section, or who willfully aids or abets any such violation or any such prohibited operation, practice, or transaction, shall, upon conviction thereof, be punished by a fine not exceeding $10,000 or by imprisonment for not more than four years, or both. (40 Stat. 280.)

See note to § 3115⅛e, ante.

§ 3115⅛kk. (Act Aug. 10, 1917, c. 53, § 14.) Stimulation of production of wheat; guaranteed price.

Whenever the President shall find that an emergency exists requiring stimulation of the production of wheat and that it is essential that the producers of wheat, produced within the United States, shall have the benefits of the guaranty provided for in this section, he is authorized, from time to time, seasonably and as far in advance of seeding time as practicable, to determine and fix and to give public notice of what, under specified conditions, is a reasonable guaranteed price for wheat, in order to assure such producers a reasonable profit. The President shall thereupon fix such guaranteed price for each of the official grain standards for wheat as established under the United States grain standards Act, approved August eleventh, nineteen hundred and sixteen. The President shall from time to time establish and promulgate such regulations as he shall deem wise in connection with such guaranteed prices, and in particular governing conditions of delivery and payment, and differences in price for the several standard grades in the principal primary markets of the United States, adopting number one northern spring or its equivalent at the principal interior primary markets as the basis. Thereupon, the Government of the United States hereby guarantees every producer of wheat produced within the

United States, that, upon compliance by him with the regulati prescribed, he shall receive for any wheat produced in reliance u this guarantee within the period, not exceeding eighteen mon prescribed in the notice, a price not less than the guaranteed p therefor as fixed pursuant to this section. In such regulations President shall prescribe the terms and conditions upon which such producer shall be entitled to the benefits of such guara The guaranteed prices for the several standard grades of wheat the crop of nineteen hundred and eighteen, shall be based u number one northern spring or its equivalent at not less than $2 bushel at the principal interior primary markets. This guara shall not be dependent upon the action of the President under first part of this section, but is hereby made absolute and shall binding until May first, nineteen hundred and nineteen. W the President finds that the importation into the United State any wheat produced outside of the United States materially hances or is likely materially to enhance the liabilities of the Un States under guaranties of prices therefor made pursuant to section, and ascertains what rate of duty, added to the then exist rate of duty on wheat and to the value of wheat at the time of portation, would be sufficient to bring the price thereof at which ported up to the price fixed therefor pursuant to the foregoing visions of this section, he shall proclaim such facts, and therea there shall be levied, collected, and paid upon wheat when impo in addition to the then existing rate of duty, the rate of duty so certained; but in no case shall any such rate of duty be fixed a amount which will effect a reduction of the rate of duty upon wh under any then existing tariff law of the United States. For purpose of making any guaranteed price effective under this sect or whenever he deems it essential in order to protect the Gov ment of the United States against material enhancement of its bilities arising out of any guaranty under this section, the Pr dent is authorized also, in his discretion, to purchase any wh for which a guaranteed price shall be fixed under this section, to hold, transport, or store it, or to sell, dispose of, and deliver same to any citizen of the United States or to any Government gaged in war with any country with which the Government of United States is or may be at war or to use the same as supplies any department or agency of the Government of the United Sta Any moneys received by the United States from or in connect with the sale or disposal of wheat under this section may, in discretion of the President, be used as a revolving fund for furt carrying out the purposes of this section. Any balance of s moneys not used as part of such revolving fund shall be cove into the Treasury as miscellaneous receipts. (40 Stat. 281.)

See note to § 3115⅛e, ante.

Proclamation issued under this section, dated February 21, 1918, as lows, omitting formal portions:

"Now, therefore, I, Woodrow Wilson, President of the United States, by tue of the powers conferred upon me by said Act of Congress, and especiall section 14 thereof, do hereby find that an emergency exists requiring stim tion of the production of wheat, and that it is essential that the producer wheat produced within the United States shall have the benefits of the g antee provided for in said section; and, in order to make effective the g antee by Congress for the crop of nineteen hundred and eighteen and to sure such producers a reasonable profit, I do hereby determine and fix, give public notice of reasonable guaranteed prices for No. 1 Northern Sp wheat and its equivalents at the respective principal primary markets as lows, to wit:

"Chicago, Illinois, Two Dollars and Twenty Cents ($2.20) per bushel;

"Omaha, Nebraska, Two Dollars and Fifteen Cents ($2.15) per bushel;

"Kansas City, Missouri, Two Dollars and Fifteen Cents ($2.15) per bus

"St. Louis, Missouri, Two Dollars and Eighteen Cents ($2.18) per bus

"Minneapolis, Minnesota, Two Dollars and Seventeen Cents ($2.17) per bushel;

"Duluth, Minnesota, Two Dollars and Seventeen Cents ($2.17) per bushel;

"New York, New York, Two Dollars and Twenty-eight Cents ($2.28) per bushel;

"Philadelphia, Pennsylvania, Two Dollars and Twenty-seven Cents ($2.27) per bushel;

"Baltimore, Maryland, Two Dollars and Twenty-seven Cents ($2.27) per bushel;

"Newport News, Virginia, Two Dollars and Twenty-seven Cents ($2.27) per bushel;

"Charleston, South Carolina, Two Dollars and Twenty-seven Cents ($2.27) per bushel;

"Savannah, Georgia, Two Dollars and Twenty-seven Cents ($2.27) per bushel;

"Portland, Oregon, Two Dollars and Five Cents ($2.05) per bushel;

"Seattle, Washington, Two Dollars and Five Cents ($2.05) per bushel;

"San Francisco, California, Two Dollars and Ten Cents ($2.10) per bushel;

"Los Angeles, California, Two Dollars and Ten Cents ($2.10) per bushel;

"Galveston, Texas, Two Dollars and Twenty Cents ($2.20) per bushel;

"New Orleans, Louisiana, Two Dollars and Twenty Cents ($2.20) per bushel;

"Salt Lake City, Utah, Two Dollars ($2.00) per bushel;

"Great Falls, Montana, Two Dollars ($2.00) per bushel;

"Spokane, Washington, Two Dollars ($2.00) per bushel;

"Pocatello, Idaho, Two Dollars ($2.00) per bushel;

"Fort Worth, Texas, Two Dollars and Nine Cents ($2.09) per bushel;

"Oklahoma City, Oklahoma, Two Dollars and Five Cents ($2.05) per bushel;

"Wichita, Kansas, Two Dollars and Eight Cents ($2.08) per bushel,

"and that the guaranteed price for the other grades established under the United States Grain Standards Act approved August 11, 1916, based on said price for No. 1 Northern Spring wheat at the respective principal primary markets of the United States above mentioned, will assure the producers of wheat produced within the United States a reasonable profit; the guaranteed prices in the principal primary markets above mentioned being fixed by adopting No. 1 Northern Spring wheat or its equivalents at the principal interior markets, as the basis.

"For the purposes of such guaranty only, I hereby fix the guaranteed prices at the respective principal primary markets above mentioned for the following grades of wheat, to wit: No. 1 Northern Spring, No. 1 Hard Winter, No. 1 Red Winter, No. 1 Durum, No. 1 Hard White. The guaranteed prices at the respective principal primary markets aforesaid of all other grades of wheat established under the United States Grain Standards Act approved August 11, 1916, shall be based on the above guaranteed prices and bear just relation thereto.

"The sums thus determined and fixed are guaranteed by the Government of the United States at the respective principal primary markets of the United States above mentioned, to every producer of wheat of any grade so established under the United States Grain Standards Act, upon the condition that said wheat is harvested in the United States during the year 1918, and offered for sale before the first day of June, 1919, to such agent or employee of the United States, or other person as may be hereafter designated, at any one of the above-mentioned cities, which are, for the purposes of this Act, hereby declared to be the principal primary markets of the United States, and provided that such producer complies with all regulations which may be hereafter promulgated in regard to said guaranty by the President of the United States."

Further proclamation, issued under this section, dated September 2, 1918, as follows, omitting formal portions:

"Now therefore, I, Woodrow Wilson, President of the United States, by virtue of the powers conferred upon me by said Act of Congress, and especially, by section 14 thereof, do hereby find that an emergency exists requiring stimulation of the production of wheat, and that it is essential that the producers of wheat produced within the United States shall have the benefits of the guarantee provided for in said section; and, in order to make effective the guarantee by Congress for the crop of nineteen hundred and nineteen and to assure such producers a reasonable profit, I do hereby determine and fix, and give public notice of reasonable guaranteed prices for No. 1 Northern Spring wheat and its equivalents at the respective principal primary markets as follows, to-wit:

"New York, New York, Two Dollars and Thirty-Nine and a Half Cents ($2.39½) per bushel.

"Philadelphia, Pennsylvania, Two Dollars and Thirty-Nine Cents ($2.39) per bushel.

"Baltimore, Maryland, Two Dollars and Thirty-Eight and Three-Quarter Cents ($2.38¾) per bushel.

"Newport News, Virginia, Two Dollars and Thirty-Eight and Three-Quarte Cents ($2.38¾) per bushel.

"Duluth, Minnesota, Two Dollars and Twenty-Two and One-Half Cent ($2.22½) per bushel.

"Minneapolis, Minnesota, Two Dollars and Twenty-One and One-Half Cent ($2.21½) per bushel.

"Chicago, Illinois, Two Dollars and Twenty-Six Cents ($2.26) per bushel.

"St. Louis, Missouri, Two Dollars and Twenty-Four Cents ($2.24) per bushel

"Kansas City, Missouri, Two Dollars and Eighteen Cents ($2.18) per bushel

"Omaha, Nebraska, Two Dollars and Eighteen Cents ($2.18) per bushel.

"New Orleans, Louisiana, Two Dollars and Twenty-Eight Cents ($2.28) pe bushel.

"Galveston, Texas, Two Dollars and Twenty-Eight Cents ($2.28) per bushel

"Tacoma, Washington, Two Dollars and Twenty Cents ($2.20) per bushel.

"Seattle, Washington, Two Dollars and Twenty Cents ($2.20) per bushel.

"Portland, Oregon, Two Dollars and Twenty Cents ($2.20) per bushel.

"Astoria, Oregon, Two Dollars and Twenty Cents ($2.20) per bushel.

"San Francisco, California, Two Dollars and Twenty Cents ($2.20) pe bushel.

"Los Angeles, California, Two Dollars and Twenty Cents ($2.20) per bushel

"Salt Lake City, Utah, Two Dollars ($2.00) per bushel.

"Great Falls, Montana, Two Dollars ($2.00) per bushel.

"Pocatello, Idaho, Two Dollars ($2.00) per bushel.

"Spokane, Washington, Two Dollars ($2.00) per bushel.

"And that the guaranteed price for the other grades established under th United States Grain Standards Act approved August 11, 1916, based on sai price for No. 1 Northern Spring wheat at the respective principal primar markets of the United States above mentioned, will assure the producers o wheat produced within the United States a reasonable profit; the guarantee prices in the principal primary markets above mentioned being fixed by adoptin No. 1 Northern Spring wheat or its equivalents at the principal interior mar kets, as the basis.

"For the purposes of such guaranty only, I hereby fix the guaranteed price at the respective principal primary markets above mentioned for the followin grades of wheat, to-wit: No. 1 Northern Spring, No. 1 Hard Winter, No. 1 Re Winter, No. 1 Durum, No. 1 Hard White. The guaranteed prices at the re spective principal primary markets aforesaid of all other grades of wheat estab lished under the United States Grain Standards Act approved August 11, 1916 shall be based on the above guaranteed prices and bear just relation thereto.

"The sums thus determined and fixed are guaranteed by the Government o the United States at the respective principal primary markets of the Unite States above mentioned, to every producer of wheat of any grade so establishe under the United States Grain Standards Act, upon the condition that sai wheat is harvested in the United States during the year 1919, and offered fo sale before the first day of June, 1920, to such agent or employé of the Unite States, or other person as may be hereafter designated, at any one of the above mentioned cities, which are hereby declared to be the principal primary market of the United States, and provided that such producer complies with all regu lations which may be hereafter promulgated in regard to said guaranty by th President of the United States."

§ 3115⅛kk(1). (Act March 4, 1919, c. 125, § 1.) Guaranteed pric of wheat; powers conferred.

By reason of the emergency growing out of the war with Ger many and in order to carry out the guaranties made to producer of wheat of the crops of nineteen hundred and eighteen and nine teen hundred and nineteen by the two proclamations of the Pres ident of the United States dated, respectively, the twenty-first da of February, nineteen hundred and eighteen, and the second da of September, nineteen hundred and eighteen, pursuant to sectio fourteen of "An Act to provide further for the national security an defense by encouraging the production, conserving the supply, an controlling the distribution of food products and fuel," approve August tenth, nineteen hundred and seventeen, and to protect th United States against undue enhancement of its liabilities unde said guaranties, the instrumentalities, means, methods, power, au thorities, duties, obligations, and prohibitions hereinafter set fort are created, established, conferred, and prescribed. (40 Stat. 1348.

This section, and the ten sections next following, are an act entitled "A act to enable the President to carry out the price guaranties made to produce

of wheat of the crops of nineteen hundred and eighteen and nineteen hundred and nineteen and to protect the United States against undue enhancement of its liabilities thereunder," cited above, except a part of section six thereof which amends the Cotton Futures Act (see post, §§ 6309e, 6309ee, 6309i).

§ 3115⅛kk(2). (Act March 4, 1919, c. 125, § 2.) Same; regulations; agencies.

In carrying out the provisions of this Act, the President is authorized to make such regulations and issue such orders as may be necessary, to enter into any voluntary arrangements or agreements, to use any existing agency or agencies, to accept the services of any person without compensation, to cooperate with any agency or person, to utilize any department or agency of the Government, including the Food Administration Grain Corporation, and to coordinate their activities so as to avoid any preventable loss or duplication of effort or funds. (40 Stat. 1348.)

See note to § 3115⅛kk(1), ante.

§ 3115⅛kk(3). (Act March 4, 1919, c. 125, § 3.) Same; purchase of wheat crops; determination of price to be paid.

Whenever the President shall find it essential, in order to carry out the guaranties aforesaid or to protect the United States against undue enhancement of its liabilities thereunder, he is authorized to buy, or contract for the purchase of, wheat of said crops of nineteen hundred and eighteen and nineteen hundred and nineteen at the places designated for the delivery of the same by the President's proclamations or such other places as he may designate, for cash at the said guaranteed prices and he is authorized thereafter to buy or contract for the purchase of, for cash, or sell, consign, or contract for the sale of, for cash or on credit, wheat of the said crops of nineteen hundred and eighteen and nineteen hundred and nineteen and flour produced therefrom at the said guaranteed prices or at such other prices and on such terms or conditions as may be necessary to carry out the purposes of this Act and to enable the people of the United States to purchase wheat products at a reasonable price; to make reasonable compensation for handling, transportation, insurance, and other charges with respect to wheat and wheat flour of said crops, and for storage thereof in elevators, on farms, and elsewhere; to take such steps, to make such arrangements, and to adopt such methods as may be necessary to maintain and assure an adequate and continuous flow of wheat and wheat flour in the channels of trade, including the protection or indemnification of millers, wholesalers, jobbers, bakers, and retail merchants who purchase in carload lots against actual loss by them on account of abnormal fluctuations in the price of wheat and wheat flour of said crops due to the action of the Government; to borrow such sums of money as may be secured by the property or other assets acquired under this Act; to lease and utilize storage facilities for, and to store, such wheat and wheat flour; and to requisition storage facilities therefor. He shall ascertain and pay a just compensation for facilities so requisitioned. If the compensation so ascertained by the President be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of such amount and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation for such facilities; and jurisdiction is hereby conferred on the United States district courts to hear and determine all such controversies. (40 Stat. 1348.)

See note to § 3115⅛kk(1), ante.

§ 3115⅛kk(4). (Act March 4, 1919, c. 125, § 4.) Same; evil practices; regulations respecting; offenses.

Whenever, the President shall find that operations, practices, or transactions, at, on, in, or under the rules of any exchange, board of trade, or similar institution or place of business cause or are likely to cause unjust market manipulation, or unfair and misleading market quotations, or undue depression or fluctuation of the prices of, or injurious speculation in, wheat or wheat flour, hereafter in this section called evil practices, calculated or likely to enhance unduly the liabilities of the United States under the said guaranties, he is authorized to prescribe such regulations governing, or may either wholly or partly prohibit, operations, practices, and transactions in wheat or wheat flour at, on, in, or under the rules of any exchange, board of trade, or similar institution or place of business as he may find essential in order to prevent, correct, or remove such evil practices. Such regulations may require all persons coming within their provisions to keep such records and statements of account, and may require such persons to make such returns, verified under oath or otherwise, as will fully and correctly disclose all transactions in wheat or wheat flour at, in, on, or under the rules of any such exchange, board of trade, or similar institution or place of business, including the making, execution, settlement, and fulfillment thereof. He may also require all persons acting in the capacity of a clearing house, clearing association, or similar institution, for the purpose of clearing, settling, or adjusting transactions in wheat or wheat flour at, in, on, or under the rules of any such exchange, board of trade, or similar institution or place of business, to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions, and he may appoint agents to conduct all investigations necessary to enforce the provisions of this section and all regulations made by him in pursuance thereof and may fix and pay the compensation of such agents. Any person who intentionally and willfully violates any regulation made pursuant to this section, or who knowingly engages in any operation, practice, or transaction prohibited pursuant to this section or who intentionally and willfully aids or abets in such violation or any such prohibited operation, practice, or transaction, shall be deemed guilty of a misdemeanor, and upon conviction thereof, be punished by a fine not exceeding $1,000. The President shall take seasonable steps to provide for and to permit the establishment of a free and open market for the purchase, sale, and handling of wheat and wheat products upon the expiration of this Act. (40 Stat. 1349.)

See note to § 3115⅛kk(1), ante.

§ 3115⅛kk(5). (Act March 4, 1919, c. 125, § 5.) Same; licenses for importation, exportation, manufacture, storage, or distribution of wheat or wheat flour; revocation; offenses.

From time to time, whenever the President shall find it essential to license any business of importation, exportation, manufacture, storage, or distribution of wheat or wheat flour in order to carry into effect any of the purposes of this Act, and shall publicly so announce: Provided, That as between the two articles mentioned preference shall be given to the exportation of flour, except when the public interest would, in the judgment of the President, be injuriously affected thereby, no person shall, after a date fixed in the announcement, engage in or carry on any such business specified in the announcement unless he shall secure and hold a license issued pursuant to this section. The regulations prescribed pursuant

to this Act may include requirements with respect to the issuance of licenses, systems of accounts, and the auditing of accounts to be kept by licensees, submission of reports by them, with or without oath or affirmation, and the entry and inspection by the President's duly authorized agents of the places of business of licensees. It shall be unlawful for any licensee to engage in any unfairly discriminatory or deceptive practice or device, or to make any unjust or unreasonable rate, commission, or charge, or to exact an unreasonable profit or price, in handling or dealing in or with wheat, wheat flour, bran, and shorts. Whenever the President shall find that any practice, device, rate, commission, charge, profit, or price of any licensee is unfairly discriminatory, deceptive, unjust, or unreasonable, and shall order such licensee, within a reasonable time fixed in the order, to discontinue the same, unless such order, which shall recite the facts found, is revoked or suspended, such licensee shall, within the time prescribed in the order, discontinue such unfairly discriminatory, deceptive, unjust, or unreasonable practice, device, rate, commission, charge, profit, or price. The President may, in lieu of any such unfairly discriminatory, deceptive, unjust, or unreasonable practice, device, rate, commission, charge, profit, or price, find what is a fair, just, or reasonable practice, device, rate, commission, charge, profit, or price, and in any proceeding brought in any court such order of the President shall be prima facie evidence. Any person who, without a license issued pursuant to this section, or whose license shall have been suspended or revoked after opportunity to be heard has been afforded him, intentionally and knowingly engages in or carries on any business for which a license is required under this section, or intentionally and willfully fails or refuses to discontinue any unfairly discriminatory, deceptive, unjust, or unreasonable practice, device, rate, commission, charge, profit, or price, in accordance with the requirement of an order issued under this section, or intentionally and willfully violates any regulation prescribed under this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof be punished by a fine not exceeding $1,000: Provided, That this section shall not apply to any farmer or cooperative association of farmers or other person with respect to the products of any farm or other land owned, leased, or cultivated by him, nor to any common carrier. (40 Stat. 1350.)

See note to § 3115⅛kk(1), ante.

§ 3115⅛kk(6). (Act March 4, 1919, c. 125, § 6.) Same; regulation of importation or exportation of wheat or wheat flour; offenses; duties on imports.

Whenever the President shall find it essential in carrying out the guaranties aforesaid, or to protect the United States against undue enhancement of its liabilities thereunder, and shall make proclamation thereof, it shall be unlawful to import into the United States from any country named in such proclamation, or to export from or ship from or take out of the United States to any country named in such proclamation, wheat, semolina, or wheat flour, except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: Provided, That no preference shall be given to the ports of one State over those of another. Any person who shall import, export, ship, or take out of the United States, or attempt to import, export, ship, or take out of the United States, any wheat, semolina, or wheat flour in violation of this section or of any regulation or order made hereunder, shall be deemed guilty of a mis-

demeanor, and, upon conviction thereof be punished by a fine n exceeding $1,000: Provided further, That when the President fin that the importation into the United States of any wheat, sem lina, or wheat flour produced outside of the United States ma rially enhances or is likely materially to enhance the liabilities the United States under guaranties of prices therefor made pu suant to law, and ascertains what rate of duty, added to the th existing rate of duty on wheat and to the value of wheat, semoli or wheat flour at the time of importation, would be sufficient bring the price thereof at which imported up to the price fix or prevailing under the direction of the President under or pu suant to this Act, he shall proclaim such facts, and thereaft there shall be levied, collected, and paid upon wheat, semolina, wheat flour when imported in addition to the then existing ra of duty the rate of duty so ascertained; but in no case shall a such rate of duty be fixed at an amount which will effect a duction of the rate of duty upon wheat, semolina, or wheat flo under any then existing tariff law of the United States. (40 St 1350.)

See note to § 3115⅛kk(1), ante.

§ 3115⅛kk(7). (Act March 4, 1919, c. 125, § 7.) Same; false sta ments; interference with enforcement of act.

Any person who intentionally and knowingly makes any fa statement or representation to any officer, agent, or employee the United States engaged in the performance of any duty und this Act, or falsely represents to any of said persons that the whe he offers for sale was grown as a part of the nineteen hundred a eighteen or nineteen hundred and nineteen crops for the purpo of securing any of the benefits of the aforesaid guaranties, or a person who willfully assaults, resists, impedes, or interferes wi any officer, agent, or employee of the United States in the exec tion of any duty authorized to be performed by or pursuant to th Act, or any person who intentionally and knowingly violates a regulation issued pursuant to this Act, except as otherwise ma punishable in this Act, shall be deemed guilty of a misdemean and, upon conviction thereof, shall be punished by a fine not e ceeding $1,000. (40 Stat. 1352.)

See note to § 3115⅛kk(1), ante.

§ 3115⅛kk(8). (Act March 4, 1919, c. 125, § 8.) Same; approp ation; revolving fund.

For carrying out the aforesaid guaranties and otherwise for t purposes of this Act, there is hereby appropriated, out of any mo eys in the Treasury not otherwise appropriated, to be available du ing the time this Act is in effect, the sum of $1,000,000,000, which not to exceed $3,000,000 may be used for such administrati expenses, including the payment of such rent, the expense, inclu ing postage, of such printing and publications, the purchase such material and equipment, and the employment of such pe sons and means, in the District of Columbia and elsewhere, the President may deem essential. Any moneys received by t United States from or in connection with the disposal by t United States of wheat or wheat flour under this Act may, in t discretion of the President, be used as a revolving fund for fu ther carrying out the purposes of this Act. Any balance of su moneys not used as part of such revolving fund shall be cover into the Treasury as miscellaneous receipts: Provided, That part of this appropriation shall be used to pay rent in the Distr of Columbia. (40 Stat. 1352.)

See note to § 3115⅛kk(1), ante.

§ 3115½kk(9). (Act March 4, 1919, c. 125, § 9.) Same; statements of receipts and disbursements; report of proceedings under act.

An itemized statement, covering all receipts and disbursements under this Act, shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives on or before the twenty-fifth day of each month after the taking effect of this Act, covering the business of the preceding month, and such statement shall be subject to public inspection. Not later than the expiration of sixty days after this Act shall cease to be in effect the President shall cause a detailed report to be made to the Congress of all proceedings had under this Act. Such report shall, in addition to other matters, contain an account of all persons appointed or employed, the salary or compensation paid or allowed each, the aggregate amount of the different kinds of property purchased or requisitioned, the use and disposition made of such property, and a statement of all receipts and expenditures, together with a statement showing the general character and estimated value of all property then on hand, and the aggregate amount and character of all claims against the United States growing out of this Act. (40 Stat. 1353.)

See note to § 3115½kk(1), ante.

§ 3115½kk(10). (Act March 4, 1919, c. 125, § 10.) Same; definitions; act of agent deemed act of principal.

Words used in this Act shall be construed to import the plural or singular, as the case demands; the word "person," wherever used in this Act, shall include individuals, partnerships, associations, and corporations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any individual, partnership, association, or corporation, within the scope of his employment or office, shall in every case also be deemed the act, omission, or failure of such individual, partnership, association, or corporation, as well as that of the person. (40 Stat. 1353.)

See note to § 3115½kk(1), ante.

§ 3115½kk(11). (Act March 4, 1919, c. 125, § 11.) Same; termination of effective force of act.

The provisions of this Act shall cease to be in effect whenever the President shall find that the emergency growing out of the war with Germany has passed and that the further execution of the provisions of this Act is no longer necessary for its purposes, the date of which termination shall be ascertained and proclaimed by the President; but the date when this Act shall cease to be in effect shall not be later than the first day of June, nineteen hundred and twenty: Provided, That after June first, nineteen hundred and twenty, neither the President nor any agency acting for him shall purchase or contract for the purchase of wheat or flour. The termination of this Act shall not affect any act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this Act; but all rights and liabilities under this Act arising before its termination shall continue and may be enforced in the same manner as if the Act had not terminated. Any offense committed and all penalties or liabilities incurred prior to such termination may be prosecuted or punished in the same manner and with the same effect as if this Act had not been terminated. (40 Stat. 1353.)

See note to § 3115½kk(1), ante.

§ 3115⅛l. (Act Aug. 10, 1917, c. 53, § 15.) Distilled spirits; u of food or food materials in production of.

From and after thirty days from the date of the approval of t Act no foods, fruits, food materials, or feeds shall be used in t production of distilled spirits for beverage purposes: Provid That under such rules, regulations, and bonds as the President m prescribe, such materials may be used in the production of distil spirits exclusively for other than beverage purposes, or for the f tification of pure sweet wines as defined by the Act entitled "A Act to increase the revenue, and for other purposes," approved Se tember eighth, nineteen hundred and sixteen. Nor shall there imported into the United States any distilled spirits. Whenev the President shall find that limitation, regulation, or prohibition the use of foods, fruits, food materials, or feeds in the production malt or vinous liquors for beverage purposes, or that reduction the alcoholic content of any such malt or vinous liquor, is essenti in order to assure an adequate and continuous supply of food, that the national security and defense will be subserved thereby, is authorized, from time to time, to prescribe and give public noti of the extent of the limitation, regulation, prohibition, or reducti so necessitated. Whenever such notice shall have been given a shall remain unrevoked no person shall, after a reasonable time pr scribed in such notice, use any foods, fruits, food materials, or fee in the production of malt or vinous liquors, or import any such li uors except under license issued by the President and in complian with rules and regulations determined by him governing the pr duction and importation of such liquors and the alcoholic conte thereof. Any person who willfully violates the provisions of th section, or who shall use any foods, fruits, food materials, or fee in the production of malt or vinous liquors, or who shall import a such liquors, without first obtaining a license so to do when a cense is required under this section, or who shall violate any ru or regulation made under this section, shall be punished by a fi not exceeding $5,000, or by imprisonment for not more than tw years, or both: Provided further, That nothing in this section sh be construed to authorize the licensing of the manufacture of vino or malt liquors in any State, Territory, or the District of Columb or any civil subdivision thereof, where the manufacture of such nous or malt liquor is prohibited. (40 Stat. 282.)

See note to § 3115⅛e, ante.

Proclamation issued under this section, dated December 8, 1917, as follo omitting formal portions:

"Now, therefore, I, Woodrow Wilson, President of the United States America, by virtue of the powers conferred on me by said Act of Congre do hereby find and determine that the national security and defense will subserved by the limitation of the amount of foods, fruits, food materials a feeds used in the production of malt liquor, and by reduction of the alcoho content of malt liquor produced in the United States. And by this proclam tion I prescribe and give public notice that on and after January 1, 1918, total amount of foods, fruits, food materials and feeds used by any person the production of malt liquor shall not exceed seventy per cent (70%) of average consumption of any such foods, fruits, food materials or feeds in production of such malt liquor by such person during the period from Janu 1, 1917 to January 1, 1918, the unit of time to be fixed by regulation; a that on and after January 1, 1918, no malt liquor except ale and porter sh be produced in the United States containing more than two and three-quart per cent. (2.75%) of alcohol by weight.

"No person shall, after January 1, 1918, use any foods, fruits, food materi or feeds in the production of malt liquor, unless he secures a license so to to be issued by the Commissioner of Internal Revenue, and complies w rules and regulations to be hereafter promulgated governing the product of such liquor and the alcoholic content thereof; and no person shall imp any such liquor except under license to be issued by the Division of Custo

Treasury Department, and in compliance with any rules and regulations governing the importation of such liquors which may be promulgated."

Further proclamation, issued under this section, dated September 16, 1918, as follows, omitting formal portions:

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers conferred on me by said Act of Congress, do hereby find and determine that it is essential, in order to assure an adequate and continuous supply of food, in order to subserve the national security and defense, and because of the increasing requirements of war industries for the fuel productive capacity of the country, the strain upon transportation to serve such industries, and the shortage of labor caused by the necessity of increasing the armed forces of the United States, that the use of sugar, glucose, corn, rice or any other foods, fruits, food materials and feeds in the production of malt liquors including near beer, for beverage purposes be prohibited. And by this Proclamation I prescribe and give public notice that on and after October 1st, 1918, no person shall use any sugar, glucose, corn, rice or any other foods, fruits, food materials or feeds, except malt now already made, and hops, in the production of malt liquors, including near beer, for beverage purposes, whether or not such malt liquors contain alcohol, and on and after December 1st, 1918, no person shall use any sugar, glucose, corn, rice or any other foods, fruits, food materials or feeds, including malt, in the production of malt liquors, including near beer, for beverage purposes, whether or not such malt liquors contain alcohol."

Further proclamation under this section, dated January 30, 1919, modifying the proclamation dated September 16, 1918, to the extent of permitting the use of grain in the manufacture of beverages which are not intoxicating.

§ 3115⅛*ll*. (Act Aug. 10, 1917, c. 53, § 16.) Same; taking over by government.

The President is authorized and directed to commandeer any or all distilled spirits in bond or in stock at the date of the approval of this Act for redistillation, in so far as such redistillation may be necessary to meet the requirements of the Government in the manufacture of munitions and other military and hospital supplies, or in so far as such redistillation would dispense with the necessity of utilizing products and materials suitable for foods and feeds in the future manufacture of distilled spirits for the purposes herein enumerated. The President shall determine and pay a just compensation for the distilled spirits so commandeered; and if the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation for such spirits, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. (40 Stat. 282.)

See note to § 3115⅛e, ante.

§ 3115⅛m. (Act Aug. 10, 1917, c. 53, § 17.) Interference, etc., with officers.

Every person who willfully assaults, resists, impedes, or interferes with any officer, employee, or agent of the United States in the execution of any duty authorized to be performed by or pursuant to this Act shall upon conviction thereof be fined not exceeding $1,000 or be imprisoned for not more than one year, or both. (40 Stat. 283.)

See note to § 3115⅛e, ante.

§ 3115⅛mm. (Act Aug. 10, 1917, c. 53, § 18.) Appropriation for expenses.

The sum of $2,500,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available until June thirtieth, nineteen hundred and eighteen, for the payment of such rent, the expense, including postage, of such printing and publications, the purchase of such material and equipment, and the em-

ployment of such persons and means, in the city of Washington an elsewhere, as the President may deem essential. (40 Stat. 283.)

See note to § 3115⅛e, ante.

§ 3115⅛n. (Act Aug. 10, 1917, c. 53, § 19.) Appropriation for oth er uses.

For the purposes of this Act the sum of $150,000,000 is hereb appropriated, out of any moneys in the Treasury not otherwise ap propriated, to be available during the time this Act is in effect Provided, That no part of this appropriation shall be expended fo the purposes described in the preceding section: Provided furthe That itemized statements covering all purchases and disbursement under this and the preceding section shall be filed with the Secre tary of the Senate and the Clerk of the House of Representative on or before the twenty-fifth day of each month after the taking e fect of this Act, covering the business of the preceding month, an said statements shall be subject to public inspection. (40 Sta 283.)

See note to § 3115⅛e, ante.

§ 3115⅛nn. (Act Aug. 10, 1917, c. 53, § 20.) Exemption of em ployés from military service.

The employment of any person under the provisions of this Ac shall not exempt any such person from military service under th provisions of the selective draft law approved May eighteenth, nine teen hundred and seventeen. (40 Stat. 283.)

See note to § 3115⅛e, ante.

§ 3115⅛o. (Act Aug. 10, 1917, c. 53, § 21.) Annual reports of pro ceedings.

The President shall cause a detailed report to be made to th Congress on the first day of January each year of all proceeding had under this Act during the year preceding. Such report shall, i addition to other matters, contain an account of all persons appoin ed or employed, the salary or compensation paid or allowed eac the aggregate amount of the different kinds of property purchase or requisitioned, the use and disposition made of such property, an a statement of all receipts, payments, and expenditures, togeth with a statement showing the general character, and estimated va ue of all property then on hand, and the aggregate amount and cha acter of all claims against the United States growing out of th Act. (40 Stat. 283.)

See note to § 3115⅛e, ante.

§ 3115⅛oo. (Act Aug. 10, 1917, c. 53, § 22.) Partial invalidity act.

If any clause, sentence, paragraph, or part of this Act shall f any reason be adjudged by any court of competent jurisdiction be invalid, such judgment shall not affect, impair, or invalidate th remainder thereof, but shall be confined in its operation to th clause, sentence, paragraph, or part thereof, directly involved in th controversy in which such judgment shall have been rendere (40 Stat. 283.)

See note to § 3115⅛e, ante.

§ 3115⅛p. (Act Aug. 10, 1917, c. 53, § 23.) Definitions.

Words used in this Act shall be construed to import the plural the singular, as the case demands. The word "person," wherev used in this Act, shall include individuals, partnerships, associ tions, and corporations. When construing and enforcing the pr visions of this Act, the act, omission, or failure of any official, ager or other person acting for or employed by any partnership, associ tion, or corporation within the scope of his employment or offi

shall, in every case, also be deemed the act, omission, or failure of such partnership, association, or corporation as well as that of the person. (40 Stat. 283.)

See note to § 3115⅛e, ante.

§ 3115⅛pp. (Act Aug. 10, 1917, c. 53, § 24.) Time when act ceases to be operative.

The provisions of this Act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated, and the fact and date of such termination shall be ascertained and proclaimed by the President; but the termination of this Act shall not affect any act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this Act; but all rights and liabilities under this Act arising before its termination shall continue and may be enforced in the same manner as if the Act had not terminated. Any offense committed and all penalties, forfeitures, or liabilities incurred prior to such termination may be prosecuted or punished in the same manner and with the same effect as if this Act had not been terminated. (40 Stat. 283.)

See note to § 3115⅛e, ante.

§ 3115⅛q. (Act Aug. 10, 1917, c. 53, § 25.) Coal and coke; fixing prices; regulation of production and sale.

The President of the United States shall be, and he is hereby, authorized and empowered, whenever and wherever in his judgment necessary for the efficient prosecution of the war, to fix the price of coal and coke, wherever and whenever sold, either by producer or dealer, to establish rules for the regulation of and to regulate the method of production, sale, shipment, distribution, apportionment, or storage thereof among dealers and consumers, domestic or foreign; said authority and power may be exercised by him in each case through the agency of the Federal Trade Commission during the war or for such part of said time as in his judgment may be necessary.

That if, in the opinion of the President, any such producer or dealer fails or neglects to conform to such prices or regulations, or to conduct his business efficiently under the regulations and control of the President as aforesaid, or conducts it in a manner prejudicial to the public interest, then the President is hereby authorized and empowered in every such case to requisition and take over the plant, business, and all appurtenances thereof belonging to such producer or dealer as a going concern, and to operate or cause the same to be operated in such manner and through such agency as he may direct during the period of the war or for such part of said time as in his judgment may be necessary.

That any producer or dealer whose plant, business, and appurtenances shall have been requisitioned or taken over by the President shall be paid a just compensation for the use thereof during the period that the same may be requisitioned or taken over as aforesaid, which compensation the President shall fix or cause to be fixed by the Federal Trade Commission.

That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, para-

graph twenty, and section one hundred and forty-five of the
dicial Code.

While operating or causing to be operated any such plants
business, the President is authorized to prescribe such regulati
as he may deem essential for the employment, control, and c
pensation of the employees necessary to conduct the same.

Or if the President of the United States shall be of the opir
that he can thereby better provide for the common defense,
whenever, in his judgment, it shall be necessary for the effic
prosecution of the war, then he is hereby authorized and emp
ered to require any or all producers of coal and coke, either in
special area or in any special coal fields, or in the entire Un
States, to sell their products only to the United States through
agency to be designated by the President, such agency to re
late the resale of such coal and coke, and the prices thereof, an
establish rules for the regulation of and to regulate the meth
of production, shipment, distribution, apportionment, or stor
thereof among dealers and consumers, domestic or foreign, an
make payment of the purchase price thereof to the producers th
of, or to the person or persons legally entitled to said payment.

That within fifteen days after notice from the agency so de
nated to any producer of coal and coke that his, or its, outpu
to be so purchased by the United States as hereinbefore descril
such producer shall cease shipments of said product upon his c
account and shall transmit to such agency all orders received
unfilled or partially unfilled, showing the exact extent to wh
shipments have been made thereon, and thereafter all shipme
shall be made only on authority of the agency designated by
President, and thereafter no such producer shall sell any of s
products except to the United States through such agency,
the said agency alone is hereby authorized and empowered to p
chase during the continuance of the requirement the output of s
producers.

That the prices to be paid for such products so purchased s
be based upon a fair and just profit over and above the cost
production, including proper maintenance and depletion char
the reasonableness of such profits and cost of production to be
termined by the Federal Trade Commission, and if the prices fi
by the said commission of any such product purchased by
United States as hereinbefore described be unsatisfactory to
person or persons entitled to the same, such person or persons s
be paid seventy-five per centum of the amount so determined,
shall be entitled to sue the United States to recover such furt
sum as, added to said seventy-five per centum, will make up s
amount as will be just compensation in the manner provided
section twenty-four, paragraph twenty, and section one hund
and forty-five of the Judicial Code.

All such products so sold to the United States shall be sold
the United States at such uniform prices, quality considered,
may be practicable and as may be determined by said agency
be just and fair.

Any moneys received by the United States for the sale of
such coal and coke may, in the discretion of the President, be u
as a revolving fund for further carrying out the purposes of
section. Any moneys not so used shall be covered into the Tr
ury as miscellaneous receipts.

That when directed by the President, the Federal Trade C
mission is hereby required to proceed to make full inquiry, giv
such notice as it may deem practicable, into the cost of produc

under reasonably efficient management at the various places of production the following commodities, to wit, coal and coke.

The books, correspondence, records, and papers in any way referring to transactions of any kind relating to the mining, production, sale, or distribution of all mine operators or other persons whose coal and coke have or may become subject to this section, and the books, correspondence, records, and papers of any person applying for the purchase of coal and coke from the United States shall at all times be subject to inspection by the said agency, and such person or persons shall promptly furnish said agency any data or information relating to the business of such person or persons which said agency may call for, and said agency is hereby authorized to procure the information in reference to the business of such coal-mine operators and producers of coke and customers therefor in the manner provided for in sections six and nine of the Act of Congress approved September twenty-sixth, nineteen hundred and fourteen, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and said agency is hereby authorized and empowered to exercise all the powers granted to the Federal Trade Commission by said Act for the carrying out of the purposes of this section.

Having completed its inquiry respecting any commodity in any locality, it shall, if the President has decided to fix the prices at which any such commodity shall be sold by producers and dealers generally, fix and publish maximum prices for both producers of and dealers in any such commodity, which maximum prices shall be observed by all producers and dealers until further action thereon is taken by the commission.

In fixing maximum prices for producers the commission shall allow the cost of production, including the expense of operation, maintenance, depreciation, and depletion, and shall add thereto a just and reasonable profit.

In fixing such prices for dealers, the commission shall allow the cost to the dealer and shall add thereto a just and reasonable sum for his profit in the transaction.

The maximum prices so fixed and published shall not be construed as invalidating any contract in which prices are fixed, made in good faith, prior to the establishment and publication of maximum prices by the commission.

Whoever shall, with knowledge that the prices of any such commodity have been fixed as herein provided, ask, demand, or receive a higher price, or whoever shall, with knowledge that the regulations have been prescribed as herein provided, violate or refuse to conform to any of the same, shall, upon conviction, be punished by fine of not more than $5,000, or by imprisonment for not more than two years, or both. Each independent transaction shall constitute a separate offense.

Nothing in this section shall be construed as restricting or modifying in any manner the right the Government of the United States may have in its own behalf or in behalf of any other Government at war with Germany to purchase, requisition, or take over any such commodities for the equipment, maintenance, or support of armed forces at any price or upon any terms that may be agreed upon or otherwise lawfully determined. (40 Stat. 284.)

See note to § 3115⅛e, ante.

Existing contracts.—Under contract for sale of coal, a clause of which read, "Not binding until accepted by us; all sales subject to causes beyond our control," and "All quotations for immediate consideration, subject to advance by the Fuel Administrator," where defendants accepted the order, but did not immediately make it effective at the mines, and pending the delay the Fuel Administrator advanced price, de-

fendants could not charge plaintiff the amount of the advance. Carlisle v. Lovell (Sup.) 171 N. Y. S. 996.

Under this act and the President's proclamations thereunder of August 21, 1917, fixing prices of coal by producer, and of August 23, 1917, fixing margin of jobber's profit on bituminous coal at 15 cents per ton, jobber's contract of August 28, 1917, allowing him profit of 15 cents per net ton, is valid, although coal had been purchased from producers prior to August 21st at a price in excess of that allowed by President's orders of that date, and ruling of Fuel Administration dated October 6, 1917, provided that jobber should not sell coal for which he had contracted at the time of fixing of price thereof for a price in excess of such fixed price plus jobber's allowed commission. Majestic Coal Co. v. W. J. Bush & Co. (City Ct.) 171 N. Y. S. 662.

Retail dealer and jobber.—Where plaintiff, who contracted to purchase coal from defendant, testified that he physically handled coal, placing it in the bins of the customers, he was a "retail dealer," within the Fuel Administrator's definition, as "every person physically handling and delivering coal to customers," and not a "coal jobber," defined as "a person who purchases and resells coal to coal dealers or consumers without physically handling it through his own vehicles, dock, trestle, or yard." Carlisle v. Lovell (Sup.) 171 N. Y. S. 996.

Jurisdiction of courts.—Though, in the absence of diversity of citizenship, the federal court has no jurisdiction to determine the controversy of price at which defendant agreed to furnish coal to plaintiff, a public service corporation, it will, leaving that question for courts of competent jurisdiction, enjoin defendant from disobeying the order of a state fuel administrator, under this act, to continue furnishing plaintiff with coal till the act by its terms ceases to be in effect, by termination of the war, ascertained and proclaimed by the President. West Virginia Traction & Electric Co. v. Elm Grove Mining Co. (D. C.) 253 F. 772.

§ 3115⅛qq. (Act Aug. 10, 1917, c. 53, § 26.) Holding or destroying necessaries.

Any person carrying on or employed in commerce among the several States, or with foreign nations, or with or in the Territories or other possessions of the United States in any article suitable for human food, fuel, or other necessaries of life, who, either in his individual capacity or as an officer, agent, or employee of a corporation or member of a partnership carrying on or employed in such trade, shall store, acquire, or hold, or who shall destroy or make away with any such article for the purpose of limiting the supply thereof to the public or affecting the market price thereof in such commerce, whether temporarily or otherwise, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both: Provided, That any storing or holding by any farmer, gardener, or other person of the products of any farm, garden, or other land cultivated by him shall not be deemed to be a storing or holding within the meaning of this Act: Provided further, That farmers and fruit growers, cooperative and other exchanges, or societies of a similar character shall not be included within the provisions of this section: Provided further, That this section shall not be construed to prohibit the holding or accumulating of any such article by any such person in a quantity not in excess of the reasonable requirements of his business for a reasonable time or in a quantity reasonably required to furnish said articles produced in surplus quantities seasonally throughout the period of scant or no production. Nothing contained in this section shall be construed to repeal the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, commonly known as the Sherman Antitrust Act. (40 Stat. 286.)

See note to § 3115⅛e, ante.

§ 3115 1/8r. (Act Aug. 10, 1917, c. 53, § 27.) Nitrate of soda; acquisition and sale of stocks of.

The President is authorized to procure, or aid in procuring, such stocks of nitrate of soda as he may determine to be necessary, and find available, for increasing agricultural production during the calendar years nineteen hundred and seventeen and eighteen, and to dispose of the same for cash at cost, including all expenses connected therewith. For carrying out the purposes of this section, there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available immediately and until expended, the sum of $10,000,000, or so much thereof as may be necessary, and the President is authorized to make such regulations, and to use such means and agencies of the Government, as, in his discretion, he may deem best. The proceeds arising from the disposition of the nitrate of soda shall go into the Treasury as miscellaneous receipts. (40 Stat. 287.)

See note to § 3115 1/8e, ante.

§ 3115 1/8rr. (Act Oct. 1, 1918, c. 178.) Same; proceeds of sale of; revolving fund.

Any moneys heretofore or hereafter received by the United States for or in connection with the disposition of nitrate of soda pursuant to section twenty-seven of the Act entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," approved August tenth, nineteen hundred and seventeen (Public, Numbered Forty-one, Sixty-fifth Congress), are hereby appropriated and made immediately available as a revolving fund to be used at the discretion of the President for further carrying out the purposes of said section and extending its operation throughout the period of the existing war as ascertained and proclaimed in accordance with section twenty-four of said Act: Provided, That nothing herein shall be construed as prohibiting the sale or disposal of any nitrates remaining on hand at the time of, or contracted for previous to, such termination. (40 Stat. 1007.)

This was a provision of the agricultural appropriation act for the fiscal year 1919, cited above.

Act March 28, 1918, c. 28, § 1, 40 Stat. 494, contained a similar provision except for the proviso.

CONSERVATION OF SUPPLY AND CONTROL OF DISTRIBUTION OF ORES, METALS AND MINERALS

§ 3115 1/8s. (Act Oct. 5, 1918, c. 181, § 1.) Ores, metals and minerals included as necessaries.

By reason of the existence of a state of war, it is essential to the national security and defense, and to the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to provide for an adequate and increased supply, to facilitate the production, and to provide for an equitable, economical, and better distribution of the following-named mineral substances and ores, minerals, intermediate metallurgical products, metals, alloys, and chemical compounds thereof, to wit: Antimony, ar-

senic, ball clay, bismuth, bromine, cerium, chalk, chromium, cobalt, corundum, emery, fluorspar, ferrosilicon, fullers' earth, graphite, grinding pebbles, iridium, kaolin, magnesite, manganese, mercury, mica, molybdenum, osmium, sodium, platinum, palladium, paper clay, phosphorus, potassium, pyrites, radium, sulphur, thorium, tin, titanium, tungsten, uranium, vanadium, and zirconium, as the President may, from time to time, determine to be necessary for the purposes aforesaid, and as to which there is at the time of such determination, a present or prospective inadequacy of supply. The aforesaid substances mentioned in any such determination are hereinafter referred to as necessaries. (40 Stat. 1009.)

This section, and the eleven sections next following, were an act entitled "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply," cited above.

§ 3115⅛ss. (Act Oct. 5, 1918, c. 181, § 2.) Purchase, production and distribution of necessaries; import duties; funds.

The President is authorized from time to time to purchase such necessaries and to enter into, to accept, to transfer, and to assign contracts for the production or purchase of same, to provide storage facilities for and store the same, to provide or improve transportation facilities, and to use, distribute, or allocate said necessaries, or to sell the same at reasonable prices, but such sales made during the war shall not be at a price less than the purchase or cost of production thereof: Provided, That no such contract of purchase shall cover a period longer than two years after the termination of the war.

The President is further authorized, upon finding that importation into the United States of any of the necessaries covered by this Act is likely to result in a loss to the United States on any necessaries which it may have acquired hereunder, to ascertain, fix, and proclaim such rate of duty upon such imported necessaries as shall be sufficient to adequately protect the United States from any such loss.

The funds provided by section six hereof shall be used in carrying out the powers granted by this section, and all moneys received by the United States from or in connection with the disposal of such necessaries, shall be used as a revolving fund for further carrying out the purposes of this Act. Any balance of such moneys remaining when the object of this Act has been accomplished, shall, as collected, received, and on hand and available, be covered into the Treasury as miscellaneous receipts. (40 Stat. 1009.)

See note to § 3115⅛s, ante.

§ 3115⅛sss. (Act Oct. 5, 1918, c. 181, § 3.) Requisition and distribution of necessaries and mines; working mines; funds.

The President is authorized to requisition and take over any of said necessaries and to use, distribute, allocate, or sell the same; and also to requisition and take over any undeveloped or insufficiently developed or operated idle land, deposit, or mine, and any idle or partially operated smelter, or plant, or part thereof, producing or, in his judgment, capable of producing said necessaries, or either of them, and to develop and operate such mine or deposit or such smelter or plant, either through the agencies hereinafter mentioned, or under lease or royalty agreement, or in any

other manner, and to store, use, distribute, allocate, or sell the products thereof; Provided, That no ores or metals, the principal money value of which consists in metals or minerals other than those specifically enumerated in section one hereof, shall be subject to requisition under the provisions of this Act. Whenever the President shall determine that the further use or operation by the Government of any such land, deposit, mine, smelter, or plant, or part thereof, so acquired, is no longer essential for the objects aforesaid, the same shall be returned to the person, firm, or corporation entitled thereto. The United States shall make just compensation, determined by the President, for the taking over, use, occupation, or operation by the Government of any such necessaries, or any such land, deposit, mine, smelter, or plant, or part thereof. If the compensation so determined be unsatisfactory to the person, firm, or corporation entitled thereto, such person, firm, or corporation shall be paid seventy-five per centum of the amount so determined and shall be entitled to sue the United States to recover such further sum as added to said seventy-five per centum will make up such amount as will be just compensation, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five, of the Judicial Code.

The President is authorized to require statements and reports, to examine books and papers, and to prescribe such rules and regulations as he may deem appropriate for carrying out the purposes of this Act. The fund provided by section six hereof may be used in carrying out the purposes of this Act, and all moneys received by the United States from or in connection with the use, operation, or disposal of any such necessaries, land, deposit, mine, smelter, or plant, or part thereof, shall be used as a revolving fund for further carrying out the purposes of this Act. Any balance of such moneys remaining when the objects of this Act have been accomplished, shall, as collected, received, and on hand and available, be covered into the Treasury as miscellaneous receipts. (40 Stat. 1010.)

See note to § 3115 1/8s, ante.

§ 3115 1/8ssss. (Act Oct. 5, 1918, c. 181, § 4.) Violations of orders or of act; punishment.

Any person who shall neglect or refuse to comply with any order or requisition made by the President pursuant to the provisions of this Act, or who shall obstruct or attempt to obstruct the enforcement of or the compliance with any such requisition or order, or who shall violate any of the provisions of this Act, or any rule or regulation adopted hereunder, shall, upon conviction, be fined not exceeding $5,000, or be imprisoned for not more than two years, or both. (40 Stat. 1010.)

See note to § 3115 1/8s, ante.

§ 3115 1/8sssss. (Act Oct. 5, 1918, c. 181, § 5.) Appropriation.

The sum of $500,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available until June thirtieth, nineteen hundred and nineteen, for the payment of all administrative expenses under this Act, including personal services, traveling and subsistence expenses, the payment of rent, the purchase of equipment, supplies, postage, printing, publications, and such other articles, both in the District of Columbia and elsewhere, as the President may deem essential and proper. (40 Stat. 1010.)

See note to § 3115 1/8s, ante.

§ 3115⅛t. (Act Oct. 5, 1918, c. 181, § 6.) Same; revolving fund; reports.

The sum of $50,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, which, together with all moneys received from time to time under the provisions of this Act, all of which shall be credited to said appropriation, shall be used as a revolving fund for carrying out the objects of this Act, and for the purpose of making all payments and disbursements, including just compensation under section three, by this Act authorized: Provided, That no part of this appropriation shall be expended for the purposes described in the last preceding section: Provided further, That a detailed report of all operations under this Act, including all receipts and disbursements, shall be filed with the Secretary of the Senate and Clerk of the House of Representatives on or before the twenty-fifth day of each month, covering the preceding month's operation. Any balance of said revolving fund remaining when the objects of this Act have been accomplished, shall, as collected, received, and on hand and available, be covered into the Treasury as miscellaneous receipts. (40 Stat. 1010.)

See note to § 3115⅛s, ante.

§ 3115⅛tt. (Act Oct. 5, 1918, c. 181, § 7.) Exercise of powers by President; employés; compensation.

The President is authorized to exercise each, every, or any power and authority hereby vested in him, and to expend the moneys herein appropriated or provided for, or any part or parts thereof, by and through such officer or officers, department or departments, board or boards, agent, agents, or agencies as he shall create or designate, from time to time, for the purpose. He may fix the reasonable compensation for the performance of such services, but no official or employee of the United States shall receive any additional compensation for such services except as now permitted by law: Provided, That no person employed under the provisions of this Act shall be paid any salary or compensation in excess of that paid for similar or like services rendered in executive departments of the Government. (40 Stat. 1011.)

See note to § 3115⅛s, ante.

§ 3115⅛ttt. (Act Oct. 5, 1918, c. 181, § 8.) Pecuniary interest in transactions under act.

No person having a pecuniary interest in any transaction in pursuance of this Act shall have any official connection under this Act with such transaction. Any person violating this provision shall forfeit to the Government all proceeds which he shall have received from such transaction, and upon due conviction of such violation shall be fined not exceeding $10,000 or imprisoned not exceeding ten years. (40 Stat. 1011.)

See note to § 3115⅛s, ante.

§ 3115⅛tttt. (Act Oct. 5, 1918, c. 181, § 9.) Corporations for enforcement of act.

The President is authorized, if in his judgment such action be necessary or useful for the objects of this Act, to form one or more corporations under the laws of any State, Territory, District, or possession of the United States, for the purpose of carrying out the powers or any of the powers hereby authorized. The capital stock of any such corporation shall be such as the President may determine, but the total capital stock for all corporations so formed shall not exceed in the aggregate the appropriation of $50,000,000, made by section six hereof. Said appropriation, or any part

thereof, may be used by the President in subscribing on behalf of the United States, through such person or persons as he may designate to the capital stock of such corporation or corporations, and the capital and assets of any such corporation or corporations, together with all additions thereto under sections two and three hereof, may be used in carrying out the objects of this Act. The directorate and organization of such corporation or corporations shall be such as the President may prescribe, and such corporation or corporations shall have all such charter powers as may be deemed necessary or desirable by the President to enable it or them to accomplish the objects of this Act. The capital stock of any such corporation or corporations shall be held and voted for the exclusive benefit of the United States, through such person or persons as the President may designate. (40 Stat. 1011.)

See note to § 3115⅛s, ante.

§ 3115⅛tttt. (Act Oct. 5, 1918, c. 181, § 10.) Termination of operative force of act.

Upon the proclamation of peace the President shall proceed as rapidly as possible to wind up and terminate all transactions under this Act, and to dispose as fast as practicable of all property acquired thereunder, and after said proclamation of peace no contracts shall be made, property acquired, or other transaction performed under this Act except such as shall be necessary for the purpose of this section and incidental thereto, and two years after such proclamation of peace this Act shall cease to have effect and all powers conferred thereby shall end: Provided, That the termination of this Act shall not prevent the subsequent collection of any moneys due the United States, nor shall it affect any act done or any right or obligation accrued or accruing, or any suit or proceeding had or commenced before such termination, but all such collections, rights, obligations, suits and proceedings shall continue as if this Act had not terminated, and any offense committed or liability incurred prior thereto shall be prosecuted in the same manner and with the same punishment and effect as if this Act had not terminated. (40 Stat. 1010.)

See note to § 3115⅛s, ante.

§ 3115⅛u. (Act Oct. 5, 1918, c. 181, § 11.) Employés not exempt from selective draft.

Employment under the provisions of this Act shall not exempt any person from military service under the provisions of the selective draft law approved May eighteenth, nineteen hundred and seventeen, or any Act amendatory thereto. (40 Stat. 1012.)

See note to § 3115⅛s, ante.

§ 3115⅛uu. (Act Oct. 5, 1918, c. 181, § 12.) Partial invalidity of act.

If any section or provision of this Act shall be declared invalid for any reason whatsoever, such invalidity shall not be construed to affect the validity of any other section or provision hereof. (40 Stat. 1012.)

See note to § 3115⅛s, ante.

MANUFACTURE, ETC., OF EXPLOSIVES

§ 3115¼a. (Act Oct. 6, 1917, c. 83, § 1.) Manufacture, distribution, storage, use or possession regulated in war time.

When the United States is at war it shall be unlawful to manufacture, distribute, store, use, or possess powder, explosives, blasting supplies, or ingredients thereof, in such manner as to be detri-

mental to the public safety, except as in this Act provided. (40 Stat. 385.)

This act is entitled "An act to prohibit the manufacture, distribution, storage, use, and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use, and possession of the same, and for other purposes."

§ 3115¼aa. (Act Oct. 6, 1917, c. 83, § 2.) Definitions.

The words "explosive" and "explosives" when used herein shall mean gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses, detonators, and other detonating agents, smokeless powders, and any chemical compound or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of, or any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb, but shall not include small arms or shotgun cartridges: Provided, That nothing herein contained shall be construed to prevent the manufacture, under the authority of the Government, of explosives for, their sale to or their possession by, the military or naval service of the United States of America. (40 Stat. 385.)

See note to § 3115¼a, ante.

§ 3115¼aaa. (Act July 1, 1918, c. 113, § 1.) Platinum, iridium, and palladium included.

Platinum, iridium, and palladium and compounds thereof are hereby made subject to the terms, conditions, and limitations of said Act of October sixth, nineteen hundred and seventeen, and the Director of the Bureau of Mines is hereby authorized, under rules and regulations approved by the Secretary of the Interior, to limit the sale, possession, and the use of said material. (40 Stat. 671.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 3115¼b. (Act Oct. 6, 1917, c. 83, § 3.) Ingredients defined.

The word "ingredients" when used herein shall mean the materials and substances capable by combination of producing one or more of the explosives mentioned in section one hereof. (40 Stat. 386.)

See note to § 3115¼a, ante.

§ 3115¼bb. (Act Oct. 6, 1917, c. 83, § 4.) Person defined.

The word "person," when used herein, shall include States, Territories, the District of Columbia, Alaska, and other dependencies of the United States, and municipal subdivisions thereof, individual citizens, firms, associations, societies and corporations of the United States and of other countries at peace with the United States. (40 Stat. 386.)

See note to § 3115¼a, ante.

§ 3115¼c. (Act Oct. 6, 1917, c. 83, § 5.) Purchase, possession or sale contrary to act.

From and after forty days after the passage and approval of this Act no person shall have in his possession or purchase, accept, receive, sell, give, barter or otherwise dispose of or procure explosives, or ingredients, except as provided in this Act: Provided, That the purchase or possession of said ingredients when purchased or held in small quantities and not used or intended to be used in the manufacture of explosives are not subject to the provisions of this Act: Provided further, That the superintendent, foreman, or other duly authorized employee, at a mine, quarry, or other work, may,

when licensed so to do, sell or issue, to any workman under him, such an amount of explosives, or ingredients, as may be required by that workman in the performance of his duties, and the workman may purchase or accept the explosives, or ingredients, so sold or issued, but the person so selling or issuing same shall see that any unused explosives, or ingredients, are returned, and that no explosives, or ingredients, are taken by the workman to any point not necessary to the carrying on of his duties. (40 Stat. 386.)

See note to § 3115¼a, ante.

§ 3115¼cc. (Act Oct. 6, 1917, c. 83, § 6.) Transportation.

Nothing contained herein shall apply to explosives or ingredients while being transported upon vessels or railroad cars in conformity with statutory law or Interstate Commerce Commission rules. (40 Stat. 386.)

See note to § 3115¼a, ante.

§ 3115¼d. (Act Oct. 6, 1917, c. 83, § 7.) License for manufacture.

From and after forty days after the passage of this Act no person shall manufacture explosives unless licensed so to do, as hereinafter provided. (40 Stat. 386.)

See note to § 3115¼a, ante.

§ 3115¼dd. (Act Oct. 6, 1917, c. 83, § 8.) Information from licensee or applicant for license.

Any licensee or applicant for license hereunder shall furnish such information regarding himself and his business, so far as such business relates to or is connected with explosives or ingredients at such time and in such manner as the Director of the Bureau of Mines, or his authorized representative, may request, excepting that those who have been or are at the time of the passage of this Act regularly engaged in the manufacture of explosives shall not be compelled to disclose secret processes, costs, or other data unrelated to the distribution of explosives. (40 Stat. 386.)

See note to § 3115¼a, ante.

§ 3115¼e. (Act Oct. 6, 1917, c. 83, § 9.) Records of sales.

From and after forty days after the passage and approval of this Act every person authorized to sell, issue, or dispose of explosives shall keep a complete itemized and accurate record, showing each person to whom explosives are sold, given, bartered, or to whom or how otherwise disposed of, and the quantity and kind of explosives, and the date of each such sale, gift, barter, or other disposition; and this record shall be sworn to and furnished to the Director of the Bureau of Mines, or his authorized representatives, whenever requested. (40 Stat. 386.)

See note to § 3115¼a, ante.

§ 3115¼ee. (Act Oct. 6, 1917, c. 83, § 10.) Licenses; to whom issuable.

The Director of the Bureau of Mines is hereby authorized to issue licenses as follows:

(a) Manufacturer's license, authorizing the manufacture, possession, and sale of explosives and ingredients.

(b) Vendor's license, authorizing the purchase, possession, and sale of explosives or ingredients.

(c) Purchaser's license, authorizing the purchase and possession of explosives and ingredients.

(d) Foreman's license, authorizing the purchase and possession of explosives and ingredients, and the sale and issuance of explosives and ingredients to workmen under the proviso to section five above.

(e) Exporter's license, authorizing the licensee to export explosives, but no such license shall authorize exportation in violation of

any proclamation of the President issued under any Act of Congress.

(f) Importer's license, authorizing the licensee to import explosives.

(g) Analyst's, educator's, inventor's, and investigator's licenses authorizing the purchase, manufacture, possession, testing, and disposal of explosives and ingredients. (40 Stat. 387.)

See note to § 3115¼a, ante.

§ 3115¼f. (Act Oct. 6, 1917, c. 83, § 11.) Same; persons entitled to.

The Director of the Bureau of Mines shall issue licenses, upon application duly made, but only to citizens of the United States of America, and to the subjects or citizens of nations that are at peace with them, and to corporations, firms, and associations thereof, and he may, in his discretion, refuse to issue a license, when he has reason to believe, from facts of which he has knowledge or reliable information, that the applicant is disloyal or hostile to the United States of America, or that, if the applicant is a firm, association, society, or corporation, its controlling stockholders or members are disloyal or hostile to the United States of America. The director may, when he has reason to believe on like grounds that any licensee is so disloyal or hostile, revoke any license issued to him. Any applicant to whom a license is refused or any licensee whose license is revoked by the said director may, at any time within thirty days after notification of the rejection of his application or revocation of his license, apply for such license or the cancellation of such revocation to the Council of National Defense, which shall make its order upon the director either to grant or to withhold the license. (40 Stat. 387.)

See note to § 3115¼a, ante.

§ 3115¼ff. (Act Oct. 6, 1917, c. 83, § 12.) Same; applications for.

Any person desiring to manufacture, sell, export, import, store, or purchase explosives or ingredients, or to keep explosives or ingredients in his possession, shall make application for a license, which application shall state, under oath, the name of the applicant; the place of birth; whether native born or naturalized citizen of the United States of America; if a naturalized citizen, the date and place of naturalization; business in which engaged; the amount and kind of explosives or ingredients which during the past six months have been purchased, disposed of, or used by him; the amount and kind of explosives or ingredients now on hand; whether sales, if any, have been made to jobbers, wholesalers, retailers, or consumers; the kind of license to be issued, and the kind and amount of explosives or ingredients to be authorized by the license; and such further information as the Director of the Bureau of Mines may, by rule, from time to time require.

Applications for vendor's, purchaser's, or foreman's licenses shall be made to such officers of the State, Territory, or dependency having jurisdiction in the district within which the explosives or ingredients are to be sold or used, and having the power to administer oaths as may be designated by the Director of the Bureau of Mines, who shall issue the same in the name of such director. Such officers shall be entitled to receive from the applicant a fee of 25 cents for each license issued. They shall keep an accurate record of all licenses issued in manner and form to be prescribed by the Director of the Bureau of Mines, to whom they shall make reports from time to time as may be by rule issued by the director required. The necessary blanks and blank records shall be furnished to such officers by the said director. Licensing officers shall be subject to

removal for cause by the Director of the Bureau of Mines, and all licenses issued by them shall be subject to revocation by the director as provided in section eleven. (40 Stat. 387.)

See note to § 3115¼a, ante.

§ 3115¼fff. (Act July 1, 1918, c. 113, § 1.) Licenses; cancellation.

Any license issued under the Act of October sixth, nineteen hundred and seventeen, may be canceled by the Director of the Bureau of Mines if the person to whom such license was issued shall, after notice and an opportunity to be heard, be found to have violated any of the provisions of the Act. (40 Stat. 671.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 3115¼g. (Act Oct. 6, 1917, c. 83, § 13.) Inspectors; appointment.

The President, by and with the advice and consent of the Senate, may appoint in each State and in Alaska an explosives inspector, whose duty it shall be, under the direction of the Director of the Bureau of Mines, to see that this Act is faithfully executed and observed. Each such inspector shall receive a salary of $2,400 per annum. He may at any time be detailed for service by said director in the District of Columbia or in any State, Territory, or dependency of the United States. All additional employees required in carrying out the provisions of this Act shall be appointed by the Director of the Bureau of Mines, subject to the approval of the Secretary of the Interior. (40 Stat. 388.)

See note to § 3115¼a, ante.

§ 3115¼gg. (Act Oct. 6, 1917, c. 83, § 14.) False representations as to licenses.

It shall be unlawful for any person to represent himself as having a license issued under this Act, when he has not such a license, or as having a license different in form or in conditions from the one which he in fact has, or without proper authority make, cause to be made, issue or exhibit anything purporting or pretending to be such license, or intended to mislead any person into believing it is such a license, or to refuse to exhibit his license to any peace officer, Federal or State, or representative of the Bureau of Mines. (40 Stat. 388.)

See note to § 3115¼a, ante.

§ 3115¼h. (Act Oct. 6, 1917, c. 83, § 15.) Divulgence of information.

No inspector or other employee of the Bureau of Mines shall divulge any information obtained in the course of his duties under this Act regarding the business of any licensee, or applicant for license, without authority from the applicant for license or from the Director of the Bureau of Mines. (40 Stat. 388.)

See note to § 3115¼a, ante.

§ 3115¼hh. (Act Oct. 6, 1917, c. 83, § 16.) Marking, defining and placarding premises.

Every person authorized under this Act to manufacture or store explosives or ingredients shall clearly mark and define the premises on which his plant or magazine may be and shall conspicuously display thereon the words "Explosives—Keep Off." (40 Stat. 388.)

See note to § 3115¼a, ante.

§ 3115¼i. (Act Oct. 6, 1917, c. 83, § 17.) Exclusion from premises where are manufactured or stored.

No person, without the consent of the owner or his authorized agents, except peace officers, the Director of the Bureau of Mines and persons designated by him in writing, shall be in or upon any

plant or premises on which explosives are manufactured or stored, or be in or upon any magazine premises on which explosives are stored; nor shall any person discharge any firearms or throw or place any explosives or inflammable bombs at, on, or against any such plant or magazine premises, or cause the same to be done. (40 Stat. 388.)

See note to § 3115¼a, ante.

§ 3115¼ii. (Act Oct. 6, 1917, c. 83, § 18.) Rules and regulations.

The Director of the Bureau of Mines is hereby authorized to make rules and regulations for carrying into effect this Act, subject to the approval of the Secretary of the Interior. (40 Stat. 388.)

See note to § 3115¼a, ante.

§ 3115¼j. (Act Oct. 6, 1917, c. 83, § 19.) Violations of act.

Any person violating any of the provisions of this Act, or any rules or regulations made thereunder, shall be guilty of a misdemeanor and shall be punished by a fine of not more than $5,000 or by imprisonment not more than one year, or by both such fine and imprisonment. (40 Stat. 388.)

See note to § 3115¼a, ante.

§ 3115¼jj. (Act Oct. 6, 1917, c. 83, § 20.) Investigation of explosions and fires.

The Director of the Bureau of Mines is hereby authorized to investigate all explosions and fires which may occur in mines, quarries, factories, warehouses, magazines, houses, cars, boats, conveyances, and all places in which explosives or the ingredients thereof are manufactured, transported, stored, or used, and shall, in his discretion, report his findings, in such manner as he may deem fit, to the proper Federal or State authorities, to the end that if such explosion has been brought about by a willful act the person or persons causing such act may be proceeded against and brought to justice; or, if said explosion has been brought about by accidental means, that precautions may be taken to prevent similar accidents from occurring. In the prosecution of such investigations the employees of the Bureau of Mines are hereby granted the authority to enter the premises where such explosion or fire has occurred, to examine plans, books, and papers, to administer oaths to, and to examine all witnesses and persons concerned, without let or hindrance on the part of the owner, lessee, operator, or agent thereof. (40 Stat. 388.)

See note to § 3115¼a, ante.

§ 3115¼k. (Act Oct. 6, 1917, c. 83, § 21.) Use of agencies of United States, States, etc.

The Director of the Bureau of Mines, with the approval of the President, is hereby authorized to utilize such agents, agencies, and all officers of the United States and of the several States, Territories, dependencies, and municipalities thereof, and the District of Columbia, in the execution of this Act, and all agents, agencies, and all officers of the United States and of the several States and Territories, dependencies, and municipalities thereof, and the District of Columbia, shall hereby have full authority for all acts done by them in the execution of this Act when acting by the direction of the Bureau of Mines. (40 Stat. 389.)

See note to § 3115¼a, ante.

The President, by a proclamation, dated October 26, 1917, declares:

"That from and after the 15th day of November, 1917, and during the present war with Germany, it will be unlawful to manufacture, distribute, store, use, or possess explosives or ingredients thereof, except as provided in said Act.

"That the Director of the Bureau of Mines is hereby authorized to utilize, where necessary for the proper administration of said Act, the services of all

officers of the United States and of the several States, Territories, dependencies, and municipalities thereof, and of the District of Columbia, and such other agents and agencies as he may designate, who shall have full authority for all acts done by them in the execution of the said Act when acting under his direction."

§ 3115¼kk. (Act Oct. 6, 1917, c. 83, § 22.) Appropriation.

For the enforcement of the provisions of this Act, including personal services in the District of Columbia and elsewhere, and including supplies, equipment, expenses of traveling and subsistence, and for the purchase and hire of animal-drawn or motor-propelled passenger-carrying vehicles, and upkeep of same, and for every other expense incident to the enforcement of the provisions of this Act, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $300,000, or so much thereof as may be necessary: Provided, That not to exceed $10,000 shall be expended in the purchase of motor-propelled passenger-carrying vehicles. (40 Stat. 389.)

See note to § 3115¼a, ante.

The sundry civil appropriation act for the year 1919, Act July 1, 1918, c. 113, § 1, 40 Stat. 634, repeats the provisions of this section, with minor modifications.

TRADING WITH THE ENEMY

§ 3115½a. (Act Oct. 6, 1917, c. 106, § 1.) Designation of act.

This Act shall be known as the "Trading with the enemy Act." (40 Stat. 411.)

This section and the eighteen sections next following were an act entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes," cited above.

Notes of Decisions

Construction and application in general.—This act must be construed in light of purposes, first, to prevent act resulting in detriment to United States in war, and, second, not to permit or compel act resulting in injury to individual alien enemy. without benefit to United States. Keppelman v. Keppelman (N. J. Ch.) 103 A. 27.

§ 3115½aa. (Act Oct. 6, 1917, c. 106, § 2.) Definitions.

The word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory,

and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

The words "to trade," as used herein, shall be deemed to mean—

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with. (40 Stat. 411.)

See note to § 3115½a, ante.

The United States formally declared that a state of war existed with Germany and Austria-Hungary by joint resolutions dated April 6, 1917 and December 7, 1917, respectively.

Proclamation issued under this section, dated February 5, 1918, as follows, omitting formal portions:

"Whereas, under the provisions of and by virtue of the power and authority granted in Sections four thousand and sixty-seven, four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy, of the Revised Statutes, and in accordance with proclamations and regulations which have been or which may hereafter be made and established thereunder by the President of the United States, certain alien enemies have been, or may from time to time be, transferred after arrest into the custody of the War Department for detention during the war:

"Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me, and in accordance with the provisions of the said Act of October 6, 1917, known as the Trading with the

Enemy Act, do hereby find that the safety of the United States and the successful prosecution of the present war require that all natives, citizens or subjects of the German Empire or of the Austro-Hungarian Empire who, by virtue of the provisions of Sections four thousand and sixty-seven, four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy, of the Revised Statutes, and of the proclamations and regulations thereunder, have been heretofore or may be hereafter transferred after arrest into the custody of the War Department for detention during the war, shall be included within the meaning of the word 'enemy' for the purposes of the Trading with the Enemy Act and of such trading; and I do hereby proclaim to all whom it may concern that every such alien enemy who is so transferred, after arrest, into the custody of the War Department for detention during the war, shall be and hereby is included within the meaning of the word 'enemy' and shall be deemed to constitute an 'enemy' for said purposes."

May 31, 1918, as follows, omitting formal portions:

"Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me, and in accordance with the provisions of the said Act of October 6, 1917, known as the Trading with the enemy Act, do hereby find that the safety of the United States and the successful prosecution of the present war require that,

"(1) Any woman, wherever resident outside of the United States, who is a citizen or subject of any nation with which the United States is at war and whose husband is either (a) an officer, official or agent of the government of any nation with which the United States is at war, or (b) resident within the territory (including that occupied by the military or naval forces) of any nation with which the United States is at war, or (c) resident outside of the United States and doing business within such territory; and

"(2) All citizens or subjects of any nation with which the United States is at war (other than citizens of the United States) who have been or shall hereafter be detained as prisoners of war, or who have been or shall hereafter be interned by any nation which is at war with any nation with which the United States is also at war; and

"(3) Such other individuals or body or class of individuals as may be citizens or subjects of any nation with which the United States is at war (other than citizens of the United States) wherever resident outside of the United States, or wherever doing business outside of the United States, who, since the beginning of the war have disseminated, or shall hereafter disseminate propaganda calculated to aid the cause of any such nation in such war, or to injure the cause of the United States in such war, or who since the beginning of the war has assisted or shall hereafter assist in plotting or intrigue against the United States, or against any nation which is at war with any nation which is at war also with the United States; and

"(4) Such other individuals or body or class of individuals as may be citizens or subjects of any nation with which the United States is at war wherever resident outside of the United States, or wherever doing business outside of the United States, who are or may hereafter be included in a publication issued by the War Trade Board of the United States of America, entitled 'Enemy Trading List'; and the term 'body or class of individuals' as herein used shall include firms and co-partnerships contained in said enemy trading list of which one or more of the members or partners shall be citizens or subjects of any nation with which the United States is at war; and

"(5) Any citizen or subject of any nation with which the United States is at war wherever resident outside of the United States, who has been at any time since August 4, 1914, resident within the territory (including that occupied by the military or naval forces) of any nation with which the United States is at war, shall all be included within the meaning of the word 'enemy' for the purposes of the 'Trading with the enemy Act' and of such trading; and I do hereby proclaim to all whom it may concern that every such individual or body or class of individuals herein referred to shall be and hereby is included within the meaning of the word 'enemy' and shall be deemed to constitute an 'enemy' for said purposes.

"And by virtue of further authority vested in me by said Act entitled 'An Act To define, regulate, and punish trading with the enemy, and for other purposes,' approved October 6, 1917, and known as the Trading with the enemy Act, I hereby make the following order, rule and regulation.

"I hereby require that, pursuant to the provisions of subsection (a) of section seven of said 'Trading with the Enemy Act,' every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall transmit to the Alien Property Custodian a full list of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company or trustee may have reasonable cause to believe to be, included by the above proclamation within the term 'enemy', together with a statement of the amount of stock or

shares owned by each such officer, director, or stockholder, or in which he has any interest; and any person in the United States who holds or has or shall hold or have custody or control of money or other property, beneficial or otherwise, alone or jointly with others, of, for, by, on account of or on behalf of, or for the benefit of, and any person within the United States, who is or shall be indebted in any way to, any person included by the above proclamation within the term 'enemy', or any person whom he may have reasonable cause to believe to be so included, shall report the fact to the Alien Property Custodian.

"Such lists, statements and reports shall be made and transmitted to the Alien Property Custodian, in such form and under such rules and regulations as he may prescribe within thirty days after the date of this order, or within thirty days after money or other property owing or belonging to or held for, by, on account of or on behalf of, or for the benefit of any such 'enemy' shall come within the custody or control of the reporter, or within thirty days after any person shall become an 'enemy' by virtue of the terms of the above proclamation."

August 10, 1918, and August 14, 1918, declaring certain enumerated partnerships and persons to be "Enemies."

Further proclamation, issued under this section, dated November 29, 1918, declaring certain enumerated persons and partnerships to be "enemies."

Notes of Decisions

Constitutionality of act.—See notes under §§ 3115½c, 3115½f, 3115½j, post.

Alien enemies residing in United States.—See post, § 7615, and notes.

Enemies—Who are.—Persons residing within enemy territory are regarded as enemies, although they may be subjects of the United States or of a neutral power or personally friendly to the United States. Gates v. Goodloe (1879) 101 U. S. 612, 25 L. Ed. 895; The Flying Scud (1867) 6 Wall. 263, 18 L. Ed. 755; Prize Cases (1862) 2 Black, 635, 17 L. Ed. 459; Page v. U. S. (1870) 11 Wall. 268, 20 L. Ed. 135; The William Bagaley (1866) 5 Wall. 377, 18 L. Ed. 583; The Benito Estenger (1900) 176 U. S. 568, 20 Sup. Ct. 489, 44 L. Ed. 592; Juragua Iron Co. v. U. S. (1909) 29 Sup. Ct. 385, 212 U. S. 297, 53 L. Ed. 520, affirming judgment (1907) 42 Ct. Cl. 99; The Hiawatha (D. C. 1861) Fed. Cas. No. 6,451, affirmed (C. C. 1861) Fed. Cas. No. 6,450, and (1862) 67 U. S. (2 Black) 635, 17 L. Ed. 459; The Joseph (C. C. 1813) Fed. Cas. No. 7,533, affirmed (1814) 12 U. S. (8 Cranch) 451, 3 L. Ed. 621; The North Carolina (D. C. 1861) Fed. Cas. No. 10,316a, affirmed (C. C. 1863) Fed. Cas. No. 10,317; The Peterhoff (D. C. 1863) Fed. Cas. No. 11,024, reversed (1866) 72 U. S. (5 Wall.) 28, 18 L. Ed. 564; The Sarah Starr (D. C. 1861) Fed. Cas. No. 12,352, affirmed (C. C. 1863) Fed. Cas. No. 12,353; U. S. v. The Allegheny (D. C. 1863) Fed. Cas. No. 14,429; U. S. v. El Telegrafo (D. C. 1846) Fed. Cas. No. 15,049; Elbers v. United Ins. Co. (N. Y. 1819) 16 Johns. 128.

If a citizen of the United States establishes his domicile in a foreign country between which and the United States hostilities afterwards break out, property shipped by such citizen before a knowledge of the war, and captured by an American cruiser after the declaration of war, must be condemned as lawful prize. The Venus (1814) 12 U. S. (8 Cranch) 253, 3 L. Ed. 553.

In a proceeding for the condemnation of certain goods captured on board of a vessel, the commercial domicile of the merchant at the time of the capture of the goods determines their character. A naturalized citizen, for the purposes of trade, returned to his native country in time of peace, but with the intention of returning to his adopted country. He remained in his native country 12 months after war had broken out between the two countries, for the purpose of closing his business, though he engaged in no new commercial transaction with the enemy, and then returned to his adopted country. Held, that he had gained a domicile in his native country, and that his goods, captured after the war, were liable to condemnation. The Frances (1814) 12 U. S. (8 Cranch) 335, 3 L. Ed. 581.

Shipments made by merchants actually domiciled in an enemy's country at the breaking out of a war partake of the nature of enemy trade, and as such are subject to capture. The Mary and Susan (1816) 14 U. S. (1 Wheat.) 46, 4 L. Ed. 32.

The language of the prize law, that property is to be condemned as enemy's, or is to be deemed enemy's, or is impressed with a hostile character, does not necessarily import that the owner is personally hostile, but only that his property has been placed in such relation to the enemy that a court of prize is to deal with it as if it belonged to the enemy. And acts which tend to subserve the interests of the enemy may impress a hostile character on property, or the residence of the owner in the enemy's country may be of such a character as to stamp the property conclusively as hostile. The Amy Warwick (D. C. 1862) Fed. Cas. No. 341, affirmed (1862) 67 U. S. (2 Black) 635, 17 L. Ed. 459.

A British subject, domiciled in the United States, but temporarily absent at Jamaica, making a shipment in time of peace, does not by his character of

British subject, affect the property with a hostile character, if war breaks out pending the voyage; otherwise, if such shipment be made pending a known war. The Ann Green (C. C. 1812) Fed. Cas. No. 414.

A shipment made from the enemy's country, after a knowledge of the war, by an American citizen, subjects the property to confiscation as prize of war. The Mary (C. C. 1813) Fed. Cas. No. 9,184, affirmed in part and reversed in part (1814) 12 U. S. (8 Cranch) 388, 3 L. Ed. 599.

Where a party puts himself in itinere to return to his native country, his property is not thereby made exempt from the hostile character acquired by the residence, where it appears that such property has been engaged in a trade illegal in the native character. The St. Lawrence (C. C. 1813) Fed. Cas. No. 12,232.

The property of a person may acquire a hostile character, although his residence be neutral. Therefore, where a person is engaged in the ordinary or extraordinary commerce of an enemy's country, upon the same footing and with the same advantages as native resident subjects, his property employed in such trade is deemed incorporated into the general commerce of that country, and subject to confiscation, be his residence where it may. The San Jose Indiano (C. C. 1814) Fed. Cas. No. 12,322, affirmed The St. Joze Indiano (1816) 14 U. S. (1 Wheat.) 208, 4 L. Ed. 73.

Property belonging to a merchant residing and trading at an enemy port is, when captured, liable to condemnation as enemy property. The Delta (D. C. 1862) Fed. Cas. No. 3,777, affirmed (C. C. 1863) Fed. Cas. No. 3,778.

Property purchased as stock in trade to be carried on in the enemy's country by a person permanently residing there is subject to capture and condemnation. The Lilla (D. C. 1862) Fed. Cas. No. 8,348.

The property of a person settled in the enemy's country though he be a neutral subject, is affected with the hostile character. A residence of 13 years is amply sufficient to invest such party with the character of an enemy. Rogers v. Amado (D. C. 1847) Fed. Cas. No. 12,005.

The fact that a vessel is enrolled in a port of a rebellious state is not conclusive that such port is the domicile of her owner, so as to make her enemy property; and it is competent to show that the owner is in fact a resident of another port in a loyal state, and thus avoid condemnation. U. S. v. The F. W. Johnson (D. C. 1861) Fed. Cas. No. 15,179.

Whether commercial intercourse with the enemy is lawful or not depends on the place of one's domicile. Thus, in the War of the Rebellion, A., whose domicile was within the Confederate lines, but who was actually living in loyal territory, might, by his agent (appointed before hostilities began), carry on commercial intercourse with the enemy, whereas such intercourse would be unlawful in the case of B., domiciled in loyal territory, but living within the lines of the Confederacy. Quigley v. U. S. (1877) 13 Ct. Cl. 367.

A foreigner residing during a state of war within the dominion of one belligerent is subject to the jurisdiction and control of the other, who may treat his property as hostile. The character of an enemy may attach either to his person or property; and he cannot demand compensation for loss or damage resulting from military operations. Gallego, Messa & Co. v. U. S. (1908) 43 Ct. Cl. 444.

An alien enemy is one with whose country the United States is at war. Taylor v. Albion Lumber Co. (Cal. 1917) 168 P. 348.

Before the passage of the ordinance of secession by Virginia, a vessel cleared from Norfolk, owned in Virginia, and her officers and crew were inhabitants of that state. On her return voyage she was captured by a United States man-of-war. Her papers were regular, and she sailed under the United States flag. Her master testified that he considered himself a subject of the United States, that he considered his allegiance to the Union as greater and stronger than the allegiance to his native state, and that he would sustain the United States against his native state. Held, that the vessel at the time of her capture was enemy property, in consequence of the residence of her owners in the enemy country. U. S. v. The Sally Mears (1864) 6 D. C. 36.

Residents of New Jersey, born in German Empire, and not citizens of United States, who had not been interned in custody of War Department, held not "enemies" within federal "Trading with the Enemy Act," so that they could not defend suit for specific performance of sale of realty on such ground. Tortoriello v. Seghorn (N. J. Ch.) 103 A. 393.

New Jersey corporation, composed entirely of German stockholders, did not, on declaration of war between United States and Germany, cease to be domestic corporation, and become an alien enemy. Fritz Schulz, Jr., Co. v. Raimes & Co. (1917) 99 Misc. Rep. 626, 164 N. Y. Supp. 454, affirmed (1917) 100 Misc. Rep. 697, 166 N. Y. Supp. 567.

An opera singer, a subject of Germany, living in the United States before and since the war, held to be a lawful resident of this country, and not a resident of Germany, within the meaning of "Trading with the Enemy Act," and hence entitled to sue in our courts. Arndt-Ober v. Metropolitan Opera Co. (Sup.) 169 N. Y. S. 944, 182 App. Div. 513, modifying order (Sup.) 169 N. Y. S. 304, 102 Misc. Rep. 320.

Native of Austria-Hungary, with which the United States is at war, though resident of North Carolina, regardless of fact that he is guilty of no act or utterance unfriendly to United States, and is quiet, law-abiding laborer, is alien enemy. Krachanake v. Acme Mfg. Co., 95 S. E. 851, 175 N. C. 435.

In view of President's Proclamation No. 1417, as to rights of Austrian nationals, and Trading with Enemy Act, defining enemy as person resident within territory of any nation with which United States is at war, native of Austria-Hungary resident within the United States may sue for torts. Id.

—— Partnerships and joint adventures.—One joint owner of a vessel obtained a register for her, which was granted upon his oath that he, together with the other joint owner, a citizen of this country, were the only owners of the ship, when in point of fact the other joint owner was domiciled in England. Held, that the vessel was liable to forfeiture, under Act Cong. Dec. 31, 1792. The Venus (1814) 12 U. S. (8 Cranch) 253, 3 L. Ed. 553.

The share of a partner in a neutral house, where his own domicile is in a hostile country, is subject to confiscation, jure belli. The Antonia Johanna (1816) 14 U. S. (1 Wheat.) 159, 4 L. Ed. 60.

Any property of a house of trade established in the enemy's country is condemnable as a prize, whatever may be the domicile of the partners. The Friendschaft (1819) 17 U. S. (4 Wheat.) 105, 4 L. Ed. 525.

The property of a commercial house established in an enemy's country is subject to seizure and condemnation as prize, although some of the partners have a neutral domicile. The Cheshire (1865) 70 U. S. (3 Wall.) 231, 18 L. Ed. 175.

In the case of a joint shipment from enemy country by a firm, where it appears that all the members of the firm are citizens of the United States, but that one of such members resides in the enemy country, the share of the latter in a prize proceeding will be condemned, for a naturalized citizen of the United States, domiciled in the enemy's country at the breaking out of war, is deemed an enemy. The Francis (C. C. 1813) Fed. Cas. No. 5,034.

If a partner in a neutral house be domiciled in the enemy's country, and engaged in its general commerce, for the benefit of his neutral house, the property is condemnable as prize, and if a house of trade is established in the enemy's country, the property of all the partners in the house is condemnable as prize, notwithstanding some of them have a neutral residence; but such connection will not affect the other separate property of the partners having a neutral residence, and where such a house of trade ship goods on their own account to one of the partners, who is domiciled in a neutral country, it is liable as prize; but it is otherwise if the shipment be made by the order of the partner, on his separate account and risk, and not on joint account. The San Jose Indiano (C. C. 1814) Fed. Cas. No. 12,322, affirmed The St. Joze Indiano (1816) 14 U. S. (1 Wheat.) 208, 4 L. Ed. 73.

Where partners domiciled on loyal and disloyal territory were engaged in growing cotton before the war, it was not contrary to the principle of international law, forbidding commercial intercourse between belligerents, for the resident partner to turn over to a common agent, appointed prior to the hostilities, certain cotton as the share of the absent partner. Douglas v. U. S. (1878) 14 Ct. Cl. 1.

"Beginning of the war."—For cases involving question when a state of war exists in absence of an express statutory provision, see U. S. Comp. St. 1916, p. 13498, note.

War was declared on Germany and Austria-Hungary by joint resolutions dated April 6, 1917 and December 7, 1917, respectively.

"End of the war."—A vessel captured after the signing of the preliminary articles of peace cannot be condemned as a prize. The Speedwell (1784) 2 Dall. 40, 1 L. Ed. 280.

A state of war with Spain did not cease until the ratification of the treaty in April, 1899 (30 Stat. 1754). Nephews v. U. S. (1908) 43 Ct. Cl. 430.

Technically a state of war existed between the United States and Spain until April 11, 1899, notwithstanding that the protocol, August 12, 1898, suspended active hostilities. MacLeod v. U. S. (1910) 45 Ct. Cl. 339.

Trading with the enemy—What constitutes.—A vessel owned by citizens of the United States, on her voyage from Naples to the United States, heard of the declaration of war between the United States and Great Britain; and, having a British license to carry her cargo to Great Britain, changed her course to that country. She was captured by the British, libeled, and acquitted upon her license. She then sold her cargo, purchased a return cargo, sailed for the United States, and was captured by an American cruiser. Held, that she was good prize. The Alexander (1814) 12 U. S. (8 Cranch) 169, 3 L. Ed. 524, affirming (C. C. 1813) Fed. Cas. No. 164.

Where, from the circumstances, the court were satisfied that the property captured in truth belonged to an American citizen, fraudulently covered by the name of a neutral, it was con-

demned as the property of citizens found trading with the enemy. The Rugen (1816) 14 U. S. (1 Wheat.) 62, 4 L. Ed. 37.

During the war between the United States and Mexico, the goods of an American trader, who went into the provinces of Mexico, which were in possession of the military authorities of the United States, and there, with the sanction of the executive department and of the commander of the forces of the United States, carried on a trade with the inhabitants, could not lawfully be seized by an officer of the United States on the ground of trading with the enemy. Mitchell v. Harmony (1851) 54 U. S. (13 How.) 115, 14 L. Ed. 75.

In time of war, trade with the enemy's country, either directly or where a neutral port is interposed, if trade with the enemy was the original purpose of the voyage, is illegal, and subjects a vessel and cargo to seizure and forfeiture. Jecker v. Montgomery (1855) 59 U. S. (18 How.) 110, 15 L. Ed. 311.

A shipment, made during war, by an American citizen from an enemy's port to a port in his colonies, is a trading with the enemy. The Diana (C. C. 1814) Fed. Cas. No. 3,876.

Trading with the enemy's country, which has been reduced to subjection, with permission and encouragement of the invading army, is not unlawful. Harmony v. Mitchell (C. C. 1850) Fed. Cas. No. 6,082, affirmed Mitchell v. Harmony (1851) 54 U. S. (13 How.) 115, 14 L. Ed. 75.

If an American vessel, after a knowledge of a war, proceed from a neutral to an enemy port on freight, it is a trading with the enemy, which subjects the vessel to forfeiture, and she is liable therefor on her return voyage to the United States. The Joseph (C. C. 1813) Fed. Cas. No. 7,533, affirmed (1814) 12 U. S. (8 Cranch) 451, 3 L. Ed. 621.

A trade to a neutral port is not illegal, although the public enemy derive benefit thereby, unless such trade be carried on in connection with or subservient to hostile interests and policy. The Liverpool Packet (C. C. 1813) Fed. Cas. No. 8,406.

A vessel is not prize of war because the master thereof has put ashore in the enemy's country a small box, containing only a few seashore shells, some newspapers, and a letter to his wife. The Tropic Wind (D. C. 1861) Fed. Cas. No. 14,186.

A trading voyage by an American vessel is not made unlawful by directing that the proceeds shall be remitted to American citizens detained in the enemy's country, in bills of exchange drawn upon that country. U. S. v. The Ariadne (D. C. 1812) Fed. Cas. No. 14,465.

Act July 13, 1861 (U. S. Comp. St. 1916, §§ 10143, 10146), prohibits every act done toward the execution of a design to carry on, without a "permit," commercial intercourse between the interdicted and other states, and it is violated not only when a vessel has actually sailed with the goods on board, but the moment the goods are started, even on land, toward the forbidden destination. The application for a "permit" is evidence of the intention to proceed, and the use of fraudulent invoices to procure the "permit" shows the intention to be fraudulent. The shipment of goods under color of that permit is a step taken in execution of that fraudulent intent—is an overt act. Such goods are "proceeding to" the interdicted port within the meaning of the act of July 13, 1861, and the shipper, under the act of May 20, 1862 (U. S. Comp. St. 1916, §§ 10154, 10162, 10163), supplementary to the former act, is guilty of an "attempt" to transport them in violation of law. U. S. v. One Hundred and Twenty-Nine Packages (D. C. 1862) Fed. Cas. No. 15,941.

During the War of 1861–65, a mercantile firm had its chief business office in a loyal state, and a branch and resident partner in the insurrectionary districts. Held, that the firm could not, through the resident partner, appoint an agent, after the Rebellion had begun, to buy property with partnership funds. Such an agency was constructive commercial intercourse between enemies. Cramer v. U. S. (1870) 6 Ct. Cl. 381.

It was unlawful for two persons resident in the insurrectionary districts during the Rebellion to take trade across the United States military lines, and what they could not do directly they could not do by one without the lines giving to a third person a sight draft for the purchase of cotton on the other within the lines. Craft v. U. S. (1876) 12 Ct. Cl. 178.

Under this section, subd. C, and the presidential proclamation of April 6, 1917, German subject residing in this country held entitled to sue for breach of contract of employment as an opera singer. Arndt-Ober v. Metropolitan Opera Co. (Sup.) 169 N. Y. S. 304, 102 Misc. Rep. 320, order modified 169 N. Y. S. 944, 182 App. Div. 513.

—— **Excuses for visiting prohibited port.**—A ship driven by distress into a French port, where she landed her cargo to make repairs, but was prevented from reloading it by French officials, but allowed to take away certain articles in exchange, is not subject to condemnation for trading with the enemy, under Nonintercourse Act of June 13, 1798. Hallet and Bowne v. Jenks (1805) 3 Cranch, 210, 2 L. Ed. 414.

Trading with an enemy is not excused by the necessity of obtaining funds to pay the expenses of the ship, nor by the opinion of an American minister, expressed to the master, that by undertaking the voyage, he would violate no law of the United States. The Joseph (1814) 12 U. S. (8 Cranch) 451, 3 L. Ed. 621, affirming (C. C. 1813) Fed. Cas. No. 7,533.

A vessel, having the president's permission to proceed to the West Indies for American property, condemned with her cargo, for having on board other merchandise besides that permitted. U. S. v. The Little Ann (D. C. 1809) Fed. Cas. No. 15,611, reversed The Little Ann (C. C. 1810) Fed. Cas. No. 8,397.

See, also, notes under §§ 3115½f and 7678b, post.

—— Withdrawal of American citizens' goods from enemy country.—After a declaration of war, an American citizen cannot lawfully send a vessel to the enemy's country to bring away his property; and, if he does, the vessel is subject to be condemned on the ground of trading with the enemy. The Rapid (1814) 12 U. S. (8 Cranch) 155, 3 L. Ed. 520, affirming (C. C. 1812) Fed. Cas. No. 11,576.

A shipment was made by an American citizen from an enemy's country, more than 11 months after the declaration of war. Held that, whether such citizen had a right to withdraw his property or not after such declaration, it was then too late for the party to make the shipment, so as to exempt himself from the penalty attached to an illegal traffic with the enemy. The St. Lawrence (1815) 13 U. S. (9 Cranch) 120, 3 L. Ed. 676.

The only qualification of the rule as to the liability of property, the product of an enemy's country and coming from it during war, is that where, upon the breaking out of hostilities or as soon after as possible, the owner escapes with such property as he can take with him, or in good faith thus early removes his property with the view of putting it beyond the hostile power, the property in such cases is exempt from the liability which would otherwise attend it; but when a civil war broke out in April, 1861, it was held that an attempt at removal on the 30th of December was too late. The Gray Jacket (1866) 72 U. S. (5 Wall.) 342, 18 L. Ed. 646.

When a ship and cargo are captured sailing under the enemy's flag and papers, the share in both ship and cargo of a loyal resident of the captor's country, who has been unable to withdraw his property from the enemy's country on account of the war, is liable to condemnation. The William Bagaley (1866) 72 U. S. (5 Wall.) 377, 18 L. Ed. 583.

Property was captured on a flatboat fastened to a wharf in Texas, and belonged to a citizen and merchant of New York, who went to Texas before the war to collect debts due to him. The cotton was the proceeds, and claimant used all diligence to collect his effects, with a view to leaving the hostile country after the breaking out of the war. Held, that the cotton was not enemy's property, and should not be condemned. Fifty-Two Bales of Cotton (C. C. 1863) Fed. Cas. No. 4,785, reversing (D. C. 1862) Fed. Cas. No. 4,784.

Where the claimant left the enemy port with the intent to withdraw from the enemy's country with his effects, and had for that purpose converted his property into the vessel and cargo of enemy produce, and intended to give himself up to the blockading squadron, held, that the withdrawal of the property under the circumstances did not subject it to capture as enemy property. The General C. C. Pinckney (C. C. 1863) Fed. Cas. No. 5,309, reversing (D. C. 1862) Fed. Cas. No. 5,308.

A citizen temporarily residing in the enemy's country at the breaking out of the war is entitled to a reasonable time to collect his effects, and convert them into available and manageable funds, so as to enable him to withdraw them from the country. The John Gilpin (C. C. 1863) Fed. Cas. No. 7,344, reversing (D. C. 1862) Fed. Cas. No. 7,343.

A naturalized citizen cannot lawfully bring away his property from an enemy country, after a knowledge of the war, without the license of the government. The St. Lawrence (C. C. 1813) Fed. Cas. No. 12,232, affirmed (1814) 12 U. S. (8 Cranch) 434, 3 L. Ed. 615.

Neutrals are entitled to a reasonable time, after the breaking out of the war, in which to withdraw their business connections in the enemy's country. The San José Indiano (C. C. 1814) Fed. Cas. No. 12,322, affirmed The St. Joze Indiano (1816) 14 U. S. (1 Wheat.) 208, 4 L. Ed. 73.

A temporary resident of an enemy's country at the breaking out of war, who leaves after that event as soon as he can convert his property into funds which can conveniently be carried with him, is not regarded as an enemy, so that his property is liable to capture as prize of war, as he is entitled to a reasonable time to withdraw from his business connections in the enemy's country after the war breaks out. The Sarah Starr (C. C. 1863) Fed. Cas. No. 12,353, reversing (D. C. 1861) Fed. Cas. No. 12,352.

Trading with an enemy's country is unlawful; but a citizen of one belligerent may withdraw his property from the country of the other belligerent, if he does it within a reasonable time after the declaration of the war, and does

not himself go to the enemy's country for that purpose. Amory v. McGregor (N. Y. 1818) 15 Johns. 24, 8 Am. Dec. 205.

§ 3115½b. (Act Oct. 6, 1917, c. 106, § 3.) Acts prohibited.

It shall be unlawful—

(a) Trading without license.

For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act, to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

(b) Transporting without license.

For any person, except with the license of the President, to transport or attempt to transport into or from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy or ally of enemy nation, with knowledge or reasonable cause to believe that the person transported or attempted to be transported is such subject or citizen.

(c) Sending into or from United States letters.

For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of an enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder by the President or by such person as he may direct), to send, or take out of, or bring into, or attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail; and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: Provided, however, That any person may send, take, or transmit out of the United States anything herein forbidden if he shall first submit the same to the President, or to such officer as the President may direct, and shall obtain the license or consent of the President, under such rules and regulations, and with such exemptions, as shall be prescribed by the President.

(d) Censorship of communications by mail.

Whenever, during the present war, the President shall deem that the public safety demands it, he may cause to be censored under such rules and regulations as he may from time to time establish, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country. Any person who willfully evades or attempts to evade the submission of any such communication to such censorship or willfully uses or attempts to use any code or other device for the purpose of concealing from such censorship the intended meaning

of such communication shall be punished as provided in section sixteen of this Act. (40 Stat. 412.)

See note to § 3115½a, ante.

See proclamation of the President, under § 7628e, post.

Notes of Decisions

"Reasonable cause."—Reasonable and probable cause have been held synonymous. Stacey v. Emery (1878) 97 U. S. 642, 646, 24 L. Ed. 1035; U. S. v. The City of Mexico (D. C. 1885) 25 Fed. 924.

For cases relating to "probable cause," see notes to § 7678d, post.

Transmitting communications otherwise than by mail.—For a somewhat similar provision regarding the transmission of letters from the United States, see U. S. Comp. St. 1916, § 7472, and note thereunder.

Effect on pending suit.—Action other than to preserve the status quo should not be taken in a suit against an alien enemy till, by reason of restoration of peace or otherwise, defense may be adequately presented; intercourse between residents of the enemy country and the United States being prohibited by this section as well as physically impossible. Watts, Watts & Co. v. Unione Austriaca Di Navigazione, 39 S. Ct. 1, 63 L. Ed. —.

Regulation of wireless telegraph systems.—The United States has power to impose conditions upon the operation of any wireless telegraph system which conveys messages to or from the United States. (1902) 24 Op. Atty. Gen. 100.

Under this section, one not in the service of the government of the United States, or any friendly nation, who attempted to bring into the United States in a secret manner, not in due course of mails, a letter from England, is guilty of a violation of the act, though it did not appear that the letter was intended to be delivered to an enemy of the United States. U. S. v. Welsh (D. C.) 250 F. 309.

It is a violation of this section to bring into the United States interest coupons from bonds of a friendly power, where they bore on the back writings which might be communications which it was the purpose of the act to exclude, but not to bring in a coupon gold note issued by an American corporation, which bore no communications other than its proper printed contents. U. S. v. Van Werkhoven (D. C.) 250 F. 311.

§ 3115½bb. (Act Oct. 6, 1917, c. 106, § 4.) (a) Licenses to enemy or ally of enemy insurance or reinsurance companies.

Every enemy or ally of enemy insurance or reinsurance company, and every enemy or ally of enemy, doing business within the United States through an agency or branch office, or otherwise, may, within thirty days after the passage of this Act, apply to the President for a license to continue to do business; and, within thirty days after such application, the President may enter an order either granting or refusing to grant such license. The license, if granted, may be temporary or otherwise, and for such period of time, and may contain such provisions and conditions regulating the business, agencies, managers and trustees and the control and disposition of the funds of the company, or of such enemy or ally of enemy, as the President shall deem necessary for the safety of the United States; and any license granted hereunder may be revoked or regranted or renewed in such manner and at such times as the President shall determine: Provided, however, That reasonable notice of his intent to refuse to grant a license or to revoke a license granted to any reinsurance company shall be given by him to all insurance companies incorporated within the United States and known to the President to be doing business with such reinsurance company: Provided further, That no insurance company, organized within the United States, shall be obligated to continue any existing contract, entered into prior to the beginning of the war, with any enemy or ally of enemy insurance or reinsurance company, but any such company may abrogate and cancel any such contract by serving thirty days' notice in writing upon the President of its election to abrogate such contract.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after appli-

cation made by any enemy or ally of enemy insurance or reinsurance company, within such thirty days as above provided, the provisions of the President's proclamation of April sixth, nineteen hundred and seventeen, relative to agencies in the United States of certain insurance companies, as modified by the provisions of the President's proclamation of July thirteenth, nineteen hundred and seventeen, relative to marine and war-risk insurance, shall remain in full force and effect so far as it applies to such German insurance companies, and the conditions of said proclamation of April sixth, nineteen hundred and seventeen, as modified by said proclamation of July thirteenth, nineteen hundred and seventeen, shall also during said period of thirty days after the passage of this Act, and pending the order of the President as herein provided, apply to any enemy or ally of enemy insurance or reinsurance company, anything in this Act to the contrary notwithstanding. It shall be unlawful for any enemy or ally of enemy insurance or reinsurance company, to whom license is granted, to transmit out of the United States any funds belonging to or held for the benefit of such company or to use any such funds as the basis for the establishment directly or indirectly of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made within such thirty days by any enemy or ally of enemy, other than an insurance or reinsurance company as above provided, it shall be lawful for such enemy or ally of enemy to continue to do business in this country and for any person to trade with, to, from, for, on account of, on behalf of or for the benefit of such enemy or ally of enemy, anything in this Act to the contrary notwithstanding: Provided, however, That the provisions of sections three and sixteen hereof shall apply to any act or attempted act of transmission or transfer of money or other property out of the United States and to the use or attempted use of such money or property as the basis for the establishment of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

If no license is applied for within thirty days after the passage of this Act, or if a license shall be refused to any enemy or ally of enemy, whether insurance or reinsurance company, or other person, making application, or if any license granted shall be revoked by the President, the provisions of sections three and sixteen hereof shall forthwith apply to all trade or to any attempt to trade with, to, from, for, by, on account of, or on behalf of, or for the benefit of such company or other person: Provided, however, That after such refusal or revocation, anything in this Act to the contrary notwithstanding, it shall be lawful for a policyholder or for an insurance company, not an enemy or ally of enemy, holding insurance or having effected reinsurance in or with such enemy or ally of enemy insurance or reinsurance company, to receive payment of, and for such enemy or ally of enemy insurance or reinsurance company to pay any premium, return premium, claim, money, security, or other property due or which may become due on or in respect to such insurance or reinsurance in force at the date of such refusal or revocation of license; and nothing in this Act shall vitiate or nullify then existing policies or contracts of insurance or reinsurance, or the conditions thereof; and any such policyholder or insurance company, not an enemy or ally of enemy, having any claim to or upon money or other property of the enemy or ally of enemy insurance

or reinsurance company in the custody or control of the alien property custodian, hereinafter provided for, or of the Treasurer of the United States, may make application for the payment thereof and may institute suit as provided in section nine hereof.

(b) Change of name; foreign insurance companies doing business in United States.

During the present war, no enemy, or ally of enemy, and no partnership of which he is a member or was a member at the beginning of the war, shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the President.

Whenever, during the present war, in the opinion of the President the public safety or public interest requires, the President may prohibit any or all foreign insurance companies from doing business in the United States, or the President may license such company or companies to do business upon such terms as he may deem proper. (40 Stat. 413.)

See note to § 3115½a, ante.

The proclamation of April 6, 1917 (No. 1,366), above referred to, reads as follows, after omitting formal portions:

"Whereas, certain insurance companies, incorporated under the laws of the German Empire, have been admitted to transact the business of insurance in various States of the United States, by means of separate United States Branches established pursuant to the laws of such States, and are now engaged in business under the supervision of the Insurance Departments thereof, with assets in the United States deposited with Insurance Departments or in the hands of resident trustees, citizens of the United States, for the protection of all policyholders in the United States;

"And whereas, the interests of the citizens of the United States in the protection afforded by such insurance are of great magnitude, so that it is deemed to be important that the agencies of such companies in the United States be permitted to continue in business;

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers vested in me as such, hereby declare and proclaim that such branch establishments of German Insurance Companies now engaged in the transaction of business in the United States pursuant to the laws of the several States are hereby authorized and permitted to continue the transaction of their business in accordance with the laws of such States in the same manner and to the same extent as though a state of war did not now exist; provided, however, that all funds of such establishments now in the possession of their managers or agents, or which shall hereafter come into their possession, shall be subject to such rules and regulations concerning the payment and disposition thereof as shall be prescribed by the insurance supervising officials of the State in which the principal office of such establishment in the United States is located, but in no event shall any funds belonging to or held for the benefit of such companies be transmitted outside of the United States nor be used as the basis for the establishment directly or indirectly of any credit within or outside of the United States to or for the benefit or use of the enemy or any of his allies without the permission of this Government."

The proclamation of July 13, 1917 (No. 1,386), above referred to, reads as follows, after omitting formal portions:

"Whereas, certain insurance companies, incorporated under the laws of the German Empire, have been admitted to transact the business of marine and war risk insurance in various States of the United States, by means of separate United States Branches established pursuant to the laws of such States, and are now engaged in such business under the supervision of the Insurance Departments thereof, with assets in the United States deposited with Insurance Departments or in the hands of resident trustees, citizens of the United States, for the protection of all policy-holders in the United States;

"And whereas, the nature of marine and war risk insurance is such that those conducting it must of necessity be in touch with the movements of ships and cargoes, and it has been considered by the Government of great importance that this information should not be obtained by alien enemies;

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers vested in me as such, hereby declare and proclaim that such branch establishments of German Insurance Companies now engaged in the transaction of business in the United States pursuant to the laws of the several States are hereby prohibited from continuing the transac-

tion of the business of marine and war risk insurance either as direct insurers or re-insurers; and all individuals, firms, and insurance companies incorporated under the laws of any of the States or Territories of the United States, or of any foreign country, and established pursuant to the laws of such States and now engaged in the United States in the business of marine and war risk insurance either as direct insurers or re-insurers are hereby prohibited from re-insuring with companies incorporated under the laws of the German Empire, no matter where located; and all persons in the United States are prohibited from insuring against marine or war risks with insurance companies incorporated under the laws of the German Empire or with individuals, firms, and insurance companies incorporated under the laws of any of the States or Territories of the United States or of any foreign country and now engaged in the business of marine or war risk insurance in the United States, which re-insure business originating in the United States with companies incorporated under the laws of the German Empire, no matter where located.

"The foregoing prohibitions shall extend and operate as to all existing contracts for insurance and re-insurance which are hereby suspended for the period of the war, except that they shall not operate to vitiate or prevent the insurance or re-insurance of, and the payment or receipt of, premiums on insurance or re-insurance under existing contracts on vessels or interest at risk on the date of this proclamation, and such insurance or re-insurance, if for a voyage, shall continue in force until arrival at destination, and if for time, until thirty days from the date of this proclamation, but if on a voyage, at that time, until the arrival at destination.

"Nothing herein shall be construed to operate to prevent the payment or receipt of any premium, return premium, or claim now due or which may become due on or in respect to insurances or re-insurances not prohibited by this proclamation.

"That all funds of such German companies now in the possession of their managers or agents, or which shall hereafter come into their possession, shall be subject to such rules and regulations concerning the payment and disposition thereof as shall be prescribed by the insurance supervising officials of the State in which the principal office of such establishment in the United States is located, but in no event shall any funds belonging to or held for the benefit of such companies be transmitted outside of the United States, nor be used as the basis for the establishment, directly or indirectly, of any credit within or outside of the United States to or for the benefit or use of the enemy or any of his allies without the permission of this Government."

Notes of Decisions

Effect of war on existing insurance policies.—Executory contracts not calculated to lend aid and comfort to the enemy, such as life insurance policies on which the premiums had been paid up to the commencement of the war, are not thereby annulled, but only suspended until its conclusion. Statham v. New York Life Ins. Co. (1871) 45 Miss. 581, 7 Am. Rep. 737.

A contract of insurance between a resident of Virginia and an English company, through its agents in New York, was not annulled or suspended by the Rebellion and the proclamation of the president and the laws of congress. It was a contract between a neutral and a rebel, recognized by the neutral's government as a belligerent. Robinson v. International Life Assur. Soc. (N. Y. 1868) 52 Barb. 450, affirmed (1870) 42 N. Y. 54, 1 Am. Rep. 400.

The Civil War only suspended, but did not abrogate, a life insurance policy. Clemmitt v. New York Life Ins. Co. (1882) 76 Va. 355; New York Life Ins. Co. v. Hendren (Va. 1874) 24 Grat. 536; Connecticut Mut. Life Ins. Co. v. Duerson's Ex'r (Va. 1877) 28 Grat. 630.

Powers of company under license.—A license issued under this act authorizes an alien enemy insurance company, in liquidation, to maintain actions designed to bring in assets growing out of its business within United States prior to the issuance of such license. Nord Deutsche Ins. Co. of Hamburg, Germany, v. John L. Dudley, Jr., Co. (Sup.) 172 N. Y. S. 154.

Change of name.—Under this section it is essential that application for leave to change name on part of an alien should state the applicant's birthplace, or the country of which he was a citizen when born; and whether or not applicant, seeking to change his name, must be a citizen, no order for change of name should be made upon an applicant's erroneous statement that he is a citizen through his father's naturalization. In re Slobody (Sup.) 173 N. Y. S. 514.

§ 3115½c. (Act Oct. 6, 1917, c. 106, § 5, as amended, Act Sept. 24, 1918, c. 176, § 5.) (a) Suspension of provisions of act relating to ally of enemy.

The President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof, and to perform any act made unlawful without such license in section three hereof, and to file and prosecute applications under subsection (b) of section ten hereof; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act; and the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b) Regulation of transactions in foreign exchange of gold or silver.

(b) The President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange and the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy, or otherwise, or between residents of one or more foreign countries, by any person within the United States; and, for the purpose of strengthening, sustaining and broadening the market for bonds and certificates of indebtedness of the United States, of preventing frauds upon the holders thereof, and of protecting such holders, he may investigate and regulate, by means of licenses or otherwise (until the expiration of two years after the date of the termination of the present war with the Imperial German Government, as fixed by his proclamation), any transactions in such bonds or certificates by or between any person or persons: Provided, That nothing contained in this subdivision (b) shall be construed to confer any power to prohibit the purchase or sale for cash, or for notes eligible for discount at any Federal Reserve Bank, of bonds or certificates of indebtedness of the United States; and he may require any person engaged in any transaction referred to in this subdivision to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed. (40 Stat. 415, 966.)

See note to § 3115½a, ante.

This section was amended by Act Sept. 24, 1918, c. 176, § 5, cited above, by changing subdivision b to read as set forth above. As originally enacted

said subdivision read as follows: "The President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed."

The powers conferred upon the President by this subsection are, in so far as applicable to the exportation from or shipment from or taking out of the United States of silver coin or silver bullion, continued until the net amount of silver required by Act April 23, 1918, c. 63, § 2, shall have been purchased as therein provided, by § 9 of said Act April 23, 1918, c. 63, post, § 7678cc. See, U. S. Comp. St. Temp. Supp. 1917, § 3115½c.

Notes of Decisions

Constitutionality.—The government of the United States has power to permit limited commercial intercourse with an enemy at time of war, and to impose such conditions thereon as it sees fit. Hamilton v. Dillin (1874) 88 U. S. (21 Wall.) 73, 22 L. Ed. 528.

In U. S. v. Marigold (1850) 9 How. 560, 13 L. Ed. 257, in upholding an act prohibiting the importation of counterfeit money, the court said that "since the passage of the embargo and nonintercourse laws, and the repeated judicial sanctions those statutes have received, it can scarcely, at this day, be open to doubt that every subject falling within the legitimate sphere of commercial regulation may be partially or wholly excluded, when either measure shall be demanded by the safety or by the important interests of the entire nation. Such exclusion cannot be limited to particular classes or descriptions of commercial subjects; it may embrace manufactures, bullion, coin, or any other thing. The power, once conceded, may operate on any and every subject of commerce to which the legislative discretion may apply it."

The power to regulate commerce includes the power to lay embargoes and admit goods free of duty. U. S. v. Craig (C. C. 1886) 28 Fed. 795, 797.

The embargo laws of December 22, 1807, and March 12, 1808, are not unconstitutional, either because they exceed the power of Congress to "regulate," because they interdict all foreign commerce, or because not limited to a specific duration. U. S. v. The William (D. C. 1808) Fed. Cas. No. 16,700.

Const. U. S. art. 1, § 9, declaring that no tax or duty shall be laid on articles exported from any state; that no preference shall be given by any regulations of commerce or revenue to the ports of one state over those of another, nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another—does not extend to a statute passed during the Rebellion to prohibit and regulate commercial intercourse with insurrectionary districts, and Act Cong. July 13, 1861 (U. S. Comp. St. 1916, §§ 10,143, 10,146), relating to commercial intercourse with insurrectionary states, is not invalid. Folsom v. U. S. (1868) 4 Ct. Cl. 366.

Congress might validly delegate to the President power to revive the nonintercourse act of March 1, 1809, by proclamation, upon determining whether certain foreign countries were violating the neutral commerce of the United States. The Brig Aurora v. U. S. (1813) 7 Cranch, 382, 388, 3 L. Ed. 378, discussed in Field v. Clark (1892) 143 U. S. 649, 682, 12 Sup. Ct. 495, 36 L. Ed. 294.

Act Oct. 1, 1890, § 3, 26 Stat. c. 1244, pp. 567, 612, authorizing the President to suspend, by proclamation, the free introduction of sugar, etc., from countries imposing duties on products of the United States which he considers reciprocally unequal or unjust, does not unconstitutionally delegate legislative power to the President. Field v. Clark (1892) 143 U. S. 649, 12 Sup. Ct. 495, 36 L. Ed. 294. In this case the court mentioned various embargo and nonintercourse acts which authorized the President to enforce or suspend their operation by proclamation, to show that delegations of power similar to the one under consideration had the sanction of numerous legislative precedents.

The president's proclamation of August 9, 1809, was without legal operation, and did not revive Nonintercourse Act March 1, 1809, c. 91. The Orono (C. C. 1812) Fed. Cas. No. 10,585; President's Proclamation Declared Illegal (C. C. 1812) Fed. Cas. No. 11,391.

The confiscation acts passed during the Civil War were held valid. Page v. U. S. (1870) 11 Wall. 268, 304, 20 L. Ed. 135; Miller v. U. S. (1870) 11 Wall. 268, 305, 20 L. Ed. 135; Tyler v. Defrees (1870) 11 Wall. 331, 20 L.

Ed. 161; Kirk v. Lynd (1882) 1 Sup. Ct. 296, 297, 106 U. S. 315, 27 L. Ed. 193; Semple v. U. S. (D. C. 1868) Fed. Cas. No. 12,661; U. S. v. Republican Banner Officers (C. C. 1863) Fed. Cas. No. 16,148; Knoefel v. Williams (1868) 30 Ind. 1.

For cases involving the power of Congress to delegate power to executive and administrative officers in general, see U. S. Comp. St. 1916, pp. 13120–13126, notes.

See, also, notes under §§ 3115½f and 3115½j, post.

Effective date of act and proclamations.—Instructions of the President, in time of war, are not, as laws are, in force without notice to the individuals, and his instructions of August 28, 1812, prohibiting the interruption of vessels owned in the United States coming from British ports with British merchandise, must be known to the commanders of vessels of war to invalidate a capture thereby forbidden. The Mary and Susan (1816) 14 U. S. (1 Wheat.) 46, 4 L. Ed. 32.

A proclamation removing restrictions on trade between the disloyal and loyal states held effective when signed, sealed, and deposited in the State Department, although not published in newspapers until several days thereafter. Lapeyre v. U. S. (1872) 17 Wall. 191, 21 L. Ed. 606.

A vessel cleared from St. Mary's, Georgia, on January 15, 1808. Upon the evening of that day, the collector of that port received information of the passage of the embargo law of December 22, 1807, and gave public notice of it. It did not appear that it was known to the master or owners of the vessel at the time of sailing, and, having been seized for a violation of the law, she was restored; for trade laws are to be considered as beginning to operate in the respective collection districts from the time they are received from the proper department by the collector, unless previous notice of them be brought home to the knowledge of the party charged with violating them. The Cotton Planter (C. C. 1810) Fed. Cas. No. 3,270.

Construction of proclamation.—Enemy merchant vessels carrying on innocent commercial transactions at the time, or just prior to the time, when hostilities occur, are entitled to a liberal interpretation of a proclamation prescribing rules for their treatment. The Buena Ventura v. U. S. (1899) 175 U. S. 384, 20 Sup. Ct. 148, 44 L. Ed. 206.

Authority to issue licenses—Form, effect, etc.—Act Cong. July 13, 1861 (U. S. Comp. St. 1916, §§ 10143, 10146), prohibiting commercial intercourse with the states in insurrection, but that the President might in his discretion license trade in such articles and by such persons as he might think conducive to public interest, to be carried on under rules and regulations prescribed by the Secretary of the Treasury, authorized the rules adopted March 31 and September 11, 1863, whereby permission was given to purchase cotton in the states in insurrection, and export the same to other states, on condition of paying, besides other fees, a fee of four cents per pound. Hamilton v. Dillin (1874) 88 U. S. (21 Wall.) 73, 22 L. Ed. 528.

Act July 13, 1861 (U. S. Comp. St. 1916, §§ 10143, 10146), and Act May 20, 1862 (U. S. Comp. St. 1916, §§ 10154, 10162, 10163), are prohibitory acts, and the forfeiture under them of goods "proceeding to" rebellious states can only be avoided by the production of such a license as is provided in the acts. Therefore a license obtained through error or mistake or fraud will not prevent the forfeiture. U. S. v. One Hundred Barrels of Cement (D. C. 1862) Fed. Cas. No. 15,945. And see U. S. v. One Hundred and Twenty-Nine Packages (D. C. 1862) Fed. Cas. No. 15,941.

This section, subsec. "a," as to license to do business as provided in sections 3, 4, and 10, does not, in view of section 7, subd. "b," post, § 3115½d, authorize a license to an ally of enemy to sue on a note given before the commencement of the war. Hungarian General Credit Bank v. Titus (Sup.) 169 N. Y. S. 926, 182 App. Div. 826.

Under Act Cong. July 13, 1861, § 5 (U. S. Comp. St. 1916, §§ 10143, 10146), authorizing the President by a proclamation to declare commercial intercourse between the citizens of the United States and the insurrectionary states unlawful during hostilities, and Act May 20, 1862, § 3 (U. S. Comp. St. 1916, §§ 10154, 10162, 10163), providing that the Secretary of the Treasury may prohibit and prevent the transportation of any goods in all cases where there shall be satisfactory reasons to believe that such goods were intended for any place in possession or under the control of insurgents against the United States, or that there was imminent danger that such goods would fall into possession of the insurgents, a sound discretion was vested in the Secretary of the Treasury to make rules in relation to the commercial intercourse with the insurrectionary states, which was of a governmental character and not subject to revision. Hughes v. Oaks (1868) 59 Pa. (9 P. F. Smith) 32.

See, also, U. S. Comp. St. 1916, pp. 12478, 12479, notes.

Persons entitled to license.—An attorney at law does not come within the terms of the Trading with the Enemy Act, so as to authorize a license to be issued to him to prosecute a suit for his client, where such client is an enemy or ally of enemy. Hungarian General Credit Bank v. Titus (Sup.) 169 N. Y. S. 926, 182 App. Div. 826

Money transactions.—In the act of 861, prohibiting intercourse between e loyal and the insurgent states, gold in is included in the words "goods and attels, wares and merchandise," and erefore is forfeited by an attempt to rry it into one of the insurgent states. S. v. Canoe (C. C. 1867) Fed. Cas. o. 14,718.

Under rule 22 of September 11, 1863 House Ex. Doc. 1862, p. 416), which as framed by the Secretary of the reasury in accordance with the provions of Act July 13, 1861 (U. S. Comp. . 1916, §§ 10143, 10146), prohibiting tercourse with the inhabitants of ates in insurrection, gold coin capturin course of transportation into such ates is subject to forfeiture, even ough the party so transporting it inded it for his own personal use. U. v. American Gold Coin (C. C. 1868) d. Cas. No. 14,439.

Transporting gold to a territory in surrection, without a license, will subject it to forfeiture, though the insurrectionary district was at the time in possession of the federal forces. U. S. v. Gay's Gold (C. C. 1870) Fed. Cas. No. 15,194, affirmed In re Gay's Gold (1871) 80 U. S. (13 Wall.) 358.

During the Civil War, a loyal citizen, living within the rebel lines, sent money to another city, also within the rebel lines, to be invested in certain articles. The investment was not made until after the place of domicile was captured, and the purchaser thereby became a resident within the federal lines. Held, that the transaction was not within Prohibition Act July 13, 1861 (12 Stat. 257). Furman v. U. S. (1869) 5 Ct. Cl. 579.

Money in hands of an administrator, belonging to alien enemy will be held, to be paid to the alien at end of war, or in the meantime to the constituted authority of the United States entitled to receive it. In re Kelly (1917) 167 N. Y. Supp. 256.

3115½cc. (Act Oct. 6, 1917, c. 106, § 6.) Alien property custodian; general powers and duties.

The President is authorized to appoint, prescribe the duties of, d fix the salary (not to exceed $5,000 per annum) of an official be known as the alien property custodian, who shall be empowed to receive all money and property in the United States due or elonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under e provisions of this Act; and to hold, administer, and account for e same under the general direction of the President and as proded in this Act. The alien property custodian shall give such ond or bonds, and in such form and amount, and with such serity as the President shall prescribe. The President may further nploy in the District of Columbia and elsewhere and fix the comensation of such clerks, attorneys, investigators, accountants, and her employees as he may find necessary for the due administraon of the provisions of this Act: Provided, That such clerks, inestigators, accountants, and other employees shall be appointed om lists of eligibles to be supplied by the Civil Service Commison and in accordance with the civil-service law: Provided further, hat the President shall cause a detailed report to be made to Conress on the first day of January of each year of all proceedings had nder this Act during the year preceding. Such report shall conin a list of all persons appointed or employed, with the salary or ompensation paid to each, and a statement of the different kinds property taken into custody and the disposition made thereof. 0 Stat. 415.)

See note to § 3115½a, ante.

Custodian's powers.—In an action by en enemies the custodian of alien emy property appointed by the presint under this act may intervene and take over and conduct the prosecution of the action. Rothbarth v. Herzfeld (1917) 167 N. Y. Supp. 199, reversing 100 Misc. Rep. 470, 166 N. Y. Supp. 744. And see In re Kelly (1917) 167 N. Y. Supp. 256.

3115½d. (Act Oct. 6, 1917, c. 106, § 7, as amended Act Nov. 4, 1918, c. 201, § 1.) (a) Lists of enemy or ally of enemy officers, directors or stockholders of corporations in United States.

Every corporation incorporated within the United States, and ery unincorporated association, or company, or trustee, or truses within the United States, issuing shares or certificates repre-

senting beneficial interests, shall, under such rules and regulation as the President may prescribe and, within sixty days after the pas sage of this Act, and at such other times thereafter as the Presiden may require, transmit to the alien property custodian a full list, dul sworn to, of every officer, director, or stockholder known to be, o whom the representative of such corporation, association, company or trustee has reasonable cause to believe to be an enemy or all of enemy resident within the territory, or a subject or citizen resid ing outside of the United States, of any nation with which th United States is at war, or resident within the territory, or a subjec or citizen residing outside of the United States, of any ally of an nation with which the United States is at war, together with th amount of stock or shares owned by each such officer, director, o stockholder, or in which he has any interest.

The President may also require a similar list to be transmitted o all stock or shares owned on February third, nineteen hundred an seventeen, by any person now defined as an enemy or ally of enemy or in which any such person had any interest; and he may als require a list to be transmitted of all cases in which said corpora tion, association, company, or trustee has reasonable cause to be lieve that the stock or shares on February third, nineteen hundre and seventeen, were owned or are owned by such enemy or ally o enemy, though standing on the books in the name of another: Pro vided, however, That the name of any such officer, director, o stockholder shall be stricken permanently or temporarily from suc list by the alien property custodian when he shall be satisfied tha he is not such enemy or ally of enemy.

Any person in the United States who holds or has or shall hol or have custody or control of any property beneficial or otherwis alone or jointly with others, of, for, or on behalf of an enemy o ally of enemy, or of any person whom he may have reasonable caus to believe to be an enemy or ally of enemy and any person in th United States who is or shall be indebted in any way to an enem or ally of enemy, or to any person whom he may have reasonabl cause to believe to be an enemy or ally of enemy, shall, with suc exceptions and under such rules and regulations as the Presiden shall prescribe, and within thirty days after the passage of this Ac or within thirty days after such property shall come within his cus tody or control, or after such debt shall become due, report the fac to the alien-property custodian by written statement under oat containing such particulars as said custodian shall require. Th President may also require a similar report of all property so held of, for, or on behalf of, and of all debts so owed to, any person no defined as an enemy or ally of enemy, on February third, ninete hundred and seventeen: Provided, That the name of any perso shall be stricken from the said report by the alien-property cus todian, either temporarily or permanently, when he shall be satis fied that such person is not an enemy or ally of enemy. The Presi dent may extend the time for filing the lists or reports required b this section for an additional period not exceeding ninety days.

(b) Act constituting trade with enemy prior to passage of act.

Nothing in this Act contained shall render valid or legal, or b construed to recognize as valid or legal, any act or transaction con stituting trade with, to, from, for or on account of, or on behalf o for the benefit of an enemy performed or engaged in since the be ginning of the war and prior to the passage of this Act, or any suc act or transaction hereafter performed or engaged in except as au thorized hereunder, which would otherwise have been or be voi illegal, or invalid at law. No conveyance, transfer, delivery, pay

ent, or loan of money or other property, in violation of section ree hereof, made after the passage of this Act, and not under li-nse as herein provided shall confer or create any right or remedy respect thereof; and no person shall by virtue of any assignment, dorsement, or delivery to him of any debt, bill, note, or other ob-gation or chose in action by, from, or on behalf of, or on account , or for the benefit of an enemy or ally of enemy have any right remedy against the debtor, obligor, or other person liable to pay, lfill, or perform the same unless said assignment, indorsement, or elivery was made prior to the beginning of the war or shall be ade under license as herein provided, or unless, if made after the eginning of the war and prior to the date of passage of this Act, e person to whom the same was made shall prove lack of knowl-dge and of reasonable cause to believe on his part that the same as made by, from or on behalf of, or on account of, or for the enefit of an enemy or ally of enemy; and any person who know-gly pays, discharges, or satisfies any such debt, note, bill, or other bligation or chose in action shall, on conviction thereof, be deemed violate section three hereof: Provided, That nothing in this Act ontained shall prevent the carrying out, completion, or perform-nce of any contract, agreement, or obligation originally made with entered into by an enemy or ally of enemy where, prior to the eginning of the war and not in contemplation thereof, the interest such enemy or ally of enemy devolved by assignment or other-ise upon a person not an enemy or ally of enemy, and no enemy ally of enemy will be benefited by such carrying out, comple-on, or performance otherwise than by release from obligation ereunder.

Nothing in this Act shall be deemed to prevent payment of money elonging or owing to an enemy or ally of enemy to a person within e United States not an enemy or ally of enemy, for the benefit of ch person or of any other person within the United States, not enemy or ally of enemy, if the funds so paid shall have been re-ived prior to the beginning of the war and such payments arise t of transactions entered into prior to the beginning of the war, d not in contemplation thereof: Provided, That such payment all not be made without the license of the President, general or ecial, as provided in this Act.

Nothing in this Act shall be deemed to authorize the prosecution any suit or action at law or in equity in any court within the nited States by an enemy or ally of enemy prior to the end of e war, except as provided in section ten hereof: Provided, how-er, That an enemy or ally of enemy licensed to do business un-r this Act may prosecute and maintain any such suit or action so r as the same arises solely out of the business transacted within e United States under such license and so long as such license emains in full force and effect: And provided further, That an nemy or ally of enemy may defend by counsel any suit in equity action at law which may be brought against him.

Receipt of notice from the President to the effect that he has rea-onable ground to believe that any person is an enemy or ally of nemy shall be prima facie defense to any one receiving the same, any suit or action at law or in equity brought or maintained, or any right or set-off or recoupment asserted by, such person and ased on failure to complete or perform since the beginning of the ar any contract or other obligation. In any prosecution under ection sixteen hereof, proof of receipt of notice from the President the effect that he has reasonable cause to believe that any per-on is an enemy or ally of enemy shall be prima facie evidence that

the person receiving such notice has reasonable cause to belie such other person to be an enemy or ally of enemy within the mea ing of section three hereof.

(c) Requiring property conveyed to alien property custodian.

If the President shall so require any money or other proper including (but not thereby limiting the generality of the abov patents, copyrights, applications therefor, and rights to apply the same, trade marks, choses in action, and rights and claims every character and description owing or belonging to or held f by, on account of, or on behalf of, or for the benefit of, an ener or ally of enemy not holding a license granted by the Preside hereunder, which the President after investigation shall determi is so owing or so belongs or is so held, shall be conveyed, tra ferred, assigned, delivered, or paid over to the Alien Property Cu todian, or the same may be seized by the Alien Property Custodia and all property thus acquired shall be held, administered and d posed of as elsewhere provided in this Act.

Any requirement made pursuant to this Act, or a duly certif copy thereof, may be filed, registered, or recorded in any office the filing, registering, or recording of conveyances, transfers, assignments of any such property or rights as may be covered such requirement (including the proper office for filing, registeri or recording conveyances, transfers, or assignments of paten copyrights, trade-marks, or any rights therein or any other right and if so filed, registered, or recorded shall impart the same not and have the same force and effect as a duly executed conveyan transfer, or assignment to the Alien Property Custodian so fil registered, or recorded.

Whenever any such property shall consist of shares of stock other beneficial interest in any corporation, association, or compa or trust, it shall be the duty of the corporation, association, or co pany or trustee or trustees issuing such shares or any certifica or other instruments representing the same or any other benefi interest to cancel upon its, his, or their books all shares of stock other beneficial interest standing upon its, his, or their books in name of any person or persons, or held for, on account of, or on half of, or for the benefit of any person or persons who shall ha been determined by the President, after investigation, to be an e my or ally of enemy, and which shall have been required to be co veyed, transferred, assigned, or delivered to the Alien Prope Custodian or seized by him, and in lieu thereof to issue certifica or other instruments for such shares or other beneficial interest the Alien Property Custodian or otherwise, as the Alien Prope Custodian shall require.

The sole relief and remedy of any person having any claim to a money or other property heretofore or hereafter conveyed, tra ferred, assigned, delivered, or paid over to the Alien Property C todian, or required so to be, or seized by him shall be that provi by the terms of this Act, and in the event of sale or other dispo tion of such property by the Alien Property Custodian, shall limited to and enforced against the net proceeds received therefr and held by the Alien Property Custodian or by the Treasurer the United States.

(d) Voluntary payment of property to alien property custodian holder.

If not required to pay, convey, transfer, assign, or deliver un the provisions of subsection (c) hereof, any person not an ene or ally of enemy who owes to, or holds for, or on account of, or

behalf of, or for the benefit of an enemy or of an ally of enemy not holding a license granted by the President hereunder, any money or other property, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, may, at his option, with the consent of the President, pay, convey, transfer, assign, or deliver to the alien property custodian said money or other property under such rules and regulations as the President shall prescribe.

(e) Acts under order, rule, or regulation of President.

No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee. The President shall issue to every person so appointed a certificate of the appointment and authority of such person, and such certificate shall be received in evidence in all courts within the United States. Whenever any such certificate of authority shall be offered to any registrar, clerk, or other recording officer, Federal or otherwise, within the United States, such officer shall record the same in like manner as a power of attorney, and such record or a duly certified copy thereof shall be received in evidence in all courts of the United States or other courts within the United States. (40 Stat. 416, 1020.)

See note to § 3115½a, ante.

Subdivision (c) of this section was amended by Act Nov. 4, 1918, c. 201, § 1, cited above, to read as set forth above. Prior to this amendment said subdivision read as follows: "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Notes of Decisions

Commercial intercourse with enemy.—Commercial intercourse with the enemy is prohibited during war. The William Bagaley (1866) 5 Wall. 377, 18 L. Ed. 583; U. S. v. Grossmayer (1869) 9 Wall. 72, 19 L. Ed. 627; The Joseph (1814) 8 Cranch, 451, 3 L. Ed. 621; The Rapid (1814) 8 Cranch, 155, 3 L. Ed. 520; The Julia (1814) 8 Cranch, 181, 3 L. Ed. 528; New York Life Insurance Co. v. Davis (1877) 95 U. S. 425, 24 L. Ed. 453; Griswold v. Waddington (N. Y. 1899) 16 Johns. 438; Jecker v. Montgomery (1855) 18 How. 110, 15 L. Ed. 311; Scholefield v. Eichelberger (1833) 32 U. S. (7 Pet.) 586, 8 L. Ed. 793; White v. Burnley (1857) 61 U. S. (20 How.) 235, 15 L. Ed. 886; Watts, Watts & Co. v. Unione Austriaca di Navigazione (D. C. 1915) 224 Fed. 188; The Rapid (C. C. 1812) Fed. Cas. No. 11,576, affirmed (1814) 12 U. S. (8 Cranch) 155, 3 L. Ed. 520; Rice v. Shook (1871) 27 Ark. 137, 11 Am. Rep. 783; Taylor v. Albion Lumber Co. (Cal.) 168 P. 348; Marchand v. Coyle (1866) 18 La. Ann. 632; Beach v. Kezar (1818) 1 N. H. 184; Griswold v. Waddington (N. Y. 1819) 16 Johns. 438; Harden v. Boyce (N. Y. 1870) 59

Barb. 425; Fritz Schulz, Jr., Co. v. Raimes & Co. (1917) 100 Misc. Rep. 697, 166 N. Y. Supp. 567, affirming order (City Ct.) 164 N. Y. S. 454, 99 Misc. Rep. 626; Vorhaus v. City Nat. Securities Co. (Sup.) 167 N. Y. S. 736, order affirmed 169 N. Y. S. 1118; Bank of Tennessee v. Woodson (1867) 45 Tenn. (5 Cold.) 176; Whitis v. Polk (1872) 36 Tex. 602; Small's Adm'r v. Lumpkin's Ex'x (Va. 1877) 28 Grat. 832.

Contracts.—Under Act July 13, 1861 (U. S. Comp. St. 1916, §§ 10143, 10146), prohibiting all commercial intercourse between the states in insurrection and the rest of the United States, the prohibition affected debtors and creditors equally with those who did not bear that relation to each other. U. S. v. Grossmayer (1869) 76 U. S. (9 Wall.) 72, 19 L. Ed. 627.

The doctrine of revival of contracts suspended during the war is based on consideration of equity, and justice will not be invoked to revive a contract which it would be unjust or inequitable to revive, as where time is the essence of a contract, or the parties cannot be made equal. New York Life Ins. Co. v. Statham (1876) 93 U. S. 24, 23 L. Ed. 789; Abell v. Penn Mut. Life Ins. Co. (1881) 18 W. Va. 400.

Seamen who signed articles on an English ship before the European war, after the commencement of that war held, under the English law, justified in leaving the ship on the ground that the war risk was not contemplated by their contract. The Epsom (D. C. 1915) 227 Fed. 158.

That a time charter of a British steamship was annulled by reason of the European war held not to deprive the broker, who procured the same, of his right to the stipulated commission. Vellore S. S. Co. v. Steengrafe (1915) 229 Fed. 394, 143 C. C. A. 514.

A contract between an English corporation, citizens of the United States, and a German firm, held not rendered void by English Trading with the Enemy Acts Dec. 23, 1915, or Jan. 27, 1916, and the English company could sue for its specific performance. Lindenberger Cold Storage & Canning Co. v. J. Lindenberger, Inc. (D. C. 1916) 235 Fed. 542.

Where contract of sale of prussiate of soda was made after war was declared between Germany and Great Britain, British orders in council placing an embargo thereon held not to excuse performance. Standard Silk Dyeing Co. v. Roessler & Hasslacher Chemical Co. (D. C. 1917) 244 Fed. 250.

The claims of creditors of this country against subjects of Great Britain which existed prior to the American Revolution were not destroyed by the dissolution of the government, although the judicial means of compel-

ling payment in this country were f
the time lost. Jones v. Walker (C.
1832) Fed. Cas. No. 7,507.

The Civil War, with respect to pe
ties to contracts who were in hostili
to each other, had the effect to su
pend the judicial enforcement of co
tracts; but their obligation did n
cease, and the remedy revived with t
restoration of peace. Semmes v. Ci
Fire Ins. Co. (C. C. 1869) Fed. Ca
No. 12,651, affirmed (1871) 80 U.
(13 Wall.) 158, 20 L. Ed. 490; Spenc
v. Brower (1870) 32 Tex. 663, 5 A
Rep. 254.

Contracts made prior to July 1
1861, between citizens of the states
rebellion and those of other stat
were not invalidated by the operati
of the principles of international la
Speed v. Smith (C. C. 1869) Fed. Ca
No. 13,226.

Contracts made prior to the proc
mation of August 16, 1861, were vali
but during the War the debt and t
remedy were suspended, and did n
revive until the restoration of pea
Perkins v. Rogers (1871) 35 Ind. 12
9 Am. Rep. 639.

It is a sufficient answer to the ob
gation of a bill of lading that it becai
impossible to perform the contra
without violating the laws of the cou
try. Therefore, no action can be mai
tained on a bill of lading to a forei
country, after a declaration of war
this country against that. Brown
Delano (1815) 12 Mass. 370.

Where a ship proceeds directly fro
this country to an enemy's colony
the order of the agent and the suppo
ed part owner, and the cargo was so
to persons in open hostility with t
United States, the shipowners cann
recover from one tortiously retai
ing the moneys received therefro
Chauncy v. Yeaton (1818) 1 N.
151.

Whether a pre-existing contract
dissolved or not by the war depen
upon whether it is essentially antag
nistic to the laws governing a state
war. If the contract is of a continui
nature, as in the case of a partnersh
or of an executory character mere
and in the performance of its essenti
features would violate such laws,
would be dissolved; but if not, a
rights have become vested under
the contract will either be qualified,
its performance suspended, accordi
to its nature, so as to strip it of its o
jectionable features, and save su
rights. The tendency of adjudicati
is to preserve, and not to destroy, co
tracts existing before the war. Mut
al Ben. Life Ins. Co. v. Hillyard (187
37 N. J. Law (8 Vroom) 444, 18 A
Rep. 741.

Where the use and occupancy
premises in New York by a citizen of
seceding state began before the co
mencement of the Civil War and co

ued after that event, the existence the war did not vitiate the implied ntract, and after hostilities ceased landlord might recover. Kiersted Orange & A. R. Co. (N. Y. 1876) 54 w. Prac. 29.

Declaration of existence of war is t alone sufficient, ex proprio vigore, avoid all obligations between citi- ns and subjects of an alien enemy. itz Schulz, Jr., Co. v. Raimes & Co. 917) 99 Misc. Rep. 626, 164 N. Y. pp. 454, affirmed (1917) 100 Misc. p. 697, 166 N. Y. Supp. 657.

State of war does not confiscate a ot owing by resident to nonresident izen of enemy country, though it y suspend remedy of collection rough courts or prohibit transmis- n of proceeds to the enemy country. thbarth v. Herzfeld (1917) 100 sc. Rep. 470, 166 N. Y. Supp. 744, re- rsed (1917) 167 N. Y. Supp. 199.

War puts an end to all executory ntracts between citizens of the bel- erent nations. Isaacs v. McGrath . C. 1819) 1 Nott & McC. 563; aacs v. McGrath (S. C. 1822) 2 Mc- rd, 26.

Confederate treasury notes as a con- leration passing from a person resi- nt within the Confederate line to an torney in fact of one resident in the al states were not a valid and legal nsideration. Conley v. Burson 870) 48 Tenn. (1 Heisk.) 145.

In 1864 an agent, acting with the ad- e and assistance of his principal, rrendered to a cotton bureau of the nfederate States, then dominant in xas, one half of the principal's cot- n, to obtain a permit to transport e other half to Mexico and thence to verpool. Held, that the transaction s in direct aid of the Rebellion and violation of the blockade and the ws of the United States then in force, d that as the principal and agent re in pari delicto, neither of them uld maintain a suit against the other the proceeds or other liabilities sing out of the transaction. Con- rse v. Miller (1870) 33 Tex. 216.

Conceding that the exportation of tton from Texas to Mexico was ille- l during the late Civil War, it would t follow that debts contracted for ms and supplies used in such expor- tion would also be illegal, nor would ere knowledge by the seller that such s the designed use of the teams and pplies prevent his recovery in an ac- n at law. Kottwitz v. Alexander's presentatives (1869) 34 Tex. 689.

The transportation of coin or bullion om Mexico into Texas during the vil War was in violation of law, and contract for such transportation n be enforced. Cantu v. Bennett 873) 39 Tex. 303.

Where the vendor in a contract for e sale of land executed before the e Civil War on the declaration of war resided in Union territory and the vendee in Confederate territory, intercourse between them during the war being prohibited, the failure of the vendee to pay the installment of the purchase price falling due during the war did not entitle the vendor to have the land sold to enforce their payment. Grinnan v. Edwards (1883) 21 W. Va. 347.

See, also, U. S. Comp. St. 1916, pp. 12473, 12474, note.

—— **Agency agreements.**—That a time charter of a British steamship was annulled by reason of the European war held not to deprive the broker, who procured the same, of his right to the stipulated commission. Vellore S. S. Co. v. Steengrafe (1915) 229 Fed. 394, 143 C. C. A. 514.

The Civil War did not revoke an agency established in one of the Southern States before the war, by a citizen of one of the Northern States. Botts v. Crenshaw (C. C. 1868) Fed. Cas. No. 1,690; Anderson v. Bank (C. C. 1869) Fed. Cas. No. 354.

War does not confiscate debts or property for the benefit of debtors or agents, but only suspends the right of action. After peace, the obligation of an agent who has collected funds in the territory of one belligerent, upon account of a resident in the other, to pay over to his principal, revives. Caldwell v. Harding (C. C. 1869) Fed. Cas. No. 2,302.

The authority of an agent is not affected by war, and proceedings had against an agent during a state of war, to which the principal could not answer by reason of the existence of war, are valid, and hold the principal. Cocks v. Izard (C. C. 1871) Fed. Cas. No. 2,934.

The agency of one representing an insurance company, authorized to receive premiums and renew policies, becomes unlawful when the insured and the insurer become public enemies. Tait v. New York Life Ins. Co. (C. C. 1873) Fed. Cas. No. 13,726.

Where a citizen during hostilities may lawfully pay a resident agent his debt due to an alien enemy, and the agent may accept the money and bind his principal, in such a case the agent who lawfully receives the money may legally protect it by an honest investment. And the owner may follow his money after the war and become the owner of the property into which it has been turned. Stoddart v. U. S. (1870) 6 Ct. Cl. 340.

An agency to buy cotton, established when both the parties reside within the Confederate lines, being lawful, continues, notwithstanding the capture of the city in which the principal dwells, and purchases made by the agent while he is in Confederate lines and his principal within the Union inure to the benefit of the principal, who acquires a

valid title. Queyrouze v. U. S. (1871) 7 Ct. Cl. 402.

Where a power of attorney to sell the land of a married woman in the District of Columbia, executed in 1859, could have been properly executed by the attorney without any communication or intercourse with the principals, the Civil War did not operate to revoke the power, although the principals resided in one of the insurrectionary states. Williams v. Paine (1895) 7 App. D. C. 116.

The war revoked the authority of a citizen of an insurgent state to act as agent for a citizen of a state which adhered to the government of the United States, without any act of revocation or renunciation by the parties. Howell v. Gordon (1869) 40 Ga. 302; Conley v. Burson (1870) 48 Tenn. (1 Heisk.) 145.

Where a citizen of Kansas by contract became the agent of a citizen of Virginia, in 1857, the fact that the latter was a rebel and was in the Confederate lines in 1863 did not of itself terminate the agency. Fisher v. Krutz (1872) 9 Kan. 501.

A person serving in the army of one belligerent cannot have an agent within the territory of the other to transact ordinary business, but he may for some purposes. Buford v. Speed (1875) 74 Ky. (11 Bush) 338.

The doctrine that a state of war dissolves or suspends all commercial partnerships existing between citizens or subjects of the belligerents does not apply to agents or agencies; and an agent or mandatory, intrusted with the management or control of real estate in New Orleans for his principal, who resided in one of the Northern States before and during the late war, was not absolved from his obligations to his principal by the breaking out of hostilities between the two sections of the country. The agency continued during the war, and his acts, as such, were binding on his principal. Monsseaux v. Urquhart (1867) 19 La. Ann. 482.

A citizen of Mississippi, shortly before the fall of New Orleans, committed to an agent there to sell certain bills of exchange, which, six days after the fall, he sold for Confederate money. Held, that the agent's authority was not revoked by the surrender of the city. Murrell v. Jones (1866) 40 Miss. 565.

The owner of a farm in Mississippi removed to Texas during the Civil War, and left an agent to supervise and carry on his farm. Held, that such agency was not terminated by the Federal occupancy of the territory in which the farm was situated; and that a contract entered into between such agent and the Federal authorities, to carry on the farm, and work freedmen thereon, did not terminate the agency, or give the agent any pov defeat the interest of his princi claiming the proceeds of the farr what he did on the farm, he c agent; and the products of the belonged to the principal. Shel Offutt (1875) 51 Miss. 128.

Powers of attorney for collecti money, executed prior to existen state of war, rendering principal emy aliens, continue to be valid, withstanding the state of war, an be exercised without violating the of public policy. Keppelmann v. pelmann (N. J. Ch.) 105 A. 140.

It is plainly against the intere alien principals that their attorne fact give refunding bonds to exec of an estate and receive their le and turn the same over to the property custodian, so it will n presumed that such principals c the agency of their attorneys in fa continue. Id.

It being to the interest of enem ien principals that their attorne fact represent them in proceedin determine accounting and distrib of their shares in an estate, conse continuance of a prewar power c torney therefor will be presumed.

A life insurance company of York had at the commencement c Civil War an agent in Mobile, to the insured had been, for several in the habit of paying premiums. that the war did not suspend the cy; but the continued payment of miums to such agent, for the com during the war, was valid, and the policy in force. Sands v. New Life Ins. Co. (N. Y. 1871) 59 556, affirmed (1872) 50 N. Y. 62 Am. Rep. 535.

An agent constituted before a may continue to represent his pri in transactions not contrary to th icy or interests of the governme the agent's residence, though the cipal be an enemy resident unde hostile government; and ther where such agent is authorized t ceive notice of the dishonor of indorsed by his principal, the se of such notice upon the agent the breaking out of the war bind principal. Hubbard v. Matt (1873) 54 N. Y. 43, 13 Am. Rep.

Contracts existing between cit and residents of the Northern S and citizens of North Carolina, to the commencement of the late were suspended during the existen hostilities; and hence, when a c of New York had, previous to the brought suit, upon a promissory in a court of North Carolina, ag a resident of that state, and th fendant paid the amount of the pending the war, to the plaintiff torney, such payment was a nullit the relation of attorney and clien been terminated by the war. E

ell v. Willard (1871) 65 N. C. 555, 6 n. Rep. 749.

Plaintiffs, residents of Indiana, obined judgments in Tennessee in 1859, d at an execution sale of defendant's nd purchased it in the name of C. as ent. In 1862 defendant paid the remption money in Confederate notes C. Held, that the war did not reke C.'s agency. Darling v. Lewis 872) 58 Tenn. (11 Heisk.) 125.

The act of 1861, revoking and susnding agencies during war, did not ply to a principal and agent residing the slave states and outside the Fedal lines. Maloney v. Stephens (1872) Tenn. (11 Heisk.) 738.

The breaking out of war does not spend authority for the collection of debt, given previous to the beginning hostilities by a citizen of one of the stile sections to an agent who, as ll as the debtor, resides in the other. odgers v. Bass (1877) 46 Tex. 505.

The authority of an agent appointed fore the war to collect a debt is not spended because it is illegal to ret to the principal, who is living outle the Confederacy, but it is the duty the agent to receive, and of the btor to pay, the debt. Hale v. Wall a. 1872) 22 Grat. 424; Wall v. usher (Va. 1872) 22 Grat. 424.

An alien enemy may have an agent in e enemy's country, to collect debts e him and to preserve his property ere. Hale v. Wall (Va. 1872) 22 at. 424.

On the breaking out of war, limited éncies in the hostile country, created fore the war, and which can be exised without communication, may be ntinued to collect and preserve, but t to transmit, property; nor is there wer to appoint any agent for any rpose after hostilities have actually nmenced. Small's Adm'r v. Lump's Ex'x (Va. 1877) 28 Grat. 832.

— **Bills and notes.**—It is not with the power of a citizen within the ited States lines to give to an enemy thin the enemy's lines an evidence of ot, which shall be valid on the return peace. Hart's Adm'r v. U. S. 879) 15 Ct. Cl. 414.

A bill of exchange drawn during the istence of war by a bank in the tery in the possession of one belligert, upon a bank in a city occupied by e other belligerent, is void, even ough the payee of the bill, at the time received it, supposed that both placwere occupied and controlled by the me belligerent; and payee could rever from the drawer, upon the comon counts, the money paid for the bill. illiams v. Mobile Sav. Bank (C. C. 75) Fed. Cas. No. 17,729.

The owner of a promissory note, be a resident citizen of New York, ght there lawfully transfer it in the ar 1862 to another resident citizen of ew York, although the note itself was then in the hands of a sequestration receiver of the Confederate States in Alabama, where the maker lived. Morris v. Poillon (1874) 50 Ala. 403.

The mere fact that a partnership made and executed a contract with the Confederate government to supply munitions of war does not, per se, so vitiate the general proceeds of the business of the firm as to render illegal a note, based upon such proceeds, given by one member of the firm to another. Gullatt v. Thrasher (1871) 42 Ga. 429.

A. moved from Georgia to the North in 1862, leaving money with an agent, who invested it in county bonds. The county pleaded in defense to A.'s suit on the bonds, Rev. St. U. S. § 5301 (U. S. Comp. St. 1916, § 10143), prohibiting intercourse, etc., between North and South. Held, that A. could recover. Bartow County Com'rs v. Newell (1880) 64 Ga. 699.

In April, 1861, G., a citizen of Kentucky, assigned two notes to T., also of Kentucky, one payable in Mississippi, November 1, 1861, and one in Louisiana, January 1, 1862, presentation and suit upon the notes being rendered impossible by hostilities and the consequent nonintercourse. T. sued G. on his assignment, Nov. 22, 1862. Held, that as the nonintercourse commenced after the assignment, T. was entitled to recover the amount paid for the notes. Graves v. Tilford (1865) 63 Ky. (2 Duv.) 108, 87 Am. Dec. 483.

An order for money drawn in Kentucky upon a resident of Texas, payable to another resident of the latter state, by a resident thereof, and delivered to a second person in Kentucky, who sent the order through the lines during the war, was not illegal, nor in violation of the nonintercourse act of congress of July 13, 1861 (U. S. Comp. St. 1916, §§ 10143, 10146), or of the proclamation of August 16, 1861. Haggard v. Conkwright (1870) 70 Ky. (7 Bush) 16, 3 Am. Rep. 297.

Notes made in New Orleans during the Rebellion, payable in Confederate money, are governed by the laws of Louisiana, and being void under Civ. Code, art. 2026, declaring that "every condition of a thing impossible or contra bonos mores or prohibited by law is annulled, and renders void an agreement which depends upon it," are void elsewhere. Stevenson v. Payne (1872) 109 Mass. 378.

A note given for the purchase of negroes taken into the states in insurrection without special license, after the proclamation of the president of August 16, 1861, is without legal consideration, and invalid. Carson v. Hunter (1870) 46 Mo. 467, 2 Am. Rep. 529.

A citizen of New York who was a member of a partnership with a citizen of a Southern state, doing business in New Orleans, was not liable on a note

indorsed in the firm name after the commencement of the war, as it terminated all commercial partnerships between citizens of the two sections. Bank of New Orleans v. Matthews (1872) 49 N. Y. 12.

A note given for the lease of land to be used in raising food for laborers employed to make iron for the Confederate government is not illegal. McKesson v. Jones (1872) 66 N. C. 258.

An agent of the war department of the Confederate government issued the following instrument: "Confederate States Depository, Wilmington, pay Messrs. Collie & Co., or order, twenty thousand dollars"—which was indorsed by the payees to defendant, who indorsed it to another, by whom it was indorsed to plaintiff. Held, that the instrument was illegal, and such illegality was apparent on its face. Cronly v. Hall (1872) 67 N. C. 9, 12 Am. Rep. 597.

If the circumstances are such that the furnishing of a hospital building is immediately required by the dictates of common humanity for diseased and wounded belligerents, any citizen may lawfully provide it, and a note given for the rent of the building for hospital purposes would not be an act in aid of the Rebellion. Fottrell v. German (1868) 45 Tenn. (5 Cold.) 580, 95 Am. Dec. 442.

A note executed within the Confederate lines for the consideration of Confederate treasury notes, borrowed to pay taxes to the Confederate government, such notes at the time passing as currency, and the loan not being made directly in aid of the Rebellion, is valid. Bond v. Perkins (1871) 51 Tenn. (4 Heisk.) 364.

A note given in 1861 for a horse, to be used with the knowledge of the seller, and which was used by the purchaser, in the rebel army, was illegal and void. Roquemore v. Alloway (1870) 33 Tex. 461.

A bond given by a married woman holding property to her own use through a trustee, to a resident within the Confederate lines, in order to avoid the confiscation of her property by the Confederate authorities, was void, although the original indebtedness in consideration of which the bond purported, in part, to be given, remained unaffected. Wright v. Graham (1870) 4 W. Va. 430.

See, also, U. S. Comp. St. 1916, p. 12476, note.

—— Conveyances, sales, etc.—One purchasing cotton of the rebel Confederacy in violation of the president's proclamation, authorized by Act July 13, 1861 (U. S. Comp. St. 1916, §§ 10143, 10146), can convey no valid title even to a foreign neutral, purchasing bona fide for value. In re The Ouachita Cotton (1867) 73 U. S. (6 Wall.) 521, 18 L. Ed. 935.

The price of goods sold in aid of the Rebellion, or with the knowledge that they were purchased for the Conf ate government, cannot be recov Nor can a promissory note give such price be enforced. Hanau Doane (1870) 79 U. S. (12 Wall.) 20 L. Ed. 439; Thomas v. City of mond (1870) 79 U. S. (12 Wall.) 34 L. Ed. 453.

Under the nonintercourse act (Comp. St. 1916, §§ 10143, 10146), tle was acquired where during the bellion a sale of personal property made by an agent within the U lines, while his principal and the erty were both within the Confed lines. Montgomery v. U. S. (187 U. S. (15 Wall.) 395, 21 L. Ed. 9 firming (1869) 5 Ct. Cl. 648.

Act July 17, 1862 (12 Stat. which rendered void, as against the ernment, all transfers of propert persons in rebellion, did not affec validity of conveyances as between vate persons. Williams v. Paine (18 Sup. Ct. 279, 169 U. S. 55, 42 L 658; Conrad v. Waples (1877) 96 279, 24 L. Ed. 721; Corbett v. (1870) 10 Wall. 464, 19 L. Ed. 97

Where it is proved that a sale bona fide between the parties to it made with the intent and effec transferring the ownership for price, it is immaterial that the v was a rebel, or that the capture o property and its seizure by the U States was imminent, and known so by the parties to the sale. Polla U. S. (1868) 4 Ct. Cl. 328.

A citizen of a loyal state took h to a Southern state to sell shortl fore the beginning of the Rebe Being unable to sell them, he rem until after the breaking out of the bellion, and was subsequently prev from returning home by the Conf ate authorities. Afterwards he sol horses and invested the procee cotton, which was seized and sol the United States authorities o capture of Mobile. During the he remained loyal to the Union, returned to his home as soon a leased by the capture of the Held, that he was entitled to re the proceeds of the cotton, since transaction was not a violation o nonintercourse act of July 13, 186 S. Comp. St. 1916, §§ 10143, 10 Foster v. U. S. (1869) 5 Ct. Cl. 41

The proclamation of August 16, forbidding commercial intercours tween the inhabitants residing w the insurrectionary districts and residing in such portions thereof as from time to time be occupied and trolled by forces of the United S does not forbid a person residing district alternately raided by both ligerents, and occasionally occupie one or the other, from acquiring a title to property situated within Confederate lines. Cartwright v. (1872) 8 Ct. Cl. 465.

A person during the Rebellion

g within the insurrectionary district as chargeable with notice of the treanable intent of the Confederate govnment in the sales by it of cotton for e purpose of raising money to purase munitions of war, and the transtion was forbidden by the laws of the nited States, and wholly void, so that e purchaser acquired no title to the operty thus bought. Sprott v. U. S. 372) 8 Ct. Cl. 499.

A sale of lands by a citizen of Georgia the Confederate government in 1862 ssed the title. Atkinson v. Central eorgia Agricultural & Mfg. Co. (1877) Ga. 227.

That a purchaser of rubber goods had en indicted for trading with the eny in time of war was not adequate ound for the cancellation of the conact by the seller. L. & M. Rubber o. v. Kalter (Sup.) 172 N. Y. S. 486.

Plaintiff, a citizen of the Confederate ates, contracted on July 5, 1864, at emphis, Tenn. (one of the Confedate States, then occupied by the nited States troops), with defendant, citizen of the United States, for the le of cotton by the latter, to be delived to plaintiff on demand in Louisia within one year from the ratificaon of a treaty of peace between the nited States and the Confederate ates. Held, that the contract (wheth- or not plaintiff was ignorant of dendant's citizenship, or had been misl by him) was illegal and void, and uld not be enforced. Nelson v. Trigg 877) 3 Tenn. Cas. 733.

The rule of nonintercourse, as beeen belligerents, has no application the conveyance of real estate situat- in one belligerent territory by a citin of the other. Shaw v. Carlile 372) 56 Tenn. (9 Heisk.) 594.

See, also, U. S. Comp. St. 1916, pp. 474–12476, notes.

—— Partnership agreements.—The efct of war is to dissolve partnership isting between citizens of nations at ar, and it is the duty of the loyal citin to withdraw his property from ch partnership without delay, and spose of all his interests; otherwise, s interest becomes impressed with e character of the enemy, and liable the consequences attending enemy's operty. The William Bagaley 866) 72 U. S. (5 Wall.) 377, 18 L. l. 583.

A partnership between citizens of an surgent state, one of which continues loyal citizen, and saves his citizenip by retiring within the federal es, is ipso facto dissolved, and an reement that the partnership conue is void as against public policy. anters' Bank v. St. John (C. C. 69) Fed. Cas. No. 11,208.

The breaking out of the Civil War erated to dissolve all partnerships d all executory contracts requiring nmercial intercourse between the belligerent states. Planters' Bank v. St. John (C. C. 1869) Fed. Cas. No. 11,208; McAdams' Ex'rs v. Hawes (1872) 72 Ky. (9 Bush) 15; Booker v. Kirkpatrick (Va. 1875) 26 Grat. 145; Small's Adm'r v. Lumpkin's Ex'x (Va. 1877) 28 Grat. 832.

Where members of a partnership are belligerents, war dissolves the partnership as to future joint dealings, though not as to winding up the affairs of the firm, and where a partner resided in belligerent territory, he could not, after the breaking out of the Rebellion, appoint an agent and give him partnership funds to purchase cotton for the firm. Cramer v. U. S. (1871) 7 Ct. Cl. 302.

Partners domiciled, one on loyal and the other on disloyal territory, and engaged in growing cotton in Mississippi before the late Civil War, continued partners as to property actually acquired, and remained bound to account to each other therefor. Douglas v. U. S. (1878) 14 Ct. Cl. 1.

A partnership between persons residing in two different countries, for commercial purposes, is suspended, if not ipso facto determined, by the breaking out of war between those countries. Griswold v. Waddington (N. Y. 1818) 15 Johns. 57; Griswold v. Waddington (N. Y. 1819) 16 Johns. 438.

A partnership between a loyal citizen of the United States and a resident of one of the insurgent states was terminated ipso facto by the Civil War. Leftwich v. Clinton (N. Y. 1870) 4 Lans. 176.

A copartnership existing between citizens of New York and citizens of New Orleans was not terminated by reason of the war until the President's proclamation, August 16, 1861, declaring commercial intercourse between the citizens of the insurrectionary states and of the loyal states unlawful. McStea v. Matthews (1872) 50 N. Y. 166.

—— Interest on obligations.—The treaty of peace of 1783 between Great Britain and the American colonies, providing that there shall be no lawful impediment to the recovery of bona fide debts, does not authorize the collection of interest for the period of the Revolutionary War, during which time all debts were suspended. Hoare v. Allen (1789) 2 Dall. 102, 1 L. Ed. 307.

A bond given by A., who resided within the Union lines, was payable within the Union lines to the authorized agent of the creditor. Held, that interest on such bond was not suspended during the Civil War by the fact that the creditor during that time resided within the Confederate lines. Ward v. Smith (1868) 74 U. S. (7 Wall.) 447, 19 L. Ed. 207.

The rule as to the abatement of interest during war does not apply when

the creditor, although a subject of the enemy, remains in the country of the debtor, or has a known agent residing there, and who is authorized to receive the debt. Conn v. Penn (C. C. 1818) Fed. Cas. No. 3,104.

If an alien enemy has an agent here, and this is known to the debtor, interest will not abate during the war. Denniston v. Imbrie (C. C. 1818) Fed. Cas. No. 3,802; Haggard v. Conkwright (1870) 70 Ky. (7 Bush) 16, 3 Am. Rep. 297.

A citizen of Mississippi, in a suit brought against him by a citizen of Kentucky on a debt due before the war, is not entitled to an abatement of interest during the war, by reason thereof. Rogers v. Arthur (D. C. 1867) Fed. Cas. No. 12,006.

The suspension of intercourse, consequent upon the recent Civil War, did not prevent interest from accruing between citizens adhering to the respective parties thereto. Shortridge v. Macon (C. C. 1867) Fed. Cas. No. 12,-812; Thomas v. Hunter (1868) 29 Md. 406.

Although the war suspended the running of the statute of limitations, whether in suits between belligerents or between residents of the Confederate States, it did not suspend the running of interest upon debts between citizens of the same belligerent. Williams v. State (1881) 37 Ark. 463.

When a note payable in Chicago became due, the payee resided in one of the states then in rebellion, and he had the note there in his possession. Held not to relieve the makers, who resided either within the Union or Confederate lines, from payment of interest on the note after its maturity and during the existence of hostilities. Yeaton v. Berney (1871) 62 Ill. 61.

The rule that interest was not demandable in a certain class of cases which occurred after the Revolutionary War does not apply to a case where the creditor resided in the rebel states during the War of 1861–65, but had an agent in the loyal state where the debt and interest were payable, and where the principal did not come due until after the suppression of the Rebellion. Lash v. Lambert (1870) 15 Minn. 416 (Gil. 336), 2 Am. Rep. 142.

A resident American citizen, indebted on a note payable at Canton, China, was, by the embargo act of the United States, prevented for one year from making the remittance necessary to take up the note. He claimed a reduction equal to the difference between 12 per cent., the rate stipulated in the note, and the legal rate of the United States, for one year. Held, that the claim could not be sustained, because in all questions arising between subjects of different states each is a party to the public, authoritative acts of his own government, and is as much incapacitated from making the consequences of an act of his own state the foundation a claim to indemnity upon a fore subject as he would be if such act been done immediately and individu by himself. Consequa v. Fanning Y. 1818) 3 Johns. Ch. 587.

The prevalence of a war suspe the right to interest between pers who reside, one in the territory of belligerent, the other in that of the er; but not between two residents der either one belligerent. Robe Adm'r v. Cocke (Va. 1877) 28 Grat. 2

Where debts are secured by judgm bond, or note obtained or executed fore the war, the mere existence of war does not constitute a sufficient son for the abatement of interest i case where the creditor and debtor citizens and subjects of the same g ernment. Johnston v. Wilson's Ad (Va. 1877) 29 Grat. 379.

There should be no abatement of terest on a judgment during the the counties in which plaintiff and fendant respectively lived being judic ly known not to be in territories wh were hostile to one another. Kent Chapman (1881) 18 W. Va. 485.

— Performance and payment. payment in discharge of an actual debtedness made by one partner to partners, absent on hostile territ after the dissolution of the concern war, whether effected by the delivery a sum of money or of goods, will upheld, if made with no purpose evade the rights of the government an agent on the spot, whose agency created before the war began. Do las v. U. S. (1878) 14 Ct. Cl. 1.

The validity or invalidity of an act contract during the Rebellion may tested by the following grounds: I aid of the war they were invalid, bu for a legitimate purpose, though by insurgent or an insurgent body, t are generally valid; and payments the Mississippi Central Railroad C pany to the state authorities upon count of a state loan made before cember 7, 1863, were good and bind on the state, but further payme made on the same debt after that d were void, the act of 1863 being a measure. New Orleans, St. L. & C. Co. v. State (1876) 52 Miss. 877.

It is not unlawful for a citizen of N York to pay a debt or perform a c tract with an alien enemy during war the payment or performance be made the agent of such alien enemy wit New York, the contract having b made before the war. Buchanan Curry (N. Y. 1821) 19 Johns. 137, Am. Dec. 200.

Where plaintiff purchased from fendants transfer of credit for 250,0 marks, to be made available by wirel for plaintiff's use in Germany, on fendants' failure to perform on acco of war, plaintiff is entitled to return American money paid for credit.

tic Communication Co. v. Zimmer-
nn (Sup.) 170 N. Y. S. 275, 182 App.
. 862.

nder the act of congress of July 13,
1 (U. S. Comp. St. 1916, §§ 10143,
46) prohibiting all commercial inter-
rse between the inhabitants of the
rrectionary states and the citizens
he other parts of the United States,
payment of a note in Confederate
ney, and the taking of a receipt by
attorney of a party resident within
military lines of territory occupied
permanently held by the federal
ops, from the cashier of the Bank of
nessee, a resident of the insurrec-
ary district, was illegal, and not
ding on the bank. Bank of Tennes-
v. Woodson (1867) 45 Tenn. (5
d.) 176.

heritance.—Where the heirs of an
ured under a fraternal benefit cer-
ate have succeeded to the rights of
eficiaries, but cannot sue in the
rts of this country, being enemy
ns, an order directing the funds due
n the insurer to be retained for dis-
ution after the termination of the
was proper. Weiditschka v. Su-
me Tent of Knights of the Macca-
s of the World (Iowa) 170 N. W.

oney in hands of an administra-
belonging to alien enemy will be
d, to be paid to the alien at end of
, or in the meantime to the consti-
d authority of the United States
tled to receive it. In re Bang's Es-
e (Sur.) 167 N. Y. S. 256, 101 Misc.
. 495.

uits between enemies in general.—
ether jurisdiction would be taken of
l in personam between British and
trian corporations for coal furnished
mers at Algiers held within the dis-
tion of the District Court, which it
not abuse by declining jurisdiction.
tts, Watts & Co. v. Unione Austria-
di Navigazione (1915) 229 Fed. 136,
C. C. A. 412, affirming decree (D. C.
5) 224 Fed. 188.

n seizure of German vessel by Unit-
States after declaration of war, held,
t libel filed in United States court,
r to its entrance into war, by Brit-
firm, should not be dismissed. The
ser Wilhelm II, 246 F. 786, 159 C.
A. 88, L. R. A. 1918C, 795, revers-
decree (D. C.) 230 F. 717.

emble, that a court of admiralty of
United States should for political
sons refuse to entertain a suit by a
adian corporation against a Greek
sel requisitioned for use by the
ek government. The Athanasios
C. 1915) 228 Fed. 558.

ince the commencement of war be-
en England and Germany, and the
mulgation by each government of
s or decrees prohibiting its subjects
n making any payments to subjects
he other, and while such decrees re-
n in effect a court of admiralty of
the United States, in a case where its action is discretionary, will refuse to entertain jurisdiction of a suit between subjects of the two countries to enforce payment of a claim which arose in a foreign country. The Kaiser Wilhelm II (D. C. 1916) 230 Fed. 717.

An alien enemy may sue and be sued in the courts of the enemy country. Cocks v. Izard (C. C. 1871) Fed. Cas. No. 2,934.

Where, in cases of cross-libels for collision, the owners of one of the vessels are citizens of a state which afterwards enters into rebellion, the court will suspend the case until after the government of the United States is reestablished in such state. Currie v. The Josiah Harthorn (D. C. 1862) Fed. Cas. No. 3,491a.

An alien enemy cannot sustain a claim in a prize court; nor can a citizen claim the property of an enemy, in a prize court, upon an alleged sale since the war. The Emulous (C. C. 1813) Fed. Cas. No. 4,479, reversed Brown v. U. S. (1814) 12 U. S. (8 Cranch) 110, 3 L. Ed. 504.

The character of an alien enemy carries with it simply a disability to sue; and whatever may be the extent of such disability to sue in the courts of the hostile country, it is clear that he is liable to be sued, and this carries with it the right to use all the means and appliances of defense. Seymour v. Bailey (1872) 66 Ill. 288.

War does not destroy but only suspends the relative rights of antagonistic enemies; and when war ceases, the one is remitted to his remedies against the other as if no suspension had occurred, and may maintain his action for the recovery of property or wrongs committed thereon, or for the use and occupation thereof. Louisville & N. R. Co. v. Buckner (1871) 71 Ky. (8 Bush) 277, 8 Am. Rep. 462.

A nonresident alien enemy cannot sue a citizen; but the rule does not prevent a citizen from obtaining satisfaction of his debt due from such alien enemy, by attaching the debts or property of his debtor found here. In re Hepburn (Md. 1830) 3 Bland, 95.

During the Civil War citizens residing in the rebel states were alien enemies and could not sue in the courts of the loyal states, but they might be sued therein by citizens of the latter states. De Jarnette v. De Giverville (1874) 56 Mo. 440.

Alien enemy rule, relating to bringing of actions, is not applicable to citizen of enemy country peaceably residing and doing business in the state with implied permission of the government, where there was nothing to show that he was within any class denounced by the Trading with the Enemy Act or any presidential proclamation. Heiler v. Goodman's Motor Express Van & Storage Co. (N. J.) 105 A. 233.

In view of the statutory rights of

aliens and Chancery Act (1 Comp. St. 1910, p. 426) § 45, and German Penal Code, § 89, held, that comity required that a neutral court be open to either of the alien parties to a contract relating to the conveyance of land in New Jersey, notwithstanding war between their respective governments. Compagnie Universelle de Telegraphie et de Telephonie Sans Fil v. United States Service Corporation (1915) 84 N. J. Eq. 604, 95 Atl. 187.

Contracts entered into before the beginning of hostilities continue in force during the war, and may be sued upon if to the disadvantage of the alien enemy defendant, who may always defend and who may in exceptional cases sue. Id.

Aliens residing in the United States at the time of a war between their own country and the United States, or who come to reside in the United States after the breaking out of such war, under an express permission, may sue and be sued as in time of peace, and it is not necessary that such aliens should have letters of safe conduct or actual license to remain in the United States, but may be implied from their being suffered to remain without being ordered out of the United States. Clarke v. Morey (N. Y. 1813) 10 Johns. 69.

Declaration of existence of war is not alone sufficient, ex proprio vigore, to suspend remedies for the enforcement of debts and dues between citizens and subjects of an alien enemy. Fritz Schulz, Jr., Co. v. Raimes & Co. (1917) 99 Misc. Rep. 626, 164 N. Y. Supp. 454, affirmed (1917) 100 Misc. Rep. 697, 166 N. Y. Supp. 567.

During the Civil War no suits could be maintained between citizens of the opposing states. Haymond v. Camden (1883) 22 W. Va. 180; Sturm v. Fleming (1883) 22 W. Va. 404.

All legal proceedings begun between parties who enlisted on opposite sides of the military lines during the Civil War were suspended during the continuance of the war. Stephens v. Brown (1884) 24 W. Va. 234.

—— Against enemies.—Judicial proceedings during the Civil War within the lines of the Federal army, by a private person on a mortgage, ending in a judgment and sale of the mortgaged premises, against one who had been expelled by the military authorities of the United States into the Confederacy, and who had no power or right to return to his home during the existence of the Rebellion, are null and void. Lasere v. Rochereau (1873) 84 U. S. (17 Wall.) 437, 21 L. Ed. 694.

The existence of war does not prevent the citizens of one belligerent power from taking proceedings for the protection of their own property in their own courts, against the citizens of the other, whenever the latter can be reached by process. Masterson v. Howard (1873) 85 U. S. (18 Wall.) 99, 21 L. E 764; Lee v. Rogers (C. C. 1874) Fe Cas. No. 8,201.

Land was sold under a power, in deed of trust executed before the la Civil War, to secure the payment promissory notes. Held, that the s was valid, notwithstanding it took pla during the war, and the grantees the in were citizens and residents of one the states declared to be in insurrect at the time of the sale. The property such citizens found in a loyal state liable to seizure and sale for debts c tracted before the outbreak of the w as in the case of other nonreside Washington University v. Finch (18 85 U. S. (18 Wall.) 106, 21 L. Ed.

Suit may be brought in a Un States court against an alien en but respondent, though an alien en is entitled to defend before judgm be entered. Watts, Watts & Co Unione Austriaca Di Navigazione, Ct. 1, 63 L. Ed. —.

A decree in an attachment case stituted during the war by seizu the property and publication of no t void as against a loyal citizen. D Gibboney (C. C. 1878) Fed. Cas. 4,006.

An action will not lie on a con made in time of war, with a p enemy, by a party in allegiance to government in whose courts the su brought. Elgee's Adm'r v. Lovell C. 1865) Fed. Cas. No. 4,344.

A sale of land for the unpaid p chase money is not vitiated becaus is made while the purchaser was abs during war and had no notice of motion for the sale or of the sale self. Johns v. Slack (D. C. 1872) F Cas. No. 7,363.

The courts of a state forming p of the Confederate States had no ju diction, during the Civil War, over ties residing in states which adh to the national government. Living v. Jordan (C. C. 1869) Fed. Cas. 8,415.

An alien enemy may be made a p defendant, and when made such p by personal service or otherwise ma heard in his defense by attorney the permission of the court, or court may appoint counsel in its cretion; and where defendant pl the privilege extended to persons siding in a county to be sued in county, plaintiff may reply that def ant became an alien enemy after service of summons, and, if the pl sustained, the court may procee judgment as if such privilege never isted. Russ v. Mitchell (1865) 11 80.

A party residing in Illinois, holdi promissory note against a person siding in one of the states in rebel in the year 1862, after the act of C gress and the President's proclama prohibiting commercial intercourse tween the adhering states and tho

ebellion, commenced a suit thereon by ttachment, which was levied on real state situate in Illinois, belonging to he maker, and obtained a judgment, nd procured a sale to be made of the remises attached. Held, that the ourt had jurisdiction of the cause, and he judgment and proceedings thereunder were valid and binding, notwithtanding the defendant resided in one f the rebellious states, and the war as at the time in active progress. lixer v. Sibley (1869) 53 Ill. 61.

Act Cong. July 13, 1861 (U. S. Comp. t. 1916, §§ 10143, 10146), empowering he President to prohibit by proclamaon all commercial intercourse between he rebellious and the loyal states, and he proclamation pursuant thereto, issued August 16, 1861, prohibiting such ntercourse, were not designed to derive creditors in the loyal states of he use of all such remedies for the ollection of their debts as the laws of hose states gave them. Willard v. oggs (1870) 56 Ill. 163.

The existence of the late Civil War, nd the President's proclamation, issued pursuance of an act of Congress, proibiting all commercial intercourse beween the citizens of the rebellious and hose of the loyal states, did not susend the operation of the Illinois states authorizing the prosecution of uits against nonresident defendants omiciled in the rebellious states, in espect to their property situate in linois by publication of notice, so as deprive the courts, in such cases, of ll jurisdiction. Seymour v. Bailey 1872) 66 Ill. 288.

The fact of being an alien enemy and hereby disqualified from appearing in erson or by attorney cannot avail a efendant, where the privilege of apearing by attorney was accorded to nd availed of by him. Herbert v. owles (1869) 30 Md. 271.

The defendant cannot set up in his wn defense that he is an alien enemy the government in whose courts he is ued. Dorsey v. Kyle (1869) 30 Md. 12, 96 Am. Dec. 617.

The War of 1861–65 did not have he effect of suspending, in favor of a onresident enemy and to the prejuice of a resident and friendly creditor, he laws of Maryland passed for the urpose of enabling the courts of the tate to sell for payment of debts the roperty of nonresidents situated in the tate, held under and subject to its aws and within the jurisdiction of its ourts; and notice of such proceedings y publication under the statute relatng to nonresident defendants is valid. Dorsey v. Dorsey (1869) 30 Md. 522, 6 Am. Dec. 633.

An alien enemy may be sued as a onresident defendant, and is bound by he proceedings in the cause, although, eing within the hostile lines, he is unable to receive the notice of publication. Dorsey v. Thompson (1872) 37 Md. 25.

After the President's proclamation of August, 1861, interdicting commercial intercourse between the rebellious and the loyal states, a note having been dishonored, certain lands were sold under a deed of trust to satisfy the debt. Held, that a bill in equity would not lie on behalf of the maker to set aside the sale on the ground that he was, when the note matured and the land was sold, within the Confederate lines, and cut off from all intercourse with the loyal states; it appearing that he had voluntarily gone and remained South. De Jarnette v. De Giverville (1874) 56 Mo. 440; Black v. Gregg (1875) 58 Mo. 565.

That alien enemies have been made parties to a suit and served by publication and mailing under license of war trade board, and have interposed no defense by counsel as authorized by this section, subd. "b," is insufficient to constitute an election to continue powers of attorney to citizens to receive their legacies. Keppelmann v. Keppelmann (N. J. Ch.) 105 A. 140.

The rule that proceedings against enemy aliens will be suspended during a war has no reference to an enemy alien as a testamentary trustee. In re Amsinck's Estate (Sur.) 169 N. Y. S. 336, 103 Misc. Rep. 124.

A judgment in a suit begun during the Civil War in a part of the state under the control of the Confederate authorities, and to which alien enemies of the Confederate state residing in alien territory had been made parties by publication alone, is to them a nullity. Rockhold v. Blevins (1873) 65 Tenn. (6 Baxt.) 115.

A suit was instituted, and publication made within the Federal lines, upon the defendant, who was within the Confederate lines. Held, that the court had acquired no jurisdiction over him. Walker v. Day (1874) 67 Tenn. (8 Baxt.) 77.

A vendor, who resided within the Union lines, prosecuted during the Civil War a suit to enforce a vendor's lien on land, defendant residing within the Confederate lines, and being unable to appear and defend the suit. Held, that the decree rendered therein was absolutely void, and that neither the vendor, who purchased at the sale authorized by decree in the suit, nor his grantees, had any valid title to the land. Grinnan v. Edwards (1883) 21 W. Va. 347.

The act passed February 10, 1862, by the General Assembly of the reorganized government of Virginia, so far as it attempts to confer jurisdiction upon courts in loyal counties of the state by order of publication against persons who left such loyal counties

and went into the Confederate lines during the war, is invalid. Haymond v. Camden (1883) 22 W. Va. 180.

—— **By enemies.**—The general rule of the common law of England is that an alien enemy cannot maintain an action in the courts of that country in his own name, during the war. Wilcox v. Henry (1782) 1 U. S. (1 Dall.) 69, 1 L. Ed. 41; Crawford v. The William Penn (C. C. 1815) Fed. Cas. No. 3,372.

Where an alien obtains judgment, on which a writ of error is brought, and war occurs pending such writ, judgment will nevertheless be affirmed. Owens v. Hanney (1815) 13 U. S. (9 Cranch) 180, 3 L. Ed. 697.

Enemy creditors cannot prosecute their claims subsequent to the commencement of hostilities. Caperton v. Bowyer (1871) 14 Wall. 216, 236, 20 L. Ed. 882.

A suit, properly brought by an alien against a citizen, will not be dismissed because of a subsequent declaration of war between the United States and the government of which plaintiff is a subject, but may be suspended during the war. Plettenberg, Holthaus & Co. v. I. J. Kalmon & Co. (D. C. 1917) 241 Fed. 605.

Plaintiff, who becomes an alien enemy, cannot continue action at law or in equity, or institute further proceedings in courts, until the war is ended, save in certain exceptional instances; and a sales agent of German subject held not real plaintiff in infringement suit brought in name of German subject, so as to prevent suspension of proceedings pending war. Stumpf v. A. Schreiber Brewing Co. (D. C. 1917) 242 Fed. 80.

An alien enemy resident in his own country is under disability during the war to institute and maintain a suit in this country, but this disability does not attach to alien enemies resident in this country. Speidel v. N. Barstow Co. (D. C. 1917) 243 Fed. 621.

A person beneficially interested in a suit, if an alien enemy, cannot support the suit in the name of his trustee who is not an alien; but an alien enemy may sue on a contract arising out of a trade licensed by the government in whose courts redress is sought; nor do the rules of the common law, apply in the same rigor in courts acting under the general laws of nations, and the general rule that an alien enemy cannot sue does not apply to a libel in the district court in admiralty to recover on a hypothecation for repairs and advances to a cartel vessel for the purpose of equipping and fitting her to carry prisoners to the belligerent country, as the contract therefor is to be considered as made between friends, and the agreement to make the vessel a cartel amounts to a license by both countries to perform the service in which she is employed, and sanctions all means necessary to that Crawford v. The William Penn (1815) Fed. Cas. No. 3,372.

The proclamation of the Pres issued under authority of Con declaring the inhabitants of c states in rebellion to be in a st insurrection, and forbidding all mercial intercourse with them, is ing on the federal courts, and wil vent such inhabitants maintaining therein. Currie v. The Josia h thorn (D. C. 1862) Fed. Cas. N 491a.

It is no answer to a plea of alie emy to aver that the plaintiff has the oath prescribed by the procl tion of amnesty. Elgee's Adm' Lovell (C. C. 1865) Fed. Cas. 4,344.

An alien enemy not here under let of safe conduct, or under the protec of the government, cannot sue in common-law courts. Johnson v. T teen Bales, etc. (C. C. 1814) Fed. No. 7,415.

An alien enemy cannot sustain a in the courts of the United St Mumford v. Mumford (C. C. 1812) Cas. No. 9,918.

An alien enemy, resident here b cense of the government of the U States, is competent to maintain a sonal action; and where plaintiff all that he is a resident in the U States with the license of the gov ment, the jury may presume that p tiff was residing here under the per sion and license of the governm where the evidence shows that he sided in the United States before war as a mechanic, and continued s reside until the time of bringing though it appears that he has not ported himself according to the pr mation of the President. Otteridg Thompson (C. C. 1814) Fed. Cas. 10,618.

By Act July 13, 1861 (U. S. C St. 1916, §§ 10143, 10146), and President's proclamation in pursu thereof, citizens of the rebellious st have prima facie become, for poses of commerce, quasi enemies, cannot sue in the United States co but the President having power, thr the Secretary of the Treasury, to r regulations permitting trade in ce cases, the granting of a license, in suance of this power, restores standing of the grantee, so as to able him to be heard in the U States courts. U. S. v. One Hun Barrels of Cement (D. C. 1862) Cas. No. 15,945.

Denial of stay of proceedings, i fect an application for a continuan account of the war between the ed States and Germany, to an alie emy plaintiff who has been inte held not an abuse of discretion, cially where it did not appear plaintiff was a necessary witness i

n behalf. Lutz v. Van Heynigen okerage Co. (Ala.) 80 So. 72.

The rights of a nonresident alien ene- are merely suspended until the ces- ion of hostilities and where an em- yé was killed prior to war by United ites against Germany, and deceased's ther was an alien, resident in Aus- a-Hungary, to which declaration of r had not been extended, appeal from judgment dismissing her action will be dismissed on ground that she s an alien enemy. (Cal. 1917) Taylor Albion Lumber Co., 168 P. 348.

Citizens of Tennessee were entitled to in the courts of Georgia, notwith- nding Georgia had claimed to with- w from the Union and was engaged hostilities with the national govern- nt, and Tennessee had not done so, en the action was commenced. Ed- nson v. Union Bank (1861) 33 Ga.

The question whether a plaintiff uld be excluded from our courts as alien enemy depends not so much on whether he had a legal citizenship the enemy's country at the opening the war which he may resume at its se, but on the questions, where is actual residence during the war, l whether, if he is allowed to recover dues, the probable effect will be to ce the amount within reach of the emy. Zacharie v. Godfrey (1869) 50 186, 99 Am. Dec. 506.

n a suit for rent commenced October 1863, the answer alleged that from uary 1, 1862, to the commencement the action, the plaintiff had been a zen of Tennessee, and had during l period, and still was, engaged in ying war against the government, and l not obeyed the proclamation of the esident made in pursuance of the fiscation act of July 17, 1862. Held, t the answer was a good defense by ce of said act, and the fact that the nt of action might revive at the ter- nation of the Rebellion was no objec- n to the rule permitting such pleas bar of the action. Knoefel v. Wil- ns (1868) 30 Ind. 1.

During the Civil War, a court of In- na had no jurisdiction to entertain uit by a citizen of Virginia against a zen of Indiana, as the plaintiff is enemy and not entitled to any stand- in the courts of Indiana. Brooke v. er (1871) 35 Ind. 402.

An inhabitant of the state of Louisi- a during the War of the Rebellion s an enemy of all the inhabitants of state of Indiana, and could not intain an action against any citizen this state, in any of the courts of United States. Perkins v. Rogers 71) 35 Ind. 124, 9 Am. Rep. 639.

Where the heirs of an assured have ceeded to the rights of beneficiaries der a fraternal benefit certificate, but residents of a country with which United States is at war, they can- prosecute an action in this country to recover under the certificate. Weiditschka v. Supreme Tent of Knights of the Maccabees of the World (Iowa) 170 N. W. 300.

The fact that one of the plaintiffs, who is a mere nominal party to the suit, is a public enemy, is not ground sufficient for dismissing the petition of the only beneficial plaintiff, who is not an enemy. Hoskins v. Gentry (1866) 63 Ky. (2 Duv.) 285.

If, after execution issued, plaintiffs become alien enemies, the court will not stay the execution on that ground, on a summary application. Brofield's Heirs v. Lynd (La. 1812) 2 Mart. (O. S.) 213.

If execution have been enjoined by defendants, the court will not listen to an application from plaintiffs, who have since become alien enemies, for its dissolution. Taylor v. Morgan (La. 1812) 2 Mart. (O. S.) 263.

A creditor's bill was dismissed under a rule for "further proceedings and security for costs." It was claimed that one of the complainants being a resident of Virginia, at that time at war with the United States, the suit should only have been suspended. Held, that an alien enemy was entitled to no greater privileges than our own citizens, and that the bill was properly dismissed. Whelan v. Cook (1868) 29 Md. 1.

At common law, if the plaintiff is an alien enemy at the commencement of the suit, it is cause for abatement. Martin v. Woods (1812) 9 Mass. 377; Sewall v. Lee (1812) 9 Mass. 363; Ainslie v. Martin (1813) 9 Mass. 454; Hutchinson v. Brock (1814) 11 Mass. 119; Levine v. Taylor (1815) 12 Mass. 8.

Plea of alien enemy, in personal actions, must aver either that plaintiff was alien born, and here without protection or safe conduct from the United States, or, if not so born, that he is resident with the enemies of the United States. Parkinson v. Wentworth (1814) 11 Mass. 26.

Under the treaty of 1794 between the United States and Great Britain, the plea of alien enemy cannot be pleaded in bar of a personal action on contract brought by a British subject during the war between the two countries; the right of action being suspended only during hostilities. Levine v. Taylor (1815) 12 Mass. 8.

Defense of alien enemy, to be considered in action at law, should be made a part of record, and stated with accuracy by an appropriate pleading or motion under New Jersey Practice Act of 1912 and rules germane thereto, and is not favored by intendment. Heiler v. Goodman's Motor Express Van & Storage Co. (N. J.) 105 A. 233.

The place of residence and the place of conducting business is an essential test in the application of the rule of alien enemy relating to bringing of actions. Id.

In view of tolerant character of President's proclamation declaring existence of state of war with Germany, suit for injunction by individual complainant, subject of Germany, resident in United States, who has taken out first papers, and by German corporation, against persons charged with having deliberately set about to wreck New Jersey corporation wherein complainants held stock, will not be stayed on ground of alien enemy. Posselt v. D'Espard (N. J. Ch. 1917) 100 Atl. 893.

Where defendant sets up the defense of alien enemy, it must appear that plaintiff has been ordered off by the executive of the United States; because an alien enemy is permitted to remain in the country till so ordered off. Clarke v. Morey (N. Y. 1813) 10 Johns. 69; Bagwell v. Babe (Va. 1823) 1 Rand. 272.

Where the plaintiff becomes an alien enemy after judgment, the court will not, on motion, stay or set aside the execution. Buckley v. Lyttle (N. Y. 1813) 10 Johns. 117.

An alien enemy residing in his own country at the time war was declared, and at the time of commencing an action, cannot maintain such action. Bell v. Chapman (N. Y. 1813) 10 Johns. 183.

The right of action of an alien enemy is only suspended during the continuance of the war. Jackson v. Decker (N. Y. 1814) 11 Johns. 418.

That a suit was brought by the plaintiff as trustee for an alien enemy is no objection to it after the war; the disability being merely temporary. Hamersley v. Lambert (N. Y. 1817) 2 Johns. Ch. 508.

The rule excluding a public enemy from our courts is one exclusively of public policy, and applies in full force to the case of citizens of the seceded states; especially since the president, by proclamation, has declared commercial intercourse with such states unlawful. Bonneau v. Dinsmore (N. Y. 1862) 23 How. Prac. 397.

An enemy adhering to an organized force at war with the government of the United States is incapacitated from maintaining an action in the civil courts of the state. Sanderson v. Morgan (1868) 39 N. Y. 231, affirming (N. Y. 1863) 25 How. Prac. 144.

Right to suspend collection of debts, contracted by individuals in time of peace, remaining due to enemy subjects at time of declaration of war, belongs to nation, and is purely discretionary with Congress and not with the courts. The President's proclamation of April 6, 1917, recognizing state of war between Germany and United States does not preclude alien enemy from suing if he is resident; and under the treaty of 1799, affirmed by treaty of 1828, between kingdom of Prussia and United States, subje Germany may still sue to collect contracted during time of peace, th existence of war has been recog and, in any event, a New Jersey poration, whose stockholders wer tirely citizens of Germany, has tinct corporate entity, and must b garded as domestic corporation that it may still sue on debts cont ed during peace, though war has declared. Fritz Schulz, Jr., Co Raimes & Co. (1917) 99 Misc. 626, 164 N. Y. Supp. 454, affi (1917) 100 Misc. Rep. 697, 166 N Supp. 567.

An alien enemy, resident in the my's country, cannot, during the prosecute an action in the courts of country, and the courts may summ suspend such actions without requ objection to be pleaded and determ on the trial, especially in view of s vision "b." the above section, nor the fact that alien enemies had ass cause of action to trustees prevent pension of action, where trustees given no control of the action, would be required to distribute bu proceeds to alien enemies, although tain American citizens might be p diced. The action, however, shoul be dismissed, but only suspended, a disability of the plaintiffs is but te rary in its nature, and the custodi alien enemy property appointed b President under this act may inte and take over and conduct the pro tion of the action. Rothbarth v. F feld (1917) 167 N. Y. Supp. 199, re ing 100 Misc. Rep. 470, 166 N. Y. S 744.

An alien enemy, resident in the my's country, cannot, during the prosecute an action in the court this country. Id.

The courts may summarily sus actions by alien enemies, withou quiring objection to be pleaded an termined on the trial, especially in of this section, subd. "b." Id.

That alien enemies had ass cause of action to trustees held n prevent suspension of action, w trustees were given no control o action, and would be required to tribute bulk of proceeds to alien mies. Id.

An alien enemy, resident in the my's country, cannot, during the prosecute an action. Panne v. (Sup.) 167 N. Y. S. 901, 101 Misc. 693.

Action by member of partnersh which alien enemy was a member to dissolution held not subject to especially in view of Trading wit Enemy Act Oct. 6, 1917, and this tion, subd. "b." Siemund v. Sc (N. Y. Mun. Ct.) 168 N. Y. S. 935.

A resident subject of a countr war against the United States is tled to maintain an action in our co Arndt-Ober v. Metropolitan Opers

p.) 169 N. Y. S. 944, 182 App. Div. , modifying order (Sup.) 169 N. Y. S. , 102 Misc. Rep. 320.

ne who was disaffected to the gov- ment during the Revolutionary r, and who removed and joined the my, may nevertheless sue in North rolina. Cruden's Ex'rs v. Neale 96) 2 N. C. 338.

ules preventing certain enemy aliens m resorting to our courts do not vail against minor son of native of stria resident in United States, since ey recovered will be in charge of rdian appointed by court, and can- be removed from state without rt's consent, and so cannot be used id of enemy. Krachanake v. Acme . Co., 95 S. E. 851, 175 N. C. 435.

resident citizen of one belligerent ion cannot maintain an action in courts of the other. Bishop v. es (1866) 28 Tex. 294.

nemies in war have no right to en- and use the courts of the adverse ty, and can do so only when permit- by the Legislature, and on such ms as may be prescribed by the islature. Peerce v. Carskadon 70) 4 W. Va. 234, 6 Am. Rep. 281.

— By or against corporations.— here is no legal difference as to the a of alien enemy between a corpora- and an individual; and where a eign corporation established in a eign country sues in the courts in United States, and war intervenes ween the countries pending the suit, action will not be defeated, unless ppears that such corporation is not hin any of the exceptions which ble an alien enemy to sue. Society the Propagation of the Gospel v. eeler (C. C. 1814) Fed. Cas. No. 56.

corporation created by an Ameri- state cannot be excluded from the rts, though most of its stockholders alien enemies living in Germany, long as it has a legal existence officers or agents authorized do business or bring actions. Fritz ulz, Jr., Co. v. Raimes & Co. (Sup.) N. Y. S. 567, 100 Misc. Rep. 697, rming order (City Ct.) 164 N. Y. S. , 99 Misc. Rep. 626.

ew Jersey corporation, composed irely of German stockholders, did , on declaration of war between ited States and Germany, cease to domestic corporation, and become n enemy. Fritz Schulz, Jr., Co. v. imes & Co. (City Ct.) 164 N. Y. S. , 99 Misc. Rep. 626, order affirmed p.) 166 N. Y. S. 567, 100 Misc. Rep. .

ction by German insurance company conversion held to be stayed, though long delay may greatly impair its nedy. Nord Deutsche Ins. Co. of mburg, Germany, v. John L. Dudley, , Co. (Sup.) 169 N. Y. S. 303, order rmed Same v. King (Sup.) 169 N. Y. 1106.

— Pending appeal.—Under Trading with Enemy Act, writ of error to review judgment in favor of alien, who became alien enemy before disposition thereof, need not be held in abeyance; but, judgment being upheld, it should be modified, so as to direct payment to clerk of court, and by him to be transferred to Alien Property Custodian, without prejudice, however, to rights of any person not alien enemy to establish interest therein. Birge-Forbes Co. v. Heye, 248 F. 636, 160 C. C. A. 536, certiorari granted 38 S. Ct. 426, 246 U. S. 676, 62 L. Ed. 933.

Injured servant does not lose capacity to sue under employers' liability law by reason of probable change in status from alien friend to alien enemy, taking place since employer's appeal was perfected. Superior & Pittsburg Copper Co. v. Davidovich (Ariz.) 171 P. 127.

Where employé was killed prior to war by United States against Germany, and deceased's mother was an alien, resident in Austria-Hungary, to which declaration of war had not been extended, appeal from a judgment dismissing her action will not be dismissed on ground that she was an alien enemy. Taylor v. Albion Lumber Co. (Cal.) 168 P. 348.

An appeal taken from the district court to Supreme Court will not be dismissed because defendants, or parties in attitude of defendants, taking the appeal, are nonresident alien enemies. In re Thiede's Estate (Neb.) 169 N. W. 435.

Motion to dismiss appeal because appellants are alien enemies will be overruled, where it does not appear they are aliens or citizens of country with which United States is at war, although residents thereof. Ozbolt v. Lumbermen's Indemnity Exchange (Tex. Civ. App.) 204 S. W. 252.

It does not follow necessarily that appeal prosecuted by citizen of Austria-Hungary will be dismissed because of fact that since appeal was perfected our government has declared war on such country. Id.

— Suits for infringement of patents.—See notes to § 3115ee, post.

Nonliability for following regulations of President.—Act March 3, 1863 (12 Stat. 756), provided that any order of the President, or under his authority, made during the existence of the Rebellion, should be a defense to any action for acts done under or by virtue of such order. Held, that a general in the army was not liable for a seizure and arrests made by him during the Rebellion in pursuance of instructions from the Secretary of War; the instructions of the Secretary being, in that behalf, the act of the President. Crosby v. Cadwalader (C. C. 1870) Fed. Cas. No. 3,419.

Const. art. 11, § 4, protecting officers from prosecutions for unlawful seizures

made during the Rebellion, is valid. Williamson v. Russell (1872) 49 Mo. 185.

Act Feb. 27, 1866, provided that no action should be maintained, etc., for any act done in suppression of the late Rebellion, and it should be a sufficient defense to such action to show that such act was done in obedience to the orders of any officer of the state, etc. Held, that a defendant in trespass, justifying under said act, might show that the seizure was under the orders of any civil or military officer of this state or of the United States, or that the act was done in aid of the purposes and policy of the authorities in retarding, checking, and suppressing the Rebellion. Hess v. Johnson (1869) 3 W. Va. 645.

Admissibility of certificate in evidence.—A somewhat similar provision in the Interstate Commerce Act, § 11 (U. S. Comp. St. 1916, § 8582), making the Commission's published reports competent evidence, did not obviate the necessity of offering them in evidence or require judicial notice to be taken of them. Robinson v. Baltimore & O. R. R. Co. (1911) 222 U. S. 506, 32 Sup. Ct. 114, 56 L. Ed. 288.

It has been held that a somewhat similar provision making written instruments not bearing a Federal revenue stamp inadmissible in evidence, either did not or could not, apply to proceedings in state courts. Bumpass v. Taggart (1870) 26 Ark. 398, 7 Am. Rep. 623; Forcheimer v. Holly (1872) 14 Fla. 239; Latham v. Smith (1867) 45 Ill. 29; Wallace v. Cravens (1870) 34 Ind. 534; Holt v. Hart (1881) 33 La. Ann. 673; Davis v. Richardson (1871) 45 Miss. 499, 7 Am. Rep. 732; Gilbert v. Sage (N. Y. 1871) 5 Lans. 287; Sporrer v. Eifler (1870) 48 Tenn. (1 Heisk.) 633; Frank v. Bauer (1903) 75 P. 930, 19 Colo. App. 445; Garland v. Gaines (1901) 49 A. 19, 73 Conn. 662, 84 Am. St. Rep. 182; Richardson v. Roberts (1902) 62 N. E. 840, 195 Ill. 27; Mullin v. Johnson (1901) 98 Ill. App. 621; Dillingham v. Parks (1902) 65 N. E. 300, 30 Ind. App. 61; Wade v. Foss (1902) 52 A. 640, 96 Me. 230; Same v. Curtis (1902) 52 A. 762, 96 Me. 309; Rowe v. Bowman (1903) 67 N. E. 636, 183 Mass. 488; Knox v. Rossi (1899) 57 P. 179, 25 Nev. 96, 48 L. R. A. 305, 83 Am. St. Rep. 566; Davis v. Evans (1903) 45 S. E. 643, 133 N. C. 320; Cassidy v. St. Germain (1900) 46 A 22 R. I. 53; Southern Ins. Co. v. E (1901) 62 S. W. 149, 106 Tenn. 47 L. R. A. 915, 82 Am. St. Rep. North British & Mercantile Ins. C Same, Id.; Watson v. Mirike (190 S. W. 538, 25 Tex. Civ. App. 527; v. Slocumb (1900) 112 Ga. 279, 37 481, 53 L. R. A. 130, 81 Am. St. 50; U. S. Express Co. v. Haines (48 Ill. 248; Masterofsky v. He (1900) 99 Ill. App. 214; Griffin ber Co. v. Myer (1902) 80 Miss. 4 South. 787; Foster v. Pacific C Line (1902) 30 Wash. 515, 71 And see U. S. Comp. St. 1916 7310–7312, note. But see Mayfi Richards (1885) 5 S. Ct. 1187, 1 S. 137, 29 L. Ed. 334, and Stew Kahn (1870) 78 U. S. (11 Wall.) 4 L. Ed. 176, holding that Act Jun 1864 (13 Stat. 123), suspending sta of limitations during the Civil could and did apply to proceedin state courts.

Custodian of enemy property.—U subdivision "c" of this section an ecutive order of February 26, 1918 alien property custodian's authori over the property of and interes alien enemies in property, and n property in which they have an i est, so that custodian's interest i right of alien enemies to legacies receive such shares from the tru upon giving the refunding bonds re ed of beneficiaries to protect cred and executors, since they are not tected by section 7, subds. c, e. pelmann v. Keppelmann (N. J. Ch.) A. 140.

In an action by alien enemies, custodian of alien enemy property pointed by the president under Trading with the Enemy Act may i vene and take over and conduct prosecution of the action. Rothl v. Herzfeld (Sup.) 167 N. Y. S. 179 App. Div. 865, reversing (Sup.) 166 N. Y. S. 744, 100 Misc. 470.

The alien property custodian, pointed under the Trading with Enemy Act, may intervene in an a by an alien enemy and continu prosecution. Nord Deutsche Ins. of Hamburg, Germany, v. John L ley, Jr., Co. (Sup.), 169 N. Y. S. order affirmed Same v. King (169 N. Y. S. 1106.

§ 3115½dd. (Act Oct. 6, 1917, c. 106, § 8.) (a) Contracts, m gages, or pledges against or with enemy or ally of enemy.

Any person not an enemy or ally of enemy holding a lawful m gage, pledge, or lien, or other right in the nature of security in p erty of an enemy or ally of enemy which, by law or by the te of the instrument creating such mortgage, pledge, or lien, or ri may be disposed of on notice or presentation or demand, and person not an enemy or ally of enemy who is a party to any l ful contract with an enemy or ally of enemy, the terms of w provide for a termination thereof upon notice or for acceleratio

aturity on presentation or demand, may continue to hold said roperty, and, after default, may dispose of the property in accordnce with law or may terminate or mature such contract by notice presentation or demand served or made on the alien property istodian in accordance with the law and the terms of such instruent or contract and under such rules and regulations as the Presient shall prescribe; and such notice and such presentation and emand shall have, in all respects, the same force and effect as if ily served or made upon the enemy or ally of enemy personally: rovided, That no such rule or regulation shall require that notice presentation or demand shall be served or made in any case in hich, by law or by the terms of said instrument or contract, no otice, presentation, or demand was, prior to the passage of this ct, required; and that in case where, by law or by the terms of ch instrument or contract, notice is required, no longer period of otice shall be required: Provided further, That if, on any such disosition of property, a surplus shall remain after the satisfaction of e mortgage, pledge, lien, or other right in the nature of security, otice of that fact shall be given to the President pursuant to such les and regulations as he may prescribe, and such surplus shall held subject to his further order.

) Abrogation of contracts.

Any contract entered into prior to the beginning of the war beeen any citizen of the United States or any corporation organized ithin the United States, and an enemy or ally of an enemy, the rms of which provide for the delivery, during or after any war which a present enemy or ally of enemy nation has been or is w engaged, of anything produced, mined, or manufactured in the nited States, may be abrogated by such citizen or corporation by rving thirty days' notice in writing upon the alien property cusdian of his or its election to abrogate such contract.

) Suspension of running of statutes of limitations.

The running of any statute of limitations shall be suspended with ference to the rights or remedies on any contract or obligation tered into prior to the beginning of the war between parties neier of whom is an enemy or ally of enemy, and containing any omise to pay or liability for payment which is evidenced by drafts other commercial paper drawn against or secured by funds or her property situated in an enemy or ally of enemy country, and suit shall be maintained on any such contract or obligation in y court within the United States until after the end of the war, until the said funds or property shall be released for the payent or satisfaction of such contract or obligation: Provided, hower, That nothing herein contained shall be construed to prevent e suspension of the running of the statute of limitations in all her cases where such suspension would occur under existing law. 0 Stat. 418.)

See note to § 3115½a, ante.

Suspension of limitations of actions cases arising before Civil War.—The tute of limitations was suspended ring the continuance of the Revoluary War as to alien enemies disalified to sue in our courts. —— v. wis (C. C. 1805) Fed. Cas. No. 8,315. The revolutionary confiscation acts ve the creditors of alien enemies nedies as effectual as those taken ay. The statute of limitations did t therefore stop running during the war. In re Hepburn (Md. 1830) 3 Bland, 95.

Where the statute of limitations has been suspended, the time which elapsed prior to the suspension may be added to that which has elapsed since the suspension ceased, in order to complete the period requisite to the bar of the statute. Hicks' Ex'rs v. Pouncey (S. C. 1802) 1 Brev. 115.

A war with this country suspends the operation of the limitation act of 1712, between the citizens of the countries at

war with each other, so long as the war lasts. Robson v. Wall (S. C. 1820) 2 Nott & McC. 498, 10 Am. Dec. 623.

The distracted condition of Texas from 1830 to 1835 and the revolution that occurred is a sufficient ground to prevent the bar of the statute of limitations. Hall v. Phelps (Tex. 1841) Dallam Dig. 435.

Effect of Civil War on suspension of limitations.—The statute of limitations ceased to run during the Civil War. Batesville Institute v. Kauffman (1873) 85 U. S. (18 Wall.) 151, 21 L. Ed. 775; Eddins v. Graddy (1873) 28 Ark. 500; Hall v. Denckla, Id. 506; Randolph v. Ward (1874) 29 Ark. 238; Hodges v. Taylor (1890) 13 S. W. 129; Coleman v. Holmes (1870) 44 Ala. 124, 4 Am. Rep. 121; Ellis v. Atlantic & G. R. Co. (1878) 61 Ga. 362; Gwyn v. Porter (1871) 52 Tenn. (5 Heisk.) 253; Yancy v. Yancy, Id. 353, 13 Am. Rep. 5; Harrison v. Henderson (1872) 54 Tenn. (7 Heisk.) 315; Neely v. Luster, Id. 354; Kilpatrick v. Brashear (1873) 57 Tenn. (10 Heisk.) 372; Marks v. Borum (1873) 60 Tenn. (1 Baxt.) 87, 25 Am. Rep. 764; Pack v. Buck (1873) 62 Tenn. (3 Baxt.) 71; Brewis v. Lawson (1881) 76 Va. 36; Updike's Adm'r v. Lane (1883) 78 Va. 132; Cole's Adm'r v. Ballard (1883) 78 Va. 139; Davis v. Tebbs (1886) 81 Va. 600; Baltimore & O. R. Co. v. Faulkner (1870) 4 W. Va. 180; Pitzer v. Burns (1873) 7 W. Va. 63; Hale v. Pack's Ex'rs (1877) 10 W. Va. 145.

The Civil War suspended the running of the statute of limitations between citizens of the belligerents. Hanger v. Abbott (1867) 73 U. S. (6 Wall.) 532, 18 L. Ed. 939; The Protector (1869) 9 Wall. 687, 19 L. Ed. 812; Levy v. Stewart (1870) 78 U. S. (11 Wall.) 244, 20 L. Ed. 86; Brown v. Hiatt (C. C. 1870) Fed. Cas. No. 2,011, affirmed Same v. Hiatts (1872) 82 U. S. (15 Wall.) 177, 21 L. Ed. 128; Brown v. Hiatts (1872) 82 U. S. (15 Wall.) 177, 21 L. Ed. 128; Bird v. Louisiana State Bank (1876) 93 U. S. 96, 23 L. Ed. 818; Opie v. Castleman (D. C. 1887) 32 Fed. 511; Chappelle v. Olney (C. C. 1870) Fed. Cas. No. 2,613; Gooding v. Varn (C. C. 1869) Fed. Cas. No. 5,539; Jackson Ins. Co. v. Stewart (C. C. 1866) Fed. Cas. No. 7,152; Sierra v. U. S. (1873) 9 Ct. Cl. 224; Green v. U. S. (1881) 17 Ct. Cl. 174; Metropolitan Nat. Bank v. Gordon (1872) 28 Ark. 115; Worthington's Adm'r v. De Bardlekin (1878) 33 Ark. 651; Stiles v. Easley (1869) 51 Ill. 275; Perkins v. Rogers (1871) 35 Ind. 124, 9 Am. Rep. 639; Selden v. Preston (1875) 74 Ky. (11 Bush) 191; Sharp v. Morris (1883) 4 Ky. Law Rep. (abstract) 732; Aby v. Brigham (1876) 28 La. Ann. 840; McMerty v. Morrison (1876) 62 Mo. 140; Hammond v. Johnston (1887) 93 Mo. 198, 6 S. W. 83; Brewis v. Lawson (1881) 76 Va. 36; Ahnert v. (1876) 40 Wis. 622.

The principle that state statute limitation did not run during the War applies to suits between pe in different states of the late so-c Confederate States, as much a suits between citizens of loyal s and citizens of the Confederate St Ross v. Jones (1874) 89 U. S. Wall.) 576, 22 L. Ed. 730.

The existence of war suspends statute of limitations as between zens of the adverse belligerent po but not as between citizens of the power. Cross v. Sabin (C. C. 1 13 Fed. 308.

Unless a country is actually occu by hostile forces, and its laws courts are suppressed, the courts not allowed the discretion to d when and when not the statutes of itation are in operation as betwee own citizens only. Lockhart v. (C. C. 1871) Fed. Cas. No. 8,445 firmed Horn v. Lockhart (1873) S. (17 Wall.) 570, 21 L. Ed. 657.

The suspension of the federal in Mississippi, by reason of the R lion, suspended the running of li tions as to persons having a rig pursue their remedies in that c Whitfield v. Allison (D. C. 1867) Cas. No. 17,571.

The disability of a party to bring against the government because o own disloyalty does not suspend running of the statute of limitat nor does the disability of an adm trator to sue because of his dislo suspend the running of the st against the claim of the intes Sierra v. U. S. (1873) 9 Ct. Cl. 2

One cannot avoid the effect of statute of limitations by setting u own self-disqualification, through acts of rebellion, to sue in the C of Claims. Kendall v. U. S. (1878 Ct. Cl. 374.

In an action on a note, where fendant pleads the statute of li tions in bar, it is not a sufficient cation that the courts were clos consequence of the Civil War, and plaintiff could not obtain legal pro Bennett v. Worthington (1866 Ark. 487.

The statute of limitations was suspended by the war of 186 against persons who, although cit of a seceded state at the openi the war, resided in the loyal stat in neutral territory while it wa progress, and maintained their giance. Such persons were not bled from suing in the courts of Ill during the war. Zacharie v. Go (1869) 50 Ill. 186, 99 Am. Dec. 5

The statutes of limitation of th ceded states were suspended by war in favor of persons who were solutely prevented by the war bringing actions in the courts of t

ıtes during the times limited. Mixer Sibley (1869) 53 Ill. 61.

The three-year limitation for defend-; against a decree of foreclosure will t be extended on the ground that e mortgagor was absent by voluntary listment in the Confederate army. ıll v. Connecticut Mut. Life Ins. Co. 873) 68 Ill. 357.

The right to proceed against alien emies, or against debtors living in e seceded states during the war, by editors in the adhering states, by nstructive notice, did not affect the nning of the statute of limitations, the judgment only affected the operty attached, and the remedy was o incomplete to require the creditor pursue it, in order to avail himself any of the exceptions expressed in e statute. Selden v. Preston (1875) Ky. (11 Bush) 191.

A citizen of Kentucky, who yielded the claim of sovereignty asserted er him by the Confederate govern-ent, and took service in the Confed-ate army when it held the country ıere he lived, became a subject of e Confederate government, and can-t be considered as having voluntarily sumed the disability of alienage, in e sense that the time during which thus continued a subject of the Con-derate government must not be elim-ated in computing the time limited r the commencement of an action by n against a citizen of Kentucky. arp v. Morris (1883) 4 Ky. Law Rep. 2.

The existence of the Civil War did t, of itself, suspend prescription. ınson v. Robertson (1867) 19 La. ın. 170.

Where the holder might have brought it on a note before the period of lim-tion had expired, he was barred from inging an action after the expiration that time, although during part of e time an impediment existed against ıintaining an action, owing to the vil War. Rabel v. Pourciau (1868) La. Ann. 131; Payne v. Douglass, 280; Barriere v. Stein, Id. 397; ɔrwood v. Mills, Id. 422; Lemon v. est, Id. 427.

Where the holder of a note due No-mber 6, 1861, had more than 16 ɔnths after the organization of the rk's and sheriff's office in the parish ıere the note was suable during the r before the note was barred by ıitations, he could not relieve him-f from the plea of prescription by e maxim, "Contra non valentem ere non currit prescriptio." Jackson Yoist (1869) 21 La. Ann. 108.

The fact that a creditor resided in w Orleans within the Federal lines ring the Civil War, while his debtor ɔided within the Confederate lines, ɔugh within the state, did not inter-ɔt prescription. Perrett v. Lee 871) 23 La. Ann. 553.

The running of the statute of limitations in case of a note made in Missouri in 1858 will not be stopped during the time in which the courts were closed in consequence of the Rebellion, as Missouri did not join in the Rebellion, and her courts were open. McKinzie v. Hill (1873) 51 Mo. 303, 11 Am. Dec. 450.

The Civil War did not suspend the running of a state statute of limitations as to actions of contract between two persons who were residents of the same state. Smith v. Charter Oak Life Ins. Co. (1876) 64 Mo. 330.

Where the time between the maturity of a debt and the passage of a statute suspending limitations falls short of the period of limitations of actions on such debts, it cannot be added to the time expiring before the bringing of the action, after the revival of the statute of limitations, for the purpose of completing the bar. East Tennessee Iron Mfg. Co. v. Gaskell (1879) 70 Tenn. (2 Lea) 742.

— **Particular cases.**—A policy of insurance against fire, issued by a Connecticut corporation to a citizen of Mississippi, contained a condition that no suit should be brought on it, unless within 12 months after a loss. Held, that Civil War relieved plaintiff from consequences of failing to sue within this period. Semmes v. Hartford Fire Ins. Co. (1871) 80 U. S. (13 Wall.) 158, 20 L. Ed. 490.

Where a statute imposing a liability for wrongful death provides for suit to enforce the same within a specified time, such limitation operates on the liability, and not on the remedy alone; and hence suit must be brought within that time, regardless of other statutes suspending the operation of the statutes of limitation. Kavanagh v. Folsom (C. C. 1910) 181 Fed. 401.

A vendor who reserved a lien which he agreed to enforce within a certain time is not precluded from enforcing the lien after the time specified, if the existence of the Civil War prevented his enforcing the lien within the agreed time. Atkins v. Rison (1867) 25 Ark. 138.

The provision of Rev. Code, § 3525, that when any person has, bona fide, and for a valuable consideration, purchased real or personal property, and has been in the possession of such real property for four years, or of such personal property two years, the same shall be discharged from the lien of any judgment against the person from whom he purchased, is not a statute of limitations, but a condition, put by law on the lien of the judgment, like the duty of recording a mortgage, and hence is not within the purview of general statute temporarily suspending the operation of "all statutes of limitations." Chapman v. Akin (1869) 39 Ga. 347;

Dooly v. Isbell (1869) 39 Ga. 342; Battle v. Shivers (1869) 39 Ga. 405.

An application by a nonresident defendant, under section 15 of the chancery act, to open a decree and be allowed to defend, being a defensive proceeding, is not affected by the rule which prohibits an alien enemy from suing in the courts of that state; and therefore the accident of war affords no ground for suspending the limitation of three years in which such application must be made. Seymour v. Bailey (1872) 66 Ill. 288; Same v. Davis (1872) 66 Ill. 308, note.

A law suspending the operation of the statute of limitations does not apply to the presumption of payment arising from a lapse of 20 years. Shubrick v. Adams (1883) 20 S. C. 49; Harrison v. Heffin (1875) 54 Ala. 552; Black v. Pratt Coal & Coke Co. (1888) 85 Ala. 504, 5 South. 89.

The limitation of two years, prescribed by Code Tenn. § 3781, within which a book account must be proved, is within Acts 1865, c. 10, § 1, providing that no statute of limitation shall operate between May 6, 1861, and January 1, 1867. Vaughn v. Smith (1871) 49 Tenn. (2 Heisk.) 649.

Where a right had accrued before the passage of Shannon's Code, § 4464, suspending limitations from May 6, 1861, to January 1, 1867, the right was not affected or impaired thereby, or by the constitutional provision on the same subject. Breckenridge Cannel Coal Co. v. Scott (1908) 121 Tenn. 88, 114 S. W. 930.

Act March 3, 1866, § 7, providing that the period during which the act shall remain in force shall be excluded from the computation of the time within which by operation of any statute it may be necessary to preserve the loss of any right or remedy, suspends the statute of limitations as to suits to set aside fraudulent conveyances. Johnston v. Gill (Va. 1876) 27 Grat. 587.

In computing time within which suits on demands against fiduciaries may be brought, the stay period must be eliminated as in other cases. Morrison's Ex'r v. Householder's Adm'r (1884) 79 Va. 627.

Code, § 2919, provides that the period between April 17, 1861, and January 1, 1869, shall be excluded from th putation of the time within whi any statute "or rule of law," it n necessary to commence any Held that, in a suit on a debt had not been recognized for 26 this period must be excluded in co ing the 20 years by which a pre tion of payment is raised. Tu Adm'r v. Withers (1890) 86 Va. S. E. 565.

—— **Act June 11, 1864.**—Act June 11, 1864 (13 Stat. 123), susp the statute of limitations duri Rebellion as to any action ac against a person who, because conflict, was beyond the reach c cess, was not unconstitutional plied to actions in the state cou well as in the federal courts. M v. Richards (1885) 5 S. Ct. 1187, S. 137, 29 L. Ed. 334; Stewart v (1870) 78 U. S. (11 Wall.) 493, Ed. 176.

The act applied to cases in the of the state as well as to those federal courts, and allowed both before and time after the pass the act, during which plaintiff wa vented by the Rebellion from su be deducted. Stewart v. Kahn 78 U. S. (11 Wall.) 493, 20 L. E U. S. v. Wiley, Id., 78 U. S. (11 508, 20 L. Ed. 211.

The act was not itself a stat limitation, and was not within th visions of Const. Tex. 1870, art. claring statutes of limitation susp Graydon v. Sweet (C. C. 1871 Cas. No. 5,733.

Under this act, a claim held resident of New York against a of Louisiana was not affected prescription enacted by the latte during the time of such susp Auchincloss v. Frois (1872) 24 La 31. And see Aby v. Brigham (18 La. Ann. 840.

The act did not apply to cases the creditor and debtor both within the limits of the insurrect states. Miltenberger v. Wi (1872) 24 La. Ann. 183.

The act was inapplicable to pr ings in the state court. Succes Winn (1881) 33 La. Ann. 1392.

See, also, U. S. Comp. St. 19 3592, notes under R. S. § 1048.

§ 3115½e. (Act Oct. 6, 1917, c. 106, § 9.) Claims to prop transferred to alien property custodian.

Any person, not an enemy, or ally of enemy, claiming any est, right, or title in any money or other property which may been conveyed, transferred, assigned, delivered, or paid to the property custodian hereunder, and held by him or by the T urer of the United States, or to whom any debt may be owing an enemy, or ally of enemy, whose property or any part th shall have been conveyed, transferred, assigned, delivered, or to the alien property custodian hereunder, and held by him the Treasurer of the United States, may file with the said cust a notice of his claim under oath and in such form and conta

ıch particulars as the said custodian shall require; and the Presi-
ent, if application is made therefor by the claimant, may, with
e assent of the owner of said property and of all persons claim-
g any right, title, or interest therein, order the payment, convey-
ıce, transfer, assignment or delivery to said claimant of the mon-
or other property so held by the alien property custodian or by
e Treasurer of the United States or of the interest therein to which
e President shall determine said claimant is entitled: Provided,
hat no such order by the President shall bar any person from the
osecution of any suit at law or in equity against the claimant to
tablish any right, title or interest which he may have in such
oney or other property. If the President shall not so order within
xty days after the filing of such application, or if the claimant shall
ıve filed the notice as above required and shall have made no ap-
ication to the President, said claimant may, at any time before
e expiration of six months after the end of the war, institute a suit
equity in the district court of the United States for the district
which such claimant resides, or, if a corporation, where it has its
incipal place of business (to which suit the alien property cus-
dian or the Treasurer of the United States, as the case may be,
all be made a party defendant), to establish the interest, right,
tle, or debt so claimed, and if suit shall be so instituted then the
oney or other property of the enemy, or ally of enemy, against
hom such interest, right, or title is asserted, or debt claimed, shall
retained in the custody of the alien property custodian, or in the
reasury of the United States, as provided in this Act, and until
ıy final judgment or decree which shall be entered in favor of
e claimant shall be fully satisfied by payment or conveyance,
ansfer, assignment, or delivery by the defendant or by the alien
operty custodian or Treasurer of the United States on order of
e court, or until final judgment or decree shall be entered against
e claimant, or suit otherwise terminated.

Except as herein provided, the money or other property conveyed,
ansferred, assigned, delivered, or paid to the alien property cus-
dian shall not be liable to lien, attachment, garnishment, trustee
ocess, or execution, or subject to any order or decree of any court.
This section shall not apply, however, to money paid to the alien
operty custodian under section ten hereof. (40 Stat. 419.)

See note to § 3115½a, ante.

3115½ee. (Act Oct. 6, 1917, c. 106, § 10.) Acts permitted.

Nothing contained in this Act shall be held to make unlawful any
the following acts:

) Applications for letters patent, or registration of trade-mark or copyright.

An enemy, or ally of enemy, may file and prosecute in the United
ates an application for letters patent, or for registration of trade-
ark, print, label, or copyright, and may pay any fees therefor in
cordance with and as required by the provisions of existing law
ıd fees for attorneys or agents for filing and prosecuting such ap-
ications. Any such enemy, or ally of enemy, who is unable dur-
g war, or within six months thereafter, on account of conditions
ising out of war, to file any such application, or to pay any offi-
al fee, or to take any action required by law within the period pre-
ribed by law, may be granted an extension of nine months be-
ond the expiration of said period, provided the nation of which the
id applicant is a citizen, subject, or corporation shall extend sub-
antially similar privileges to citizens and corporations of the Unit-
l States.

(b) Payment of tax in relation to patents, trade-marks or co rights.

Any citizen of the United States, or any corporation organi within the United States, may, when duly authorized by the Pr dent, pay to an enemy or ally of enemy any tax, annuity, or which may be required by the laws of such enemy or ally of ene nation in relation to patents and trade-marks, prints, labels, copyrights; and any such citizen or corporation may file and pr cute an application for letters patent or for registration of tra mark, print, label, or copyright in the country of an enemy, o an ally of enemy after first submitting such application to the Pr dent and receiving license so to file and prosecute, and to pay fees required by law and customary agents' fees, the maxim amount of which in each case shall be subject to the control of President.

(c) Licenses to manufacture or use articles covered by patent copyright owned by enemy or ally of enemy.

Any citizen of the United States or any corporation organi within the United States desiring to manufacture, or cause to manufactured, a machine, manufacture, composition of matter, design, or to carry on, or to use any trade-mark, print, label or ca to be carried on, a process under any patent or copyrighted ma owned or controlled by an enemy or ally of enemy at any time d ing the existence of a state of war may apply to the President a license; and the President is hereby authorized to grant suc license, nonexclusive or exclusive as he shall deem best, provi he shall be of the opinion that such grant is for the public welf and that the applicant is able and intends in good faith to manu ture, or cause to be manufactured, the machine, manufacture, c position of matter, or design, or to carry on, or cause to be ried on, the process or to use the trade-mark, print, label or co righted matter. The President may prescribe the conditions this license, including the fixing of prices of articles and produ necessary to the health of the military and naval forces of the Uni States or the successful prosecution of the war, and the rules regulations under which such license may be granted and the which shall be charged therefor, not exceeding $100, and not ceeding one per centum of the fund deposited as hereinafter p vided. Such license shall be a complete defense to any suit at or in equity instituted by the enemy or ally of enemy owners of letters patent, trade-mark, print, label or copyright, or otherw against the licensee for infringement or for damages, royalty, other money award on account of anything done by the licensee der such license, except as provided in subsection (f) hereof.

(d) Same; statements by licensees.

The licensee shall file with the President a full statement of extent of the use and enjoyment of the license, and of the pr received in such form and at such stated periods (at least annua as the President may prescribe; and the licensee shall pay at s times as may be required to the alien property custodian not to ceed five per centum of the gross sums received by the licensee fr the sale of said inventions or use of the trade-mark, print, label copyrighted matter, or, if the President shall so order, five per c tum of the value of the use of such inventions, trade-marks, pri labels or copyrighted matter to the licensee as established by President; and sums so paid shall be deposited by said alien pr erty custodian forthwith in the Treasury of the United States a trust fund for the said licensee and for the owner of the said p ent, trade-mark, print, label or copyright registration as hereina

rovided, to be paid from the Treasury upon order of the court, as rovided in subdivision (f) of this section, or upon the direction of ıe alien property custodian.

e) Same; term; cancellation.

Unless surrendered or terminated as provided in this Act, any cense granted hereunder shall continue during the term fixed in ıe license or in the absence of any such limitation during the term f the patent, trade-mark, print, label, or copyright registration un-er which it is granted. Upon violation by the licensee of any of ıe provisions of this Act, or of the conditions of the license, the 'resident may, after due notice and hearing, cancel any license ranted by him.

f) Same; suits against licensee.

The owner of any patent, trade-mark, print, label, or copyright nder which a license is granted hereunder may, after the end of ıe war and until the expiration of one year thereafter, file a bill in quity against the licensee in the district court of the United States or the district in which the said licensee resides, or, if a corpora-on, in which it has its principal place of business (to which suit the 'reasurer of the United States shall be made a party), for recov-ry from the said licensee for all use and enjoyment of the said pat-ıted invention, trade-mark, print, label, or copyrighted matter: rovided, however, That whenever suit is brought, as above, no-ce shall be filed with the alien property custodian within thirty ays after date of entry of suit: Provided further, That the licensee ıay make any and all defenses which would be available were no cense granted. The court on due proceedings had may adjudge ıd decree to the said owner payment of a reasonable royalty. The mount of said judgment and decree, when final, shall be paid on rder of the court to the owner of the patent from the fund depos-ed by the licensee, so far as such deposit will satisfy said judgment ıd decree; and the said payment shall be in full or partial satis-ıction of said judgment and decree, as the facts may appear; and , after payment of all such judgments and decrees, there shall re-ıain any balance of said deposit, such balance shall be repaid to ıe licensee on order of the alien property custodian. If no suit is rought within one year after the end of the war, or no notice is led as above required, then the licensee shall not be liable to make ıy further deposits, and all funds deposited by him shall be re-aid to him on order of the alien property custodian. Upon entry f suit and notice filed as above required, or upon repayment of ınds as above provided, the liability of the licensee to make fur-ıer reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, rminate the license, and may, in such event, issue an injunction restrain the licensee from infringement thereafter, or the court, case the licensee, prior to suit, shall have made investment of ıpital based on possession of the license, may continue the license r such period and upon such terms and with such royalties as it ıall find to be just and reasonable.

g) Restraining infringement of patents or copyrights by enemy or ally of enemy.

Any enemy, or ally of enemy, may institute and prosecute suits equity against any person other than a licensee under this Act enjoin infringement of letters patent, trade-mark, print, label, ıd copyrights in the United States owned or controlled by said ıemy or ally of enemy, in the same manner and to the extent that e would be entitled so to do if the United States was not at war:

Provided, That no final judgment or decree shall be entered in f of such enemy or ally of enemy by any court except after t days' notice to the alien property custodian. Such notice sha in writing and shall be served in the same manner as civil pr of Federal courts.

(h) Powers of attorney.

All powers of attorney heretofore or hereafter granted b enemy or ally of enemy to any person within the United Stat so far as they may be requisite to the performance of acts au ized in subsections (a) and (g) of this section, shall be valid.

(i) Keeping secret inventions.

Whenever the publication of an invention by the granting patent may, in the opinion of the President, be detrimental t public safety or defense, or may assist the enemy or endange successful prosecution of the war, he may order that the inve be kept secret and withhold the grant of a patent until the e the war: Provided, That the invention disclosed in the applic for said patent may be held abandoned upon it being establishe fore or by the Commissioner of Patents that, in violation of sai der, said invention has been published or that an application patent therefor has been filed in any other country, by the inv or his assigns or legal representatives, without the consent o proval of the commissioner or under a license of the President

When an applicant whose patent is withheld as herein pro and who faithfully obeys the order of the President above ref to shall tender his invention to the Government of the United S for its use, he shall, if he ultimately receives a patent, have the to sue for compensation in the Court of Claims, such right to pensation to begin from the date of the use of the invention b Government. (40 Stat. 420.)

See note to § 3115½a, ante.

The above provisions (paragraph i) are almost identical with the pro of Act Oct. 6, 1917, c. 95, entitled "An act to prevent the publication ventions by the grant of patents that might be detrimental to the public or convey useful information to the enemy, to stimulate invention, an vide adequate protection to owners of patents, and for other purpose cept that the act above cited is, by its terms, made applicable during an when the United States is at war, whereas these provisions may be re as applicable only to the present war. Accordingly, said above cited act included in this compilation, and is set forth post, under Title LX, "P Trade-Marks, and Copyrights," post, § 9429a.

The President's proclamation, No. 1,372, dated May 24, 1917, and ently issued under paragraph b of the above section, reads as follows omitting formal portions:

"Whereas, the laws of the German Empire provide that letters granted or issued to citizens of other countries shall lapse unless certain annuities or fees are paid within stated periods;

"And whereas, the interests of the citizens of the United States i letters patent are of great value, so that it is important that such pa should be made in order to preserve their rights;

"Now, therefore, I, Woodrow Wilson, President of the United St America, by virtue of the powers vested in me as such, hereby declare a claim that citizens of the United States owning letters patent gran issued by the German Empire are hereby authorized and permitted t payment of any tax, annuity or fee which may be required by the laws German Empire for the preservation of their rights in such letters pate

Notes of Decisions

Infringement suits by enemies.—A sales agent of a German subject held not the real plaintiff in patent infringement suit brought in the name of German subject, and proceedings will be suspended during the war. Stumpf v. Schreiber Brewing Co. (D. C. 1917) 242 Fed. 80.

On the declaration of a state between Germany and the States, a pending suit for infrin by partners, who then became al emies, some resident and some n dent, will be stayed for the dura the war. Speidel v. N. Barstow C. 1917) 243 Fed. 621.

3115½f. (Act Oct. 6, 1917, c. 106, § 11.) Importations prohibited. Whenever during the present war the President shall find that ne public safety so requires and shall make proclamation thereof shall be unlawful to import into the United States from any coun-y named in such proclamation any article or articles mentioned in uch proclamation except at such time or times, and under such egulations or orders, and subject to such limitations and excep-ons as the President shall prescribe, until otherwise ordered by ne President or by Congress: Provided, however, That no prefer-nce shall be given to the ports of one State over those of another. 40 Stat. 422.)

See note to § 3115½a, ante.

Proclamations issued under this section:

November 28, 1917, as follows, omitting formal portions:

"Now, therefore, I, Woodrow Wilson, President of the United States of America, do hereby proclaim to all whom it may concern that the public safety requires that the following articles, namely: antimony, antimony ore, or any chemical extracted therefrom; asbestos; beans of all kinds; balata; burlap; castor seed, castor oil; cotton; chrome, chrome ore, or any ferro-alloy or chemical extracted therefrom; cocoanut oil; cobalt, cobalt ore, or any ferro-alloy or chemical extracted therefrom; copra; industrial diamonds; all ferro-alloys; flax; gutta joolatong; gutta percha; gutta siak; hemp; hides and skins; jute; iridium; leather, manganese, manganese ore, or any ferro-alloy or chemical extracted therefrom; mica, molybdenum, molybdenum ore, or any ferro-alloy or chemical extracted therefrom; naxos emery and naxos emery ore; nickel, nickel ore, matte, or any ferro-alloy or chemical extracted therefrom; sodium, potassium, or calcium nitrates; optical glass; palm oil; platinum; plumbago; pyrites; rice; rubber, raw, reclaimed, waste or scrap; scheelite; shellac; sisal; soya bean oil; spiegeleisen; sugars; tanning materials; tin in bars, blocks, pigs, or grain or granulated; tin ore and tin concentrates, or any chemical extracted therefrom; titanium, titanium ore, or any ferro-alloy or chemical extracted therefrom; tobacco; tungsten, tungsten ore, or any ferro-alloy or chemical extracted therefrom; vanadium, vanadium ore, or any ferro-alloy or chemical extracted therefrom; wheat and wheat flour; wolframite; or wool, shall not, from and after the date of this proclamation, be imported into the United States or its territorial possessions from Abyssinia, Afghanistan, Albania, Argentina, Austria-Hungary, Belgium, her colonies, possessions and protectorates, Bolivia, Brazil, Bulgaria, China, Chile, Colombia, Costa Rica, Cuba, Denmark, her colonies, possessions and protectorates, Dominican Republic, Ecuador, Egypt, France, her colonies, possessions and protectorates, Germany, her colonies, possessions and protectorates, Great Britain, her colonies, possessions and protectorates, Greece, Guatemala, Haiti, Honduras, Italy, her colonies, possessions and protectorates, Japan, Liechtenstein, Liberia, Luxembourg, Mexico, Monaco, Montenegro, Morocco, Nepal, The Netherlands, her colonies, possessions and protectorates, Nicaragua, Norway, Oman, Panama, Paraguay, Persia, Peru, Portugal, her colonies, possessions and protectorates, Roumania, Russia, Salvador, San Marino, Serbia, Siam, Spain, her colonies, possessions and protectorates, Sweden, Switzerland, Turkey, Uruguay, or Venezuela, except under license granted by the War Trade Board in accordance with regulations or orders and subject to such limitations and exceptions as have heretofore been made or shall hereafter be prescribed in pursuance of the powers conferred by said Act of October 6, 1917, and the Executive Order of October 12, 1917."

February 14, 1918, as follows, omitting formal portions:

"Whereas the President has heretofore by proclamation dated November 28, 1917, declared certain imports in time of war unlawful, and the President now finds that the public safety requires that such proclamation be amended and supplemented in respect to the articles and countries hereinafter mentioned;

"Now, therefore, I, Woodrow Wilson, President of the United States of America, do hereby proclaim to all whom it may concern that the public safety requires that the following articles, namely: all kinds of arms, guns, ammunition and explosives, machines for their manufacture or repair, component parts thereof, materials or ingredients used in their manufacture, and all articles necessary or convenient for their use; all contrivances for or means of transportation on land or in the water or air, machines used in their manufacture or repair, component parts thereof, materials or ingredients used in their manufacture, and all instruments, articles and animals necessary or convenient for their use; all means of communication, tools, implements, instruments, equipment, maps, pictures, papers and other articles, machines and documents necessary or convenient for carrying on hostile operations; all

kinds of fuel, food, foodstuffs, feed, forage and clothing, and all articl materials used in their manufacture; all chemicals, drugs, dyestuffs an ning materials; cotton, wool, silk, flax, hemp, jute, sisal and other fibe manufactures thereof; all earths, clay, glass, sand, stone, and their pr animals of every kind, their products and derivatives; hides, skins and factures thereof; all non-edible animal and vegetable products; all mac tools, dies, plates, and apparatus, and materials necessary or convenie their manufacture; medical, surgical, laboratory and sanitary suppli equipment; all metals, minerals, mineral oils, ores, and all derivativ manufactures thereof; paper pulp, books and all printed matter, and ma necessary and convenient for their manufacture; rubber, gums, rosin and waxes, their products, derivatives and substitutes, and all article taining them; wood and wood manufactures; coffee, cocoa, tea and wines, spirits, mineral waters and beverages; and all other articles kind whatsoever, shall not, on and after the sixteenth day of February, year One Thousand Nine Hundred and Eighteen, be imported into the States or its territorial possessions from Abyssinia, Afghanistan, A Argentina, Austria-Hungary, Belgium, her colonies, possessions and torates, Bolivia, Brazil, Bulgaria, China, Chile, Colombia, Costa Rica, Denmark, her colonies, possessions and protectorates, Dominican Re Ecuador, Egypt, France, her colonies, possessions and protectorates many, her colonies, possessions and protectorates, Great Britain, her c possessions and protectorates, Greece, Guatemala, Haiti, Honduras, Its colonies, possessions and protectorates, Japan, Liechtenstein, Liberia, I bourg, Mexico, Monaco, Montenegro, Morocco, Nepal, The Netherlan colonies, possessions and protectorates, Nicaragua, Norway, Oman, P Paraguay, Persia, Peru, Portugal, her colonies, possessions and protect Roumania, Russia, Salvador, San Marino, Serbia, Siam, Spain, her c possessions and protectorates, Sweden, Switzerland, Turkey, Urugu Venezuela, except under license granted in accordance with regulati orders and subject to such limitations and exceptions as have heretofor or shall hereafter be prescribed in pursuance of the powers conferred Act of October 6, 1917. The said proclamation of November 28, 191 paragraph III of the executive order of October 12, 1917, are hereby c ed and continued and all rules and regulations heretofore made in con therewith or in pursuance thereof are likewise hereby confirmed and co and made applicable to this proclamation."

Notes of Decisions

Constitutionality.—For cases involving power to regulate imports, see U. S. Comp. St. 1916, p. 13258, note.

Brolan v. U. S. (1915) 35 Sup. Ct. 285, 236 U. S. 216, 59 L. Ed. 544, and U. S. v. Yee Fing (D. C. 1915) 222 Fed. 154, hold that U. S. Comp. St. 1916, §§ 8800, 8801, prohibiting opium importations, are valid.

For cases involving validity of delegation of power to President, see notes under § 3115½c, ante. See, also, notes under § 3115½j, post.

Importations.—Under the nonintercourse law of March 1, 1809, making it unlawful to import into the United States any merchandise from any port or place situated in Great Britain, or in any of the colonies or dependencies of Great Britain, a vessel had no right to come into the waters of the United States to inquire whether she might land her cargo. The Penobscot v. U. S. (1813) 11 U. S. (7 Cranch) 356, 3 L. Ed. 369.

Under the nonintercourse act of 1809, a vessel sailing from Great Britain, without a knowledge of the war, had a right to lay off the coast of the United States to receive instructions from her owners, in New York, and, if necessary, to drop anchor, and in case of a storm, to make harbor; and if prevented, by a mutiny of her crew, from putting out to sea might wait in the waters of the States for orders. The Fanny 13 U. S. (9 Cranch) 181, 3 L. E

If articles, the importation of is forbidden, were taken on boa the intention of importing the with the owner's or master's edge, the vessel is forfeited, und March 1, 1809, whether she be into port by stress of weather and even if no such intention exi the time of loading, the same quence will attach to the good shall appear that the coming in vessel was voluntary on the part master; for the necessity whi excuse a violation of nonimpo laws must be urgent, and procee such a state of things as may b posed to produce on the mind of ful mariner a well-grounded f the loss of vessel and cargo, or lives of the crew. The New (1818) 16 U. S. (3 Wheat.) 59, 4 333.

Nonintercourse Act April 18, 1 65, prohibited the coming of vessels to the ports of the United from a British port closed agai commerce of the United States, directly or through an open port; but it did not prohibit th ing of such vessels from a close

port through a foreign port not tish, where the continuity of the age was fairly broken. The Pitt 23) 21 U. S. (8 Wheat.) 371, 5 L. 639.

a British ship come from a foreign t, not British, to a port of the Unit- States, the continuity of the voyage ot broken, and the vessel is not lia- to forfeiture, under Act April 18, 8, c. 65, by touching at an inter- liate British closed port, from ne- sity and in order to get provisions, hout trading there. The Frances Eliza (1823) 21 U. S. (8 Wheat.) , 5 L. Ed. 645.

nder Act Feb. 9, 1909 (U. S. Comp. 1916, § 8800), prohibiting the im- tation of opium, the offense is mitted when opium is brought in the territorial limits of the ted States, although not landed n the ship or carried across the oms lines. U. S. v. Caminata (D. 1912) 194 Fed. 903.

he mere coming into port without aking bulk is prima facie evidence an importation; and if a vessel vol- arily arrive at her port of destina- with a cargo, it constitutes in t of law an importation under Act ch 1, 1809, c. 91 (2 Stat. 529), and tish goods put on board a vessel intent to import them into the ted States, are forfeited, under this whether the owner intended there- o violate it or not; but an involun- tary arrival by stress of weather does not constitute an importation. The Boston (C. C. 1812) Fed. Cas. No. 1,670; The Mary (C. C. 1812) Fed. Cas. No. 9,183.

The arrival of a vessel within the Chesapeake Bay for the purpose of procuring a pilot in anticipation of a storm is sufficient to subject her to forfeiture under the nonintercourse laws. In such case the vessel is not within the exception of vessels "forced in by distress or by dangers of the sea." Thomson v. U. S. (C. C. 1820) Fed. Cas. No. 13,985.

An act allowing drawbacks upon the exportation of articles manufactured from "imported" materials include goods brought into the United States from the Philippine Islands, although those islands are not a foreign country. (1907) 26 Op. Atty. Gen. 355.

Act Feb. 9, 1909 (U. S. Comp. St. 1916, § 8801), prohibiting the importation of opium, is not violated by bringing opium into a port of the United States from a foreign country on one vessel and transferring it to another vessel for immediate transportation to a foreign destination. (1909) 27 Op. Atty. Gen. 440.

See, also, notes under § 3115½aa, ante, and § 7678b, post.

Preferences to ports.—See U. S. Comp. Stats. 1916, Const. art. 1, § 9, cl. 6, p. 13543, and notes thereunder.

115½ff. (Act Oct. 6, 1917, c. 106, § 12, as amended, Act March 28, 1918, c. 28, § 1.) Property transferred to alien property custodian.

ll moneys (including checks and drafts payable on demand) d to or received by the alien property custodian pursuant to this t shall be deposited forthwith in the Treasury of the United tes, and may be invested and reinvested by the Secretary of the easury in United States bonds or United States certificates of ebtedness, under such rules and regulations as the President ll prescribe for such deposit, investment, and sale of securities; l as soon after the end of the war as the President shall deem cticable, such securities shall be sold and the proceeds deposited he Treasury.

ll other property of an enemy, or ally of enemy, conveyed, trans- red, assigned, delivered, or paid to the alien property custodian eunder shall be safely held and administered by him except as einafter provided; and the President is authorized to designate a depositary, or depositaries, of property of an enemy or ally of my, any bank, or banks, or trust company, or trust companies, other suitable depositary or depositaries, located and doing busi- s in the United States. The alien property custodian may de- it with such designated depositary or depositaries, or with the retary of the Treasury, any stocks, bonds, notes, time drafts, e bills of exchange, or other securities, or property (except mon- or checks or drafts payable on demand which are required to be osited with the Secretary of the Treasury) and such depositary depositaries shall be authorized and empowered to collect any idends or interest or income that may become due and any ma- ing obligations held for the account of such custodian. Any

moneys collected on said account shall be paid and deposited
with by said depositary or by the alien property custodian in
Treasury of the United States as hereinbefore provided.

The President shall require all such designated depositar
execute and file bonds sufficient in his judgment to protect
erty on deposit, such bonds to be conditioned as he may direct

The alien property custodian shall be vested with all
powers of a common-law trustee in respect of all property,
than money, which has been or shall be, or which has been o
be required to be, conveyed, transferred, assigned, deliver
paid over to him in pursuance of the provisions of this Act, a
addition thereto, acting under the supervision and direction
President, and under such rules and regulations as the Pre
shall prescribe, shall have power to manage such property a
any act or things in respect thereof or make any disposition t
or of any part thereof, by sale or otherwise, and exercise any
or powers which may be or become appurtenant thereto or
ownership thereof in like manner as though he were the ab
owner thereof: Provided, That any property sold under thi
except when sold to the United States, shall be sold only to A
can citizens, at public sale to the highest bidder, after publ
vertisement of time and place of sale which shall be whe
property or a major portion thereof is situated, unless the
dent stating the reasons therefor, in the public interest shall
wise determine: Provided further, That when sold at publi
the alien property custodian upon the order of the Presiden
ing the reasons therefor, shall have the right to reject all bi
resell such property at public sale or otherwise as the Pre
may direct. Any person purchasing property from the alien
erty custodian for an undisclosed principal, or for re-sale to
son not a citizen of the United States, or for the benefit of
son not a citizen of the United States, shall be guilty of a
meanor, and, upon conviction, shall be subject to a fine of not
than $10,000, or imprisonment for not more than ten years, o
and the property shall be forfeited to the United States. I
be the duty of every corporation incorporated within the
States and every unincorporated association, or company, o
tee, or trustees within the United States issuing shares or
cates representing beneficial interests to transfer such sha
certificates upon its, his, or their books into the name of th
property custodian upon demand, accompanied by the presen
of the certificates which represent such shares or beneficial
ests. The alien property custodian shall forthwith deposit
Treasury of the United States, as hereinbefore provided, th
ceeds of any such property or rights so sold by him.

Any money or property required or authorized by the pro
of this Act to be paid, conveyed, transferred, assigned, or del
to the alien property custodian shall, if said custodian shall
rect by written order, be paid, conveyed, transferred, assign
delivered to the Treasurer of the United States with the sa
fect as if to the alien property custodian.

After the end of the war any claim of any enemy or of an
enemy to any money or other property received and held
alien property custodian or deposited in the United States
ury, shall be settled as Congress shall direct: Provided, ho
That on order of the President as set forth in section nine
or of the court, as set forth in sections nine and ten hereof, th
property custodian or the Treasurer of the United States, as th
may be, shall forthwith convey, transfer, assign, and pay
person to whom the President shall so order, or in whose beh

urt shall enter final judgment or decree, any property of an enemy ally of enemy held by said custodian or by said Treasurer, so as may be necessary to comply with said order of the President said final judgment or decree of the court: And provided fur- er, That the Treasurer of the United States, on order of the alien operty custodian shall, as provided in section ten hereof, repay to licensee any funds deposited by said licensee. (40 Stat. 423, 0.)

See note to § 3115½a, ante.

The amendment of this section by Act March 28, 1918, c. 28, § 1, cited above, changed the fourth paragraph thereof to read as set forth here. As originally enacted said paragraph read as follows:

"The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that the interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him."

3115½fff. (Act July 1, 1918, c. 113, § 1.) Taxes on property held by alien property custodian.

All taxes heretofore or hereafter lawfully assessed by any body itic against money or other property held by the alien property stodian shall be paid out of such money or other property, and if it be insufficient, shall be charged thereto and paid out of any ier moneys or properties required from the same enemy or ally of emy. (40 Stat. 646.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

115½g. (Act Oct. 6, 1917, c. 106, § 13.) Statements by masters of vessels and owners of cargoes before granting clearances.

During the present war, in addition to the facts required by sec- ns forty-one hundred and ninety-seven, forty-one hundred and iety-eight, and forty-two hundred of the Revised Statutes, as ended by the Act of June fifteenth, nineteen hundred and sev- teen, to be set out in the master's and shipper's manifests before arance will be issued to vessels bound to foreign ports, the mas- or person in charge of any vessel, before departure of such ves- from port, shall deliver to the collector of customs of the dis- ct wherein such vessel is located a statement duly verified by oath it the cargo is not shipped or to be delivered in violation of this t, and the owners, shippers, or consignors of the cargo of such ssels shall in like manner deliver to the collector like statement der oath as to the cargo or the parts thereof laden or shipped by em, respectively, which statement shall contain also the names d addresses of the actual consignees of the cargo, or if the ship- nt is made to a bank or other broker, factor, or agent, the names d addresses of the persons who are the actual consignees on whose ount the shipment is made. The master or person in control of vessel shall, on reaching port of destination of any of the cargo,

deliver a copy of the manifest and of the said master's, own shipper's, or consignor's statement to the American consular cer of the district in which the cargo is unladen. (40 Stat. 424.)

See note to § 3115½a, ante.

§ 3115½gg. (Act Oct. 6, 1917, c. 106, § 14.) Same; refusa clearance; reports of gold or silver coin in cargoes for exp

During the present war, whenever there is reasonable caus believe that the manifest or the additional statements under required by the preceding section are false or that any vessel, mestic or foreign, is about to carry out of the United States property to or for the account or benefit of an enemy, or all enemy, or any property or person whose export, taking out transport will be in violation of law, the collector of customs the district in which such vessel is located is hereby authorized empowered subject to review by the President to refuse clear to any such vessel, domestic or foreign, for which clearance is quired by law, and by formal notice served upon the owners, ter, or person or persons in command or charge of any dom vessel for which clearance is not required by law, to forbid the parture of such vessel from the port, and it shall thereupon be lawful for such vessel to depart.

The collector of customs shall, during the present war, in case report to the President the amount of gold or silver coi bullion or other moneys of the United States contained in any c intended for export. Such report shall include the names and dresses of the consignors and consignees, together with any known to the collector with reference to such shipment and ticularly those which may indicate that such gold or silver coi bullion or moneys of the United States may be intended for d ery or may be delivered, directly or indirectly, to an enemy o ally of enemy. (40 Stat. 424.)

See note to § 3115½a, ante.

"Reasonable cause."—See note under § 3115½b, ante.

"Vessel."—An open boat was held not a ship or vessel within Act May 15, 1820 (3 Stat. 602), and Act March 1, 1823 (3 Stat. 740), prohibiting commercial intercourse from the British colonies. U. S. v. Open Boat (C. C. 1828) Fed. Cas. No. 15,967, affirming Open Boat (D. C. 1827) Fed. Cas. No. 10,549; U. S. v. Open Boat (C. C. 1829) Fed. Cas. No. 15,968.

Departure.—Where a vessel leaves the wharf with intent to go to sea, and is seized before she has actually out of port, it is not a departure the port, within Supplementary bargo Act Jan. 9, 1808, § 3 (2 453). The Sloop Active (1812) S. (7 Cranch) 100, 3 L. Ed. 282.

A departure from any place the jurisdictional limits of the U States, although not a port, is the provisions of the embargo a 22d Dec., 1807, c. 5 (2 Stat. 451) posing an embargo on ships withi "ports and places" of the U States, etc. The Ann (C. C. Fed. Cas. No. 397.

§ 3115½h. (Act July 1, 1918, c. 113, § 1.) Appropriation for penses.

For expenses of the alien property custodian authorized by the entitled "An Act to define, regulate, and punish trading with the en and for other purposes," approved October sixth, nineteen hundred seventeen, including personal and other services and rental of qua in the District of Columbia and elsewhere, per diem allowances in of subsistence not exceeding $4, traveling expenses, printing and b ing, law books, books of reference and periodicals, supplies and eq ment, and maintenance, repair, and operation of motor-propelled senger-carrying vehicles, $900,000. (40 Stat. 645.)

This section was a provision of the sundry civil appropriation act fo fiscal year 1919, cited above.

3115½hh. (Act Oct. 6, 1917, c. 106, § 16.) Offenses; punishment; forfeitures of property.

Whoever shall willfully violate any of the provisions of this Act of any license, rule, or regulation issued thereunder, and whoer shall willfully violate, neglect, or refuse to comply with any ler of the President issued in compliance with the provisions of s Act shall, upon conviction, be fined not more than $10,000, or, natural person, imprisoned for not more than ten years, or both; l the officer, director, or agent of any corporation who knowingly rticipates in such violation shall be punished by a like fine, imsonment, or both, and any property, funds, securities, papers, or er articles or documents, or any vessel, together with her tackle, parel, furniture, and equipment, concerned in such violation shall forfeited to the United States. (40 Stat. 425.)

ee note to § 3115½, ante.

nowledge of illegal purpose.—In a e of sailing under an enemy's lise, or of trading with the enemy, knowledge of the agent will affect principal, even if, in reality, he be orant of the fact. The Hiram 16) 14 U. S. (1 Wheat.) 440, 4 L. 131.

the case of a vessel seized as prize reason of her having violated a kade, or been used by the enemy warlike purposes, it is of no conseace that she was so employed with the knowledge or approbation of owner. The Napoleon (D. C. 1863) . Cas. No. 10,013.

the owner of a vessel places it unthe control of a master who per it to carry under false papers traband goods ostensibly destined a neutral port, but in reality going port of the enemy, it is subject to eiture as prize of war; and it makes difference that the intention of such er is innocent; for the master is nd to know the contents of his carand cannot be permitted to aver his orance of the contents of contraband kages on board of his vessel. The erhoff (D. C. 1863) Fed. Cas. No. 24; The Springbok (D. C. 1863) . Cas. No. 13,264, modified (1866) U. S. (5 Wall.) 1, 18 L. Ed. 480. see The Shark (D. C. 1862) Fed. . No. 12,708.

he vessel is subject to condemnation re, with the master's knowledge, it sed to carry to an intermediate port traband of war for transshipment to enemy country. The Stephen Hart C. 1863) Fed. Cas. No. 13,364, afed (1865) 70 U. S. (3 Wall.) 559, 18 Ed. 220.

forfeiture of the ship is incurred her violation of the embargo laws, ther with or without the authority the owner. The vessel speaks and by the master, and both she and owner are bound by his acts. U. S. The Little Charles (C. C. 1818) Fed. . No. 15,612.

eizures.—Act July 13, 1861 (U. S. np. St. 1916, §§ 10143, 10146), is to construed as positively prohibiting citizens or residents alike in the loyal and insurrectionary states from all commercial intercourse and dealing with a view to reciprocity of gains, or in manifestation of feelings of amity and aid toward each other, whether in acts of material support or friendly encouragement to the enemy. Property intended to be used to these ends and the vehicle employed to convey it, either gratuitously or for profit, are alike subject to confiscation. The absolute culpability of the property is independent of all questions of contraband or blockade, or of the intrinsic value or adaptation to belligerent uses of the articles to be interchanged, or the degree of progress made in completing the object of the parties. U. S. v. The Josie (D. C. 1864) Fed. Cas. No. 15,498a.

—— **Fishing vessels.**—Coast fishing vessels are ordinarily exempt from capture as prizes. The Paquete Habana (1899) 175 U. S. 677, 20 Sup. Ct. 290, 44 L. Ed. 320.

—— **Who may seize.**—At common law, any person may, at his peril, seize for a forfeiture to the government; and if the government adopt his seizure, and the property is condemned, he will be completely justified. Gelston v. Hoyt (1818) 3 Wheat. 246, 310, 4 L. Ed. 381; The Caledonian (1819) 17 U. S. (4 Wheat.) 100, 4 L. Ed. 523; Carrington et al. v. Merchants' Insurance Co. (1834) 8 Pet. 495, 8 L. Ed. 1021.

In 1864 the rebel steamer Florida was captured at Bahia, Brazil, by the United States steamer Wachusett, and brought thence to Hampton Roads, where by a collision she was sunk. The United States disavowed the act of the captain of the Wachusett in making the capture. He libeled the Florida as a prize of war. Held, that the libel was properly dismissed. The Florida (1879) 101 U. S. 37, 25 L. Ed. 898.

The libeling by the United States of a prize captured by a transport in its service, but not a commissioned ship of war, is equivalent to an original seizure by the government, and is an affirmance of the capture. The Emma (D. C. 1863) Fed. Cas. No. 4,461.

—— **Time of seizure.**—A vessel which had proceeded to a foreign port contrary to the embargo act of January 9, 1808, was liable to be seized upon her return. The Eliza (1812) 11 U. S. (7 Cranch) 113, 3 L. Ed. 286.

By Act April 25, 1808, c. 66, § 11, the collector had no right to detain a vessel and cargo, after her arrival at her port of destination, under a suspicion that she intended to violate the embargo; nor could such detention be justified by instructions from the secretary of the treasury, nor by the confirmation of the president. Otis v. Bacon (1813) 11 U. S. (7 Cranch) 589, 3 L. Ed. 448.

An American vessel carrying a cargo from St. Petersburg to London after declaration of war against England is subject to capture and forfeiture as a prize after discharging such cargo and on her way to America. The Joseph (1814) 8 Cranch, 451, 3 L. Ed. 621.

If a vessel, not actually arriving at her port of original destination, excites an honest suspicion in the mind of the collector that her demand of a permit to land is merely colorable, this is not a termination of a voyage so as to preclude the right of detention. Otis v. Walter (1821) 19 U. S. (6 Wheat.) 583, 5 L. Ed. 536.

A vessel violating a blockade is subject to confiscation only until her return voyage has been ended. The Wren (1867) 6 Wall. 582, 18 L. Ed. 876.

A vessel guilty of an unlawful trade with the enemy is liable to capture for the offense at any time during the voyage in which the offense is committed. The Memphis (D. C. 1862) Fed. Cas. No. 9,413, affirmed (C. C. 1863) Fed. Cas. No. 9,414.

A forfeiture of the vessel, imposed by the embargo laws, cannot be enforced after she has arrived within the jurisdiction of a foreign power, but the United States must then resort to the penalties imposed by those laws, and proceed for double the vessel and cargo, to which they are entitled upon their violation. Parker v. U. S. (C. C. 1809) Fed. Cas. No. 10,751.

Under Act July 13, 1861, § 5 (U. S. Comp. St. 1916, § 10143), goods forming the cargo of a vessel proceeding to a point in the insurrectionary states are liable to forfeiture only while in transitu, and the vessel only while the contraband cargo is on board; but under the regulations made by the Secretary of the Treasury by authority of this act, Act May 20, 1862 (U. S. Comp. St. 1916, §§ 10154, 10162), and Act July 2, 1864 (13 Stat. 375), a vessel engaging in trade with the insurrectionary districts is liable to forfeiture, even after the termination of the prohibited voyage and the discharge of the contraband cargo. U. S. v. The Francis Hatch (D. C. 1864) Fed. Cas. No. 15,158.

The homeward bound cargo o
sel having proceeded to a forei
in contravention of Act Cong.
1808 (2 Stat. 453), supplemen
the general embargo act, is not
condemnation. U. S. v. The
Wells (C. C. 1808) Fed. Cas.
467, affirmed The James Well
S. (1812) 11 U. S. (7 Cranch) 2
Ed. 256.

—— **Method of seizure.**—By E
Act Jan. 9, 1809, c. 72, § 3
507), collectors were authori
make seizure for violations of
visions; and such seizure need n
been by them in person, or b
written authority; nor was it ne
that a record should be made
seizure, nor that the collector's
to a party to discharge a cargo
bond should specially state the
tion of the statute. The Bolin
1812) Fed. Cas. No. 1,608.

—— **Seizure of goods on land**
mies' goods on land cannot be
without legislative authority.
v. U. S. (1814) 8 Cranch, 110, 3
604; Alexander's Cotton (1864)
404, 17 L. Ed. 915; Conrad v.
(1877) 96 U. S. 279, 284, 24 L.

Under international law and
ed Property Act, Act Cong. M
1863, title to property on land n
in actual hostilities could not
vested in the insurgent states,
whose property was captured o
doned might obtain its rest
Neel's Ex'r v. Noland's Heirs
179 S. W. 430, 166 Ky. 455.

Liability for wrongful sei
Probable cause for seizing a
vessel as a prize does not exe
captors from liability for spoli
the captured property where it
condemned. Del Col v. Arnold
Dall. 333, 1 L. Ed. 624.

Where there was no rea
ground of suspicion that a ves
guilty of trading contrary to l
commander of the United State
who seized her was liable in d
Murray v. The Charming Betsey
6 U. S. (2 Cranch) 64, 2 L. Ed.

An officer of a public armed v
the United States who makes se
a neutral vessel on the high sea
ble for all consequential dama
less he show probable cause
seizure; nor is it an excuse for
storing in value that, after a
seizure at sea, the vessel wa
from the possession of the seiz
superior force; but the deducti
premium for insurance which
been paid is proper in adjusting
count of damages. Maley v. S
(1806) 7 U. S. (3 Cranch) 458, 2
498.

The owners of property illega
tured, and lost through the
the captors, can recover of the
for compensation in damages. T

a Maria (1817) 15 U. S. (2 Wheat.) 27, 4 L. Ed. 252.

Probable cause for the seizure of a essel and cargo as prize of war is no ar to the owner's claim for restitution, the vessel and cargo were not liable o capture and condemnation, but goes nly in mitigation of additional damges for the injury and expenses susained by reason of the seizure and dention. Jecker v. Montgomery (1851) 4 U. S. (13 How.) 498, 14 L. Ed. 240.

Prize courts deny damages or costs, s against captors, in cases of seizure ade upon "probable cause"; that is o say, where there were circumstances ufficient to warrant suspicion, though ot to warrant condemnation. The hompson (1865) 70 U. S. (3 Wall.) 155, 8 L. Ed. 55.

It is no justification to a collector of ustoms, for refusing clearance to a essel and her cargo, that he acted uner instructions from the Secretary of e Treasury. Hendricks v. Ganzalez 1895) 67 Fed. 351, 14 C. C. A. 659, 35 . S. App. 127.

The rule of damages, in cases of maine trespass, is the full value of the roperty injured or destroyed; and here a vessel had been captured which ad changed its course to refit on acount of a storm, the deterioration in alue of its cargo while lying in port is ot an item of damages, as against the aptor, where it is not attributable to e improper conduct of the captor; or can the probable profits to be deived from a voyage on which a vessel as originally bound be assessed as amages, since the probable or possible enefits of the proposed voyage afford o safe rule by which to estimate the amages. The Amiable Nancy (1818) 6 U. S. (3 Wheat.) 546, 4 L. Ed. 456.

The removal of prize goods is an irgularity, but is indulged, under propr circumstances, in the discretion of e court. The Arabella (C. C. 1815) 'ed. Cas. No. 501.

When a cargo captured in an enemy's essel, and shipped from the enemy's ountry after the existence of a state of ar commenced, is restored to a neural owner, no costs or damages will be llowed against the captor, as the facts how probable cause for the seizure. 'he General Green (D. C. 1861) Fed. Cas. No. 5,312a, affirmed The General Greene (C. C. 1863) Fed. Cas. No. 5,-13.

Probable cause is a sufficient justifiation for a capture. But such proection may be forfeited by subsequent nisconduct or negligence. The George C. C. 1815) Fed. Cas. No. 5,328.

A seizure as prize is no trespass, hough it may be wrongful. The tort s merged in the capture as prize. Jundo v. Taylor (D. C. 1818) Fed. Cas. No. 7,558.

Captors are not liable for damages in case where the vessel captured preents probable cause for the capture, even though she was led into the predicament in which she is found involuntarily, and by the mistake of the revenue officers of the captor's own government. The La Manche (D. C. 1863) Fed. Cas. No. 8,004.

If captors wantonly injure the captured crew, the prize court will award damages for personal ill usage; and freight is a proper item of damage, when the voyage has been lost or the cargo unliveried, but supposed loss of profits is not a proper item, and where the vessel and cargo have been wholly lost, the prime cost and interest is the measure of damages. The Lively (C. C. 1812) Fed. Cas. No. 8,403.

Captors are not liable to damages where there is probable cause of capture. The Liverpool Packet (C. C. 1813) Fed. Cas. No. 8,406; The Rover (C. C. 1814) Fed. Cas. No. 12,091.

The general rule in respect to captures by public ships is that the actual wrongdoer alone is responsible for any wrong done or illegality committed on the prize, excepting acts done by members of the seizing vessel in obedience to the orders of their superiors. The Louisa Agnes (D. C. 1862) Fed. Cas. No. 8,531.

Where a vessel seized as contraband of war is lost while in the hands of its captors, without their fault, they are not liable therefor. The Caroline Wilmans (1892) 27 Ct. Cl. 215; Stumps v. U. S. (1892) 27 Ct. Cl. 215; Stewart v. Same (1892) 27 Ct. Cl. 215.

Where a collector of customs makes an unlawful seizure, under Act June 13, 1798 (1 Stat. 565), suspending the commercial intercourse between the United States and France, probable cause of seizure is no justification. Imlay v. Sands (N. Y. 1804) 1 Caines, 566.

Upon subject of "probable cause," see U. S. Comp. St. 1916, § 1611, notes thereunder, and notes under § 7678d, post.

See, also, U. S. Comp. St. 1916, § 8416 and notes thereunder.

Forfeitures—Effect on outstanding claims to seized property.—Under nonintercourse Act March 1, 1809, declaring that articles imported contrary to its provisions "shall be forfeited," the forfeiture occurs upon commission of the offense and avoids a subsequent bona fide sale, although there may have been a regular permit for landing and payment of duties. U. S. v. 1960 Bags of Coffee (1814) 8 Cranch, 398, 3 L. Ed. 602. And see U. S. v. The Brigantine Mars (1814) 8 Cranch, 417, 3 L. Ed. 609.

Where an enemy ships goods upon his own risk to an American consignee, the capture and forfeiture thereof is not subject to the consignee's lien for purchase money paid. The Frances (1814) 8 Cranch, 418, 3 L. Ed. 609.

Under the general maritime law a

sentence of condemnation extinguishes the proprietor's title. The Star (1818) 3 Wheat. 78, 4 L. Ed. 338.

A loyal citizen's mortgage on a vessel captured as a prize is inferior to the captors' claims. The Hampton (1866) 5 Wall. 372, 18 L. Ed. 659.

Act July 13, 1861 (U. S. Comp. St. 1916, §§ 10143, 10146), and subsequent presidential proclamation making commercial intercourse with belligerent states unlawful, renders a prohibited sale void. The Ouachita Cotton (1867) 6 Wall. 521, 18 L. Ed. 935.

Under Act Aug. 6, 1861, for the seizure and confiscation of property used in aid of the Rebellion, the interest of mortgagees of property seized whose mortgage was prior to the unlawful use, who had not consented to it, and who had become the purchasers of the property under their mortgage, was not confiscable under the act. Union Ins. Co. v. U. S. (1867) 73 U. S. (6 Wall.) 759, 18 L. Ed. 879.

For case involving freight lien on cargo captured by enemy and subsequently restored to owners, see The Appam (D. C. 1917) 243 Fed. 230.

In case of the forfeiture of the interest in a vessel of a resident of the Southern States during the Rebellion, admiralty cannot entertain a claim for alleged balances due by such part owner to his co-owners; his partnership accounts cannot be settled in admiralty because the sentence of confiscation rises superior to all liens and equities. United States v. The Isaac Hammett (D. C. 1862) Fed. Cas. No. 15,446.

—— **Conflicting claims of United States and captors.**—An antecedent forfeiture to the United States for violating the nonintercourse act of March 1, 1809, is inferior to rights subsequently acquired by prize captors. The Sally (1814) 8 Cranch, 382, 3 L. Ed. 597. And see The Rapid (1814) 8 Cranch, 155, 3 L. Ed. 520.

—— **Enforcement after cessation of hostilities.**—Forfeitures incurred under Act July 13, 1861 (U. S. Comp. St. 1916, §§ 10143, 10146), making commercial intercourse between citizens of states in insurrection and other citizens unlawful, may be enforced after cessation of hostilities. Duvall v. U. S. (1866) 154 U. S. 548, 14 Sup. Ct. 1162, 18 L. Ed. 252; The Reform (1865) 3 Wall. 617, 18 L. Ed. 105; U. S. v. Stevenson (C. C. 1869) Fed. Cas. No. 16,396.

—— **Remission.**—Secretary of the Treasury has no power to remit a forfeiture of property captured as maritime prize of war. The Gray Jacket (1866) 5 Wall. 342, 369, 18 L. Ed. 646.

Venue.—See U. S. Comp. St. 1916, §§ 1025, 1027, and notes thereunder.

Pleading.—In debt for the double value, under Embargo Act Jan. 9, 1808, c. 8, § 3 (2 Stat. 454), it is unnecessary to allege the particular articles posing the cargo, or that the o was knowingly concerned in the il voyage. Cross v. U. S. (C. C. 1 Fed. Cas. No. 3,434.

A declaration in debt for a pe for violation of Embargo Act 1808, c. 8, § 3, need not aver tha vessel and cargo had not and coul be seized for the offense. Smith S. (C. C. 1812) Fed. Cas. No. 13

Where goods are seized and cla as forfeited as part of the cargo, u the nonintercourse act of May 15, (3 Stat. 602), the claimant may, i chooses, file a special defense on point that they were not on board vessel at the time the forfeiture incurred; but it is also in issue or general denial of the allegations of libel. U. S. v. Open Boat (C. C. 1 Fed. Cas. No. 15,968.

For cases on admiralty pleadin general, see U. S. Comp. St. 1916, 2770–2798, note.

Evidence—Judicial notice.—A court will take into consideratio well-known and obvious system of ducting trade with the enemy in traband articles. The Peterhoff (D 1863) Fed. Cas. No. 11,024, reve (1866) 72 U. S. (5 Wall.) 28, 18 Ed. 564.

—— **Presumptions and burden proof.**—The burden of proving a and cargo captured to be a lawful rests upon the captors in condemna proceedings. Miller v. The Ship R lution (1781) 2 U. S. (2 Dall.) 19, Ed. 271.

A legal presumption arises that p erty is not neutral which is a s part of a cargo on board an ene ship, and destined for a port in the emy's country. The London Pa (1820) 18 U. S. (5 Wheat.) 132, Ed. 52.

In prize cases, the bill of lading fords but a weak presumption as to ownership of a cargo, which must supported by satisfactory evidence the part of the claimant that he is owner. The Hallie Jackson (D. 1861) Fed. Cas. No. 5,961.

The burden is on the captors to p the existence of an overruling neces justifying the spoliation of prop found on the prize, or the separatio the officers or crew from the captu vessel, or the omission to send t into port with the prize for exam tion. The Jane Campbell (D. C. 18 Fed. Cas. No. 7,205.

In prize causes, the onus proband on the claimant; and if claimants prize cause be admitted or proved t alien enemies, they must be presu to be in the ordinary and usual si tion of alien enemies, to wit, in t own country, at all events out of Johnson v. Thirteen Bales, etc. (C 1832) Fed. Cas. No. 7,415.

In a prize case, where a ship is

er regular course, as shown by her apers, a strong presumption of fraud rises. The Joseph H. Toone (D. C. 862) Fed. Cas. No. 7,541, affirmed (C. . 1863) Fed. Cas. No. 7,543.

On a monition to proceed to adjudication, the cause is to be heard in the ame manner as upon a libel by the aptors; the onus probandi resting on he claimants. The Rover (C. C. 1814) ed. Cas. No. 12,091.

Where a shipment is made in an enmy's vessel, in a voyage from an enny's country, it is presumed to belong enemies, unless a distinct neutral haracter be impressed upon it. The an Jose Indiano (C. C. 1914) Fed. as. No. 12,322, affirmed The St. Joze ndiano (1816) 14 U. S. (1 Wheat.) 08, 4 L. Ed. 73.

A prize court regards merchandise to the property of the shipper or congnor, and not of the consignee, unless ere be clear proof to the contrary. he Sarah Starr (D. C. 1861) Fed. Cas. o. 12,352.

Where claimants set up a special dense against forfeiture, the onus prondi lies on them; and if such defense not made out, condemnation will go. he Short Staple (C. C. 1812) Fed. Cas. o. 12,813; Ten Hogsheads of Rum C. C. 1812) Fed. Cas. No. 13,830.

If a bill of lading imports prima facie at the consignors are owners of the ods, that presumption is so feeble and conclusive, particularly in a prize se, as to demand, under any equivocal rcumstances, explanations by proofs oduced on the part of the consignor. . S. v. The Hattie Jackson (D. C. 61) Fed. Cas. No. 15,327.

Where goods are seized and claimed forfeited as part of the cargo, under e nonintercourse act of May 15, 1820 Stat. 602), the onus probandi is on e government to prove that such ods were part of the cargo on board the time of the offense. U. S. v. pen Boat (C. C. 1829) Fed. Cas. No. ,968.

A party relying upon a license to esblish the validity of commercial transtions during the Civil War has the rden of proving the license's existce. Lacy v. Sugarman (1873) 59 enn. (12 Heisk.) 354.

See, also, U. S. Comp. St. 1916, p. 28, note.

—— Admissibility and sufficiency.—a prosecution against a vessel for olating the laws of the United States óhibiting commercial intercourse beeen the United States and Great ritain and France and their dependenes, evidence by two witnesses that ey were at a port of San Domingo nd saw lying there a schooner called e Jane, and that her cargo consisted a quantity of coffee, and she sailed about September 10th, and the vessel in question was a schooner bearing the same name, commanded by the same captain, and having a cargo of coffee, and arrived at Baltimore about the time when a vessel which left the port referred to by the witnesses might reasonably have been expected to arrive, is sufficient to establish the identity of the vessel, as it is not necessary to adduce positive evidence of the identity; it being sufficient if there are strong circumstances justifying the presumption. The Jane v. U. S. (1813) 11 U. S. (7 Cranch) 363, 3 L. Ed. 372.

The facts that a vessel sailed from her port of departure with the design of trading with the enemy, and did in fact hold illegal intercourse with them, are sufficient to subject both vessel and cargo to condemnation. Jecker v. Montgomery (1851) 54 U. S. (13 How.) 498, 14 L. Ed. 240.

The spoliation of papers is a strong circumstance of suspicion, but does not furnish, of itself, sufficient ground for condemnation. The Stephen Hart (D. C. 1863) Fed. Cas. No. 13,364, affirmed (1865) 70 U. S. (3 Wall.) 559, 18 L. Ed. 220.

On a libel of forfeiture under the embargo laws, the report, manifest, and affidavit of the master before the collector constitute one entire transaction, so as to be admissible in evidence. The entry of the ship is a separate matter, and not necessary to complete the transaction. U. S. v. The Little Charles (C. C. 1818) Fed. Cas. No. 15,-612.

Jury trial.—Where property on land is seized under Act Cong. July 13, 1861 (U. S. Comp. St. 1916, §§ 10143, 10146), authorizing the forfeiture of property of persons engaged in insurrection against the United States, the claimants are entitled to a trial by jury, though the suit was in form a libel of information. Morris' Cotton (1869) 75 U. S. (8 Wall.) 507, 19 L. Ed. 481.

In the case of a seizure on land, where there was a citation by monition published in a newspaper calling on the owners or parties interested to show cause why the condemnation should not be made final, and, nearly two years after such a notice, no appearance having been made, a default was entered and the libel taken pro confesso, the proceeding will not be regarded as defective as a proceeding in rem at common law for the want of a jury trial, for the default so entered dispenses with the necessity of a trial by jury. Pasteur v. Lewis (1887) 39 La. Ann. 5, 1 South. 307.

Costs, expenses, etc.—See U. S. Comp. St. 1916, §§ 1611, 8416, 8417, and notes thereunder.

§ 3115½i. (Act Oct. 6, 1917, c. 106, § 17.) Rules by district co appeals.

The district courts of the United States are hereby given j diction to make and enter all such rules as to notice and oth er and all such orders and decrees, and to issue such process as be necessary and proper in the premises to enforce the provis of this Act, with a right of appeal from the final order or decr such court as provided in sections one hundred and twenty-e and two hundred and thirty-eight of the Act of March third, 1 teen hundred and eleven, entitled "An Act to codify, revise, amend the laws relating to the judiciary." (40 Stat. 425.)

See note to § 3115½, ante.

Jurisdiction.—See U. S. Comp. St. 1916, Const. art. 3, § 2, cl. 1, p. 14015, and notes on pp. 14103-14106; § 991 (3), p. 764, and notes on pp. 780-783; and § 1233, pp. 1841, 1842, and note on pp. 1866, 1867.

Power of courts.—The congressional assumption, as shown by this section, is that the courts should determine what is or what is not enemy property. Keppelmann v. Keppelmann (N. J. Ch.) 105 A. 140.

Where legacies payable to alien enemy beneficiaries cannot be paid over to the alien property custodian, but must be held by executors as trustees awaiting disposition, the court will direct their investment in securities approved by such custodian. Id.

Conclusiveness and effect of decree.—Under the act of Congress of 1861, for the confiscation of property of rebels, the jurisdiction of the United States District Court to entertain proceedings for condemnation of such propert cluded the general power of dete ing whether the property proc against was enemies' property, a the proceedings were regular in the decree cannot be impeached state court, on the ground tha owner of the property was a loya zen and had no notice of the pro ings. Chapman v. Phœnix Nat (1878) 44 N. Y. Super. Ct. (12 Jon S.) 340.

The refusal of the United States trict Court to set aside a void d of confiscation and the proceeding thereunder does not validate the cree, nor prevent the true owner o confiscated property from asserti rights therein. Chapman v. Ph Nat. Bank of City of New York (1 85 N. Y. 437.

Appeals.—See U. S. Comp. St. 1 pp. 1403, 1404, note; p. 1726, note 1801, note; pp. 3308-3310, note; an 8950, note.

§ 3115½ii. (Act Oct. 6, 1917, c. 106, § 18.) Jurisdiction of cou of Philippines and Canal Zone of offenses.

The several courts of first instance in the Philippine Islands a the district court of the Canal Zone shall have jurisdiction of o fenses under this Act committed within their respective distric and concurrent jurisdiction with the district courts of the Unit States of offenses under this Act committed upon the high seas an of conspiracies to commit such offenses as defined by section thirt seven of the Act entitled "An Act to codify, revise, and amend th penal laws of the United States," approved March fourth, ninetee hundred and nine, and the provisions of such section for the pu pose of this Act are hereby extended to the Philippine Islands an to the Canal Zone. (40 Stat. 425.)

See note to § 3115½a, ante.

§ 3115½j. (Act Oct. 6, 1917, c. 106, § 19.) Print, newspaper publication in foreign languages.

Ten days after the approval of this act and until the end of th war, it shall be unlawful for any person, firm, corporation, or a sociation, to print, publish, or circulate, or cause to be printe published, or circulated in any foreign language, any news ite editorial or other printed matter, respecting the Government of th United States, or of any nation engaged in the present war, its po cies, international relations, the state or conduct of the war, or an matter relating thereto: Provided, That this section shall not a ply to any print, newspaper, or publication where the publisher distributor thereof, on or before offering the same for mailing,

n any manner distributing it to the public, has filed with the postmaster at the place of publication, in the form of an affidavit, a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper, or publication, and has caused to be printed, in plain type in the English language, at the head of each such item, editorial, or other matter, on each copy of such print, newspaper, or publication, the words "True translation filed with the postmaster at on (naming the post office where the translation was filed, and the date of filing thereof), as required by the Act of (here giving the date of this Act)."

Any print, newspaper, or publication in any foreign language which does not conform to the provisions of this section is hereby declared to be nonmailable, and it shall be unlawful for any person, firm, corporation, or association, to transport, carry, or otherwise publish or distribute the same, or to transport, carry or otherwise publish or distribute any matter which is made nonmailable by the provisions of the Act relating to espionage, approved June fifteenth, nineteen hundred and seventeen: Provided further, That upon evidence satisfactory to him that any print, newspaper, or publication, printed in a foreign language may be printed, published, and distributed free from the foregoing restrictions and conditions without detriment to the United States in the conduct of the present war, the President may cause to be issued to the printers or publishers of such print, newspaper, or publication, a permit to print, publish, and circulate the issue or issues of their print, newspaper, or publication, free from such restrictions and requirements, such permits to be subject to revocation at his discretion. And the Postmaster General shall cause copies of all such permits and revocations of permits to be furnished to the postmaster of the post office serving the place from which the print, newspaper, or publication, granted the permit is to emanate. All matter printed, published and distributed under permits shall bear at the head thereof in plain type in the English language, the words, "Published and distributed under permit authorized by the Act of (here giving date of this Act), on file at the post office of (giving name of office)."

Any person who shall make an affidavit containing any false statement in connection with the translation provided for in this section shall be guilty of the crime of perjury and subject to the punishment provided therefor by section one hundred and twenty-five of the Act of March fourth, nineteen hundred and nine, entitled "An Act to codify, revise, and amend the penal laws of the United States," and any person, firm, corporation, or association, violating any other requirement of this section shall, on conviction thereof, be punished by a fine of not more than $500, or by imprisonment of not more than one year, or, in the discretion of the court, may be both fined and imprisoned. (40 Stat. 425.)

See note to § 3115½a, ante.

Constitutionality.—Under Const. art. §§ 5, 12 (Code 1906, pp. lxv, lxvi). and statutory provisions, held, that the governor has power to temporarily suppress any newspaper published in the state, and having a circulation in territory under martial law, where it tended to encourage a continuation of the disorder. Hatfield v. Graham (1914) 73 W. Va. 759, 81 S. E. 533, L. R. A. 1915A, 175, Ann. Cas. 1917C, 1.

For cases relating generally to freedom of speech and press, as affected by the First Amendment to the Constitution, see U. S. Comp. St. 1916, pp. 14307, 14308, note.

FEDERAL CONTROLLED TRANSPORTATION SYSTEMS

§ 3115¾a. (Act March 21, 1918, c. 25, § 1.) Agreements as to co pensation; operating income; war taxes; maintenance ; ra roads included.

The President, having in time of war taken over the possessio use, control, and operation (called herein Federal control) of c tain railroads and systems of transportation (called herein ca riers), is hereby authorized to agree with and to guarantee to a such carrier making operating returns to the Interstate Commerc Commission, that during the period of such Federal control it sha receive as just compensation an annual sum, payable from tim to time in reasonable installments, for each year and pro rata fo any fractional year of such Federal control, not exceeding a sum equivalent as nearly as may be to its average annual railway operating income for the three years ended June thirtieth, nineteen hundred and seventeen.

Any railway operating income accruing during the period of Federal control in excess of such just compensation shall remain the property of the United States. In the computation of such income, debits and credits arising from the accounts called in the monthly reports to the Interstate Commerce Commission equipment rents and joint facility rents shall be included, but debits and credits arising from the operation of such street electric passenger railways, including railways commonly called interurbans, as are at the time of the agreement not under Federal control, shall be excluded. If any lines were acquired by, leased to, or consolidated with such railroad or system between July first, nineteen hundred and fourteen, and December thirty-first, nineteen hundred and seventeen, both inclusive, and separate operating returns to the Interstate Commerce Commission were not made for such lines after such acquisition, lease, or consolidation, there shall (before the average is computed) be added to the total railway operating income of such railroad or system for the three years ende June thirtieth, nineteen hundred and seventeen, the total railwa operating income of the lines so acquired, leased, or consolida ed, for the period beginning July first, nineteen hundred and fou teen, and ending on the date of such acquisition, lease, or conso idation, or on December thirty-first, nineteen hundred and se enteen, whichever is the earlier. The average annual railway o erating income shall be ascertained by the Interstate Commerc Commission and certified by it to the President. Its certi cate shall, for the purpose of such agreement, be taken as co clusive of the amount of such average annual railway operatin income.

Every such agreement shall provide that any Federal taxes un der the Act of October third, nineteen hundred and seventeen, o Acts in addition thereto or in amendment thereof, commonly calle war taxes, assessed for the period of Federal control beginning January first, nineteen hundred and eighteen, or any part of such period, shall be paid by the carrier out of its own funds, or shal be charged against or deducted from the just compensation ; tha other taxes assessed under Federal or any other governmental au thority for the period of Federal control or any part thereof, ei ther on the property used under such Federal control or on th right to operate as a carrier, or on the revenues or any part there of derived from operation (not including, however, assessment for public improvements or taxes assessed on property under con struction, and chargeable under the classification of the Inter

tate Commerce Commission to investment in road and equipment), shall be paid out of revenues derived from railway operations while under Federal control; that all taxes assessed under Federal or any other governmental authority for the period prior to January first, nineteen hundred and eighteen, whenever levied or payable, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just compensation.

Every such agreement shall also contain adequate and appropriate provisions for the maintenance, repair, renewals, and depreciation of the property, for the creation of any reserves or reserve funds found necessary in connection therewith, and for such accounting and adjustments of charges and payments, both during and at the end of Federal control as may be requisite in order that the property of each carrier may be returned to it in substantially as good repair and in substantially as complete equipment as it was in at the beginning of Federal control, and also that the United States may, by deductions from the just compensations or by other proper means and charges, be reimbursed for the cost of any additions, repairs, renewals, and betterments to such property not justly chargeable to the United States; in making such accounting and adjustments, due consideration shall be given to the amounts expended or reserved by each carrier for maintenance, repairs, renewals, and depreciation during the three years ended June thirtieth, nineteen hundred and seventeen, to the condition of the property at the beginning and at the end of Federal control and to any other pertinent facts and circumstances.

The President is further authorized in such agreement to make all other reasonable provisions, not inconsistent with the provisions of this Act or of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, that he may deem necessary or proper for such Federal control or for the determination of the mutual rights and obligations of the parties to the agreement arising from or out of such Federal control.

If the President shall find that the condition of any carrier was during all or a substantial portion of the period of three years ended June thirtieth, nineteen hundred and seventeen, because of monoperation, receivership, or where recent expenditures for additions or improvements or equipment were not fully reflected in the operating railway income of said three years or a substantial portion thereof, or because of any undeveloped or abnormal conditions, so exceptional as to make the basis of earnings hereinabove provided for plainly inequitable as a fair measure of just compensation, then the President may make with the carrier such agreement for such amount as just compensation as under the circumstances of the particular case he shall find just.

Every railroad not owned, controlled, or operated by another carrier company, and which has heretofore competed for traffic with a railroad or railroads of which the President has taken the possession, use, and control, or which connects with such railroads and is engaged as a common carrier in general transportation, shall be held and considered as within "Federal control," as herein defined, and necessary for the prosecution of the war, and shall be entitled to the benefit of all the provisions of this Act: Provided, however, That nothing in this paragraph shall be construed as including any street or interurban electric railway which has as its principal source of operating revenue urban, suburban,

or interurban passenger traffic, or sale of power, heat and lig
or both.

The agreement shall also provide that the carrier shall acc
all the terms and conditions of this Act and any regulation or
der made by or through the President under authority of this
or of that portion of the Act entitled "An Act making approp
tions for the support of the Army for the fiscal year ending J
thirtieth, nineteen hundred and seventeen, and for other p
poses," approved August twenty-ninth, nineteen hundred and
teen, which authorizes the President in time of war to take pos
sion, assume control, and utilize systems of transportation.
Stat. 451.)

This section, and the fifteen sections next following, were an act ent
"An act to provide for the operation of transportation systems while u
federal control, for the just compensation of their owners, and for other
poses," cited above.

By a provision of the Army appropriation act for the fiscal year 1917,
Aug. 29, 1916, c. 418, § 1, U. S. Comp. St. 1916, § 1974a, the President
authorized, in time of war, to take possession of any transportation sys
and to utilize the same for the transfer or transportation of troops, war
terial and equipment, etc. Act March 21, 1918, c. 25, set forth here,
enacted for the purpose of enabling the President to more fully carry out
provisions of said Act Aug. 29, 1916, c. 418, § 1.

Notes of Decisions

Construction and application of act in general.—Where a telegraph company, after terminating the arrangement under which it maintained lines on a railroad right of way, was denied right of condemnation in Alabama, held, that preliminary injunction against the railroad company's interference with telegraph lines will not be granted, because the government has assumed control of railroads, etc., where the railroad company agreed not to take any action interfering with the telegraph system without governmental approval. Louisville & N. R. Co. v. Western Union Telegraph Co. (C. C. A.) 252 F. 29.

Under Act Aug. 29, 1916 (Comp. St. 1916, § 1974a), authorizing the President in time of war to take possession of railroads, etc., and the presidential proclamation of December 26, 1917, and despite this act, the Director General of Railroads was not authorized to take possession of land belonging to a railroad company which was not used in its business as a carrier; hence sale of such land under execution against the railroad company will not be enjoined on suit of the Director General, the company making no objection. United States Railroad Administration v. Burch (D. C.) 254 F. 140.

In view of the presidential proclamation of December 26, 1917, whereby the President, as a war measure, under the authority of Act Aug. 29, 1916 (Comp. St. 1916, § 1974a) assumed
trol of the railway systems of the c
try, and in view of this act, held,
the operation of the Interstate C
merce Acts, including the Elkins
(Comp. St. 1916, §§ 8563–8604), wa
suspended. U. S. v. Metropolitan I
ber Co. (D. C.) 254 F. 335.

Fact that, under Federal Contr
Railroads Bill, whatever plaintiff
ceives from defendant carrier upo
judgment against it may be paid
cording to Interstate Commerce C
mission's classification of accounts
of moneys derived by government
operation of railroad cannot mil
against plaintiff's right to have hi
mand determined by judgment. L
ville & N. R. Co. v. Steel, 202 S
878, 180 Ky. 290.

The President and his agents ha
power, under Act Cong. Aug. 29,
§ 1 (Comp. St. 1916, § 1974a), or
act, to make an order whereby a
of action already existing again
railroad would be extinguished o
off. Benjamin Moore & Co. v. A
son, T. & S. F. Ry. Co. (Sup.) 17
Y. S. 60.

Under this act, and under pre
statutes and a proclamation of
President, the railroads of the co
are merely agencies or instrume
ties of the United States governm
Dickens v. Bransford Realty
(Tenn.) 210 S. W. 644.

§ 3115¾b. (Act March 21, 1918, c. 25, § 2.) Payment of compe tion without agreements.

If no such agreement is made, or pending the execution o agreement, the President may nevertheless pay to any ca while under Federal control an annual amount, payable in rea able installments, not exceeding ninety per centum of the

mated annual amount of just compensation, remitting such carrier, in case where no agreement is made, to its legal rights for any balance claimed to the remedies provided in section three hereof. Any amount thereafter found due such carrier above the amount paid shall bear interest at the rate of six per centum per annum. The acceptance of any benefits under this section shall constitute an acceptance by the carrier of all the provisions of this Act and shall obligate the carrier to pay to the United States, with interest at the rate of six per centum per annum from a date or dates fixed in proceedings under section three, the amount by which the sums received under this section exceed the sum found due in such proceedings. (40 Stat. 453.)

See note to § 3115¾a, ante.

§ 3115¾c. (Act March 21, 1918, c. 25, § 3.) Claims for compensation; agreements.

All claims for just compensation not adjusted (as provided in section one) shall, on the application of the President or of any carrier, be submitted to boards, each consisting of three referees to be appointed by the Interstate Commerce Commission, members of which and the official force thereof being eligible for service on such boards without additional compensation. Such boards of referees are hereby authorized to summon witnesses, require the production of records, books, correspondence, documents, memoranda, and other papers, view properties, administer oaths, and may hold hearings in Washington and elsewhere, as their duties and the convenience of the parties may require. In case of disobedience to a subpœna the board may invoke the aid of any district court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any person, corporation, partnership, or association, issue an order requiring appearance before the board, or the production of documentary evidence if so ordered, or the giving of evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Such cases may be heard separately or together or by classes, by such boards as the Interstate Commerce Commission in the first instance, or any board of referees to which any such cases shall be referred may determine. Said boards shall give full hearings to such carriers and to the United States; shall consider all the facts and circumstances, and shall report as soon as practicable in each case to the President the just compensation, calculated on an annual basis and otherwise in such form as to be convenient and available for the making of such agreement as is authorized in section one. The President is authorized to enter into an agreement with such carrier for just compensation upon a basis not in excess of that reported by such board, and may include therein provisions similar to those authorized under section one. Failing such agreement, either the United States or such carrier may file a petition in the Court of Claims for the purpose of determining the amount of such just compensation, and in the proceedings in said court the report of said referees shall be prima facie evidence of the amount of just compensation and of the facts therein stated. Proceedings in the Court of Claims under this section shall be given precedence and expedited in every practicable way. (40 Stat. 454.)

See note to § 3115¾a, ante.

§ 3115¾d. (Act March 21, 1918, c. 25, § 4.) Increase of com sation.

The just compensation that may be determined as hereinbe provided by agreement or that may be adjudicated by the C of Claims, shall be increased by an amount reckoned at a rea able rate per centum to be fixed by the President upon the cos any additions and betterments, less retirements, and upon the of road extensions to the property of such carrier made by carrier with the approval of or by order of the President w such property is under Federal control. (40 Stat. 454.)

See note to § 3115¾a, ante.

§ 3115¾e. (Act March 21, 1918, c. 25, § 5.) Payment of divide

No carrier while under Federal control shall, without the approval of the President, declare or pay any dividend in ex of its regular rate of dividends during the three years ended thirtieth, nineteen hundred and seventeen: Provided, howe That such carriers as have paid no regular dividends or no dends during said period may, with the prior approval of President, pay dividends at such rate as the President may d mine. (40 Stat. 454.)

See note to § 3115¾a, ante.

§ 3115¾f. (Act March 21, 1918, c. 25, § 6, as amended Act M 2, 1919, c. 95, § 7.) Revolving fund; additions; betterm

The sum of $500,000,000 is hereby appropriated, out of any eys in the Treasury not otherwise appropriated, which, tog with any funds available from any operating income of said riers, may be used by the President as a revolving fund for the pose of paying the expenses of the Federal control, and so f necessary the amount of just compensation, and to provide t nals, motive power, cars, and other necessary equipment, such minals, motive power, cars, and equipment to be used an counted for as the President may direct and to be disposed Congress may hereafter by law provide.

The President may also make or order any carrier to mak additions, betterments, or road extensions, and to provide minals, motive power, cars, and other equipment necessary o sirable for war purposes or in the public interest on or in co tion with the property of any carrier. He may from said revo fund advance to such carrier all or any part of the expense of additions, betterments, or road extensions, and to provide minals, motive power, cars, and other necessary equipment s dered and constructed by such carrier or by the President, advances to be charged against such carrier and to bear in at such rate and be payable on such terms as may be determin the President, to the end that the United States may be fully bursed for any sums so advanced.

Any loss claimed by any carrier by reason of any such addi betterments, or road extensions so ordered and constructed be determined by agreement between the President and such rier; failing such agreement the amount of such loss shall certained as provided in section three hereof.

From said revolving fund the President may expend su amount as he may deem necessary or desirable for the utili and operation of canals, or for the purchase, constructio utilization and operation of boats, barges, tugs, and other tra tation facilities on the inland, canal, and coastwise water and may in the operation and use of such facilities create o ploy such agencies and enter into such contracts and agree as he shall deem in the public interest.

No provision of this Act shall be construed to prevent the routing of freight by a shipper or consignee over any inland canal or coastwise waterway, or a part way over such waterway and a part way by rail. In case the shipper or consignee shall so route the freight, no provision of this Act shall be construed as giving power to change the routing. (40 Stat. 455, 1290.)

See note to § 3115¾a, ante.

This section was amended by Act March 2, 1919, c. 95, § 7, cited above, to read as set forth above. This amendment consisted in the addition of the last sentence to the section as set forth above.

§ 3115¾g. (Act March 21, 1918, c. 25, § 7.) Bonds for maturing obligations; reports.

For the purpose of providing funds requisite for maturing obligations or for other legal and proper expenditures, or for reorganizing railroads in receivership, carriers may, during the period of Federal control, issue such bonds, notes, equipment trust certificates, stock, and other forms of securities, secured or unsecured by mortgage, as the President may first approve as consistent with the public interest. The President may, out of the revolving fund created by this Act, purchase for the United States all or any part of such securities at prices not exceeding par, and may sell such securities whenever in his judgment it is desirable at prices not less than the cost thereof. Any securities so purchased shall be held by the Secretary of the Treasury, who shall, under the direction of the President, represent the United States in all matters in connection therewith in the same manner as a private holder thereof. The President shall each year as soon as practicable after January first, cause a detailed report to be submitted to the Congress of all receipts and expenditures made under this section and section six during the preceding calendar year. (40 Stat. 455.)

See note to § 3115¾a, ante.

§ 3115¾h. (Act March 21, 1918, c. 25, § 8.) Powers of President; advice of Interstate Commerce Commission.

The President may execute any of the powers herein and heretofore granted him with relation to Federal control through such agencies as he may determine, and may fix the reasonable compensation for the performance of services in connection therewith, and may avail himself of the advice, assistance, and cooperation of the Interstate Commerce Commission and of the members and employees thereof, and may also call upon any department, commission, or board of the Government for such services as he may deem expedient. But no such official or employee of the United States shall receive any additional compensation for such services except as now permitted by law. (40 Stat. 455.)

See note to § 3115¾a, ante.

Proclamation issued under this section, dated March 29, 1918, as follows:

"Whereas, by the proclamation dated December 26, 1917, taking over each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States, it was provided 'that the possession, control, operation, and utilization of such transportation systems hereby by me undertaken, shall be exercised by and through William G. McAdoo, who is hereby appointed and designated Director General of Railroads,' and the said William G. McAdoo pursuant to said proclamation entered upon and has continued to discharge the duties of Director General of Railroads as provided therein; and

"Whereas, since the issuance of said proclamation the Congress of the United States has passed an act entitled 'An Act to Provide for the Operation of Transportation Systems while under Federal Control, for the Just Compensation of their Owners and for other Purposes.' which act was duly approved by me on the 21st day of March, 1918, and is now in full force and effect; and in terms confers upon the President the powers specified therein and the authority to carry the same into effect; and

"Whereas, it is provided in Section 8 of said act that the President may

execute any of the powers therein and theretofore granted him with relati the Federal control of systems of transportation and parts thereof, incl railroads, inland waterways, etc., through such agencies as he may deter

"Now, therefore, I, Woodrow Wilson, President of the United States, and by virtue of the powers and authority so vested in me by said act a all other powers me hereto enabling, do hereby authorize the said Willia McAdoo, Director General of Railroads as aforesaid, either personall through such divisions, agencies, or persons as he may appoint, and i own name or in the name of such divisions, agencies, or persons, or in the of the President to agree with the carriers or any of them or with any person in interest, upon the amount of compensation to be paid pursua law, and to sign, seal, and deliver in his own name or in the name o President or in the name of the United States such agreements as ma necessary and expedient with the several carriers or other persons in int respecting compensation, or any other matter concerning which it ma necessary or expedient to deal and to make any and all contracts, agreem or obligations necessary or expedient and to issue any and all orders may in any way be found necessary and expedient in connection with the eral control of systems of transportation, railroads, and inland waterwa fully in all respects as the President is authorized to do, and generally and perform all and singular all acts and things and to exercise all and sin the powers and duties which in and by the said act, or any other act in tion to the subject hereof, the President is authorized to do and perfor

Sec, also, Proclamation under § 1974a, ante.

See proclamation of the President, under § 1974a, ante.

See Friesen v. Chicago, R. I. & P. Ry. Co. (D. C.) 254 F. 875.

§ 3115¾i. (Act March 21, 1918, c. 25, § 9.) Act Aug. 29, 191 418 to remain in force; further powers of President.

The provisions of the Act entitled "An Act making appro tions for the support of the Army for the fiscal year ending thirtieth, nineteen hundred and seventeen, and for other purpos approved August twenty-ninth, nineteen hundred and sixt shall remain in force and effect except as expressly modified restricted by this Act; and the President, in addition to the p ers conferred by this Act, shall have and is hereby given such er and further powers necessary or appropriate to give effec the powers herein and heretofore conferred. The provision this Act shall also apply to any carriers to which Federal con may be hereafter extended. (40 Stat. 456.)

See note to § 3115¾a, ante.

Validity of section.—This act, authorizing the President to make regulations, assuming that it authorizes the fixing by such regulations of the venue of actions in federal courts against railroad companies, is within the war powers of Congress, and constitutional. Wainwright v. Pennsylvania R. Co. (D. C.) 253 F. 459.

Act Cong. Aug. 29, 1916 (Comp. St. 1916, § 1974a), empowering President to take possession of systems of transportation, and this act, general order No. 18 of the Director General of Railroads, general order No. 18a, and general order No. 26, which relate only to the remedy of a person injured and desiring to sue, are not subject to the objection that they are ex post facto or retroactive. Rhodes v. Tatum (Tex. Civ. App.) 206 S. W. 114.

Orders and regulations.—A foreign railroad corporation which had formerly maintained office in New York where it solicited business cannot be deemed "doing business" in state during period when it was dismantling office and preparing to abandon same pursuant to order of United States Director General of Railroads. Partola Mfg. C Norfolk & W. Ry. Co. (D. C.) 25 273.

Under General Order No. 26 of rector General of Railroads, as to ing trial, on showing that just inte of government will be prejudice present trial of action against ca under federal control pending county or district other than wher cause of action arose or plaintiff resided, but allowing a new actio the other county or district, stay pends on the circumstances of case; the primary consideration the situation of the government tive to railroad witnesses leaving work. Cocker v. New York, O. & Ry. Co. (D. C.) 253 F. 676.

One injured in New Mexico railroad in Texas could not by ma mus compel immediate trial of his tion contrary to general orders 18, 18a, and 26 of the Director Ge of the Railways, in the absence of pliance with No. 26, permitting app tion to the Director General for in event of unnecessary hardshi postponement according to those ders. Rhodes v. Tatum (Tex. App.) 206 S. W. 114.

— **Venue of actions.**—Amended regulation No. 18a, promulgated by the Director General of Railroads April 18, 1918, providing that "all suits against carriers while under federal control must be brought in the county or district where the plaintiff resided at the time of the accrual of the cause of action or in the county or district where the cause of action arose," as applied to suits in the federal courts, is within the authority conferred on the President by Act March 21, 1918. Wainwright v. Pennsylvania R. Co. (D. C.) 253 F. 459.

Suit against carrier while under federal control, brought, after promulgation of and contrary to General Orders Nos. 18 and 18a of the Director General of Railroads, in a county or district other than where the cause of action arose, or where plaintiff resided when it accrued, will be dismissed. Cocker v. New York, O. & W. Ry. Co. (D. C.) 253 F. 676.

Under Act Cong. Aug. 29, 1916 (Comp. St. 1916, § 1974a), empowering President to take possession of systems of transportation, and this act, section 9, the President's appointment of a Director General, and the orders of the Director General Nos. 18, 18a, and 26, in effect requiring suits against carriers under federal control to be brought in the county where plaintiff resided at the time of the injury, or where the cause of action arose, and prohibiting trial of a suit brought in any other county, are valid. Rhodes v. Tatum (Tex. Civ. App.) 206 S. W. 114.

See, also, Friesen v. Chicago, R. I. & P. Ry. Co. (D. C.) 254 F. 875.

3115¾j. (Act March 21, 1918, c. 25, § 10.) Liabilities of carriers; actions by and against.

Carriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this Act or any other Act applicable to such Federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government. Nor shall any such carrier be entitled to have transferred to a federal court any action heretofore or hereafter instituted by or against it, which action was not so transferable prior to the Federal control of such carrier; and any action which has heretofore been so transferred because of such Federal control or of any Act of Congress or official order or proclamation relating thereto shall upon motion of either party be retransferred to the court in which it was originally instituted. But no process, mesne or final, shall be levied against any property under such Federal control.

During the period of Federal control, whenever in his opinion the public interest requires, the President may initiate rates, fares, charges, classifications, regulations, and practices by filing the same with the Interstate Commerce Commission, which said rates, fares, charges, classifications, regulations, and practices shall not be suspended by the commission pending final determination.

Said rates, fares, charges, classifications, regulations, and practices shall be reasonable and just and shall take effect at such time and upon such notice as he may direct, but the Interstate Commerce Commission shall, upon complaint, enter upon a hearing concerning the justness and reasonableness of so much of any order of the President as establishes or changes any rate, fare, charge, classification, regulation, or practice of any carrier under federal control, and may consider all the facts and circumstances existing at the time of the making of the same. In determining any question concerning any such rates, fares, charges, classifications, regulations, or practices or changes therein, the Interstate Commerce Commission shall give due consideration to the fact that the transportation systems are being operated under a united and coordinated national control and not in competition.

After full hearing the commission may make such findings and

orders as are authorized by the Act to regulate commerce amended, and said findings and orders shall be enforced as p vided in said Act: Provided, however, That when the Presid shall find and certify to the Interstate Commerce Commission t in order to defray the expenses of Federal control and operat fairly chargeable to railway operating expenses, and also to p railway tax accruals other than war taxes, net rents for joint cilities and equipment, and compensation to the carriers, operati as a unit, it is necessary to increase the railway operating r enues, the Interstate Commerce Commission in determining t justness and reasonableness of any rate, fare, charge, classificati regulation, or practice shall take into consideration said finding a certificate by the President, together with such recommendatio as he may make. (40 Stat. 456.)

See note to § 3115¾a, ante.

Constitutionality.—This section, authorizing maintenance of actions and recovery of judgments against carriers for damages sustained by employés and others while railroad is being operated by federal authorities, despite provision no process shall be levied against property under federal control, held unconstitutional. Schumacher v. Pennsylvania R. Co. (Sup.) 175 N. Y. S. 84.

Construction and application in general.—Under Act Cong. Aug. 29, 1916 (Comp. St. 1916, § 1974a), giving the President power in time of war to take possession and control of transportation systems, presidential proclamation of December 26, 1917 (note under § 1974a, ante), whereby the President took such possession and control, together with this act, the complete possession and control of the railroads taken by the United States impliedly included the power to fix rates, regardless of the power given by this section. Northern Pac. Ry. Co. v. State of North Dakota ex rel. Langer, 39 S. Ct. 502, 63 L. Ed. —.

As the federal control and operation of railroads worked a fundamental change, the provision of this section, authorizing the President to prescribe rates, etc., cannot be construed as applicable only to interstate rates, for such construction would tend to prevent the change from becoming effective. Id.

The war power of the United States is not disputable, and therefore where Congress, under its war power, by Act Aug. 29, 1916 (Comp. St. 1916, § 1974a), authorized the President to take possession of transportation systems and the President took control of the railroads, and was subsequently by this section authorized to fix rates, such rate-making power cannot be construed as limited to interstate rates, for that would be a limitation on the war powers of the United States. Id.

Under this section, authorizing the President to fix rates for railroads under federal control, but providing for review by the Interstate Commerce Commission, etc., and section 15 (Comp. St. 1916, § 3115¾o), declaring t nothing in the act shall be constr to impair lawful police regulations the state, the President has power prescribe intrastate rates for railro under federal control, though s rates conflict with rates previously ed by state authority. Id.

The federal government being in c trol of railroads as a war measu state courts should consider gene welfare in adjusting controversies b tween private suitors involving expen iture of public lands for local transpo tation facilities. Ralston Busine Men's Ass'n v. Bush (Neb.) 167 N. W 727.

Where order that carrier remove di crimination by change in tariff sche ules eliminating its absorption switching charges was in existence b fore President's proclamation takin over the railroads, such situation ough not to cause a reversal of this orde Lincoln Commercial Club v. Missou Pac. Ry. Co. (Neb.) 172 N. W. 687.

In view of this section the Industri Commission can award against th Pullman Car Company compensatio for injuries to a porter received whil the car was operated by the federa Director General. Bryant v. Pullma Co. (Sup.) 177 N. Y. S. 488.

The act of the Director General o Railroads, by General Order 28, in i creasing freight rates and prescribin uniform passenger fare without di tinguishing between interstate and in trastate commerce, was an exercise of extraordinary executive powers ne- cessitated by existence of war. State v. Northern Pac. Ry. Co. (N. D.) 172 N. W. 324.

Termination of hostilities under the armistice does not justify judicial in- terference to restrain further exercise of extraordinary executive powers con- ferred upon President by Act Cong Aug. 29, 1916 (U. S. Comp. St. 1916 § 1974a), and this act. Id.

Suits against carriers.—Under th presidential proclamation assuming con trol of the railroads and the gener orders of the Director General, th employés of the railway companies wh continued in the service became th

employés of the government, and service cannot be made on them as agents of the corporation in actions for injuries caused while the railroads were privately operated. Southern Cotton Oil Co. v. Atlantic Coast Line R. Co. (D. C.) 257 F. 138.

A suit against the Director General of Railroads, involving his right to direct and control operation of the property in his possession, is not one against the carrier, permitted by this section, while it is under federal control. Nueces Valley Town-Site Co. v. McAdoo (D. C.) 257 F. 143.

Under this act, litigants could sue railroad companies under federal direction, just as they had previously been able to do and in such courts as had jurisdiction under the general law. Johnson v. McAdoo (D. C.) 257 F. 757.

In an action against a railroad for injuries at a crossing, the dismissal of the action, as to the railroad named as original defendant, and the substitution of the Director General of Railroads as defendant, was error. Gowan v. McAdoo (Minn.) 173 N. W. 440, 443.

Act Aug. 29, 1916, § 1 (U. S. Comp. St. 1916, § 1974a), Act March 21, 1918, § 10, 13, 15, and presidential proclamations of December 26, 1918, and April 11, 1918, did not prohibit state courts from entertaining jurisdiction and proceeding to judgment in all cases against railroads as theretofore; the only purpose being to prevent states from seizing property necessary to be used in maintenance of transportation system of country for use of national government. L. N. Dantzler Lumber Co. v. Texas & P. Ry. Co. (Miss.) 80 So. 770.

Under Act Cong. Aug. 29, 1916, § 1 (U. S. Comp. St. 1916, § 1974a), authorizing President's war time assumption of control of systems of transportation, and under President's proclamation of December 26, 1917, prima facie a cause of action under federal Employers' Liability Act April 22, 1908 (U. S. Comp. St. 1916, §§ 8657–8665), for death of an employé arising and action begun subsequent to assumption of federal control and before passage of this act, became vested in plaintiff as administrator of deceased prior to passage of Rail Control Act. McGregor v. Great Northern Ry. Co. (N. D.) 172 N. W. 841.

This section held to authorize the bringing of actions against carrier corporations during period of federal control. Id.

Under this act, Director General of Railroads is charged with administering the transportation systems owned by the various carrier corporations, but is not authorized to appear and defend suits brought against them. Id.

Carrier corporations during period of federal control under Act Cong. Aug. 29, 1916, § 1 (U. S. Comp. St. 1916, § 1974a), and President's proclamation of December 26, 1917, and this act, remain legal entities, capable of suing and being sued in the courts, and are champions of their own legal rights. Id.

The word "carriers," as used in this section, providing that actions may be brought against carriers under federal control, means the corporations, and not the Director General. Id.

Where Corporation Commission ordered appellant railroad to construct a depot, and it appeared that federal government had taken charge of appellant's railroad system, the order of submission would be set aside, and cause continued until further order of court. Chicago, R. I. & P. Ry. Co. v. State (Okl.) 180 P. 250.

Suits by director general.—A suit by the Director General of Railroads to enjoin sale of land owned by a railroad under execution issued on a judgment of a state court, on the theory that, having taken possession of the same, it was exempt from process under this act, is a suit of a civil nature arising under the laws of the United States, etc., of which the federal District Court has jurisdiction, for it must be deemed that Act March 21, 1918, modified Jud. Code, § 265 (Comp. St. 1916, § 1242). United States Railroad Administration v. Burch (D. C.) 254 F. 140.

Process against property.—Under this section, an action by a telegraph company to condemn a right of way for a telegraph line along the right of way of a railroad company under federal control will not be stayed because the latter company was under federal control. Postal Telegraph-Cable Co. v. Call (C. C. A.) 255 F. 850.

Under General Order No. 50, of the Director General, no process will issue on judgment against Director General which will interfere with his possession of railroad property committed to his control. Dahn v. McAdoo (D. C.) 256 F. 549.

Control of operation of railroad by restraining order or injunction is within the prohibition of this section against interference with the possession of the Director General of the property by any process. Nueces Valley Town-Site Co. v. McAdoo (D. C.) 257 F. 143.

Within this section, providing that carriers under federal control shall be subject to all laws and liabilities as common carriers, except so far as inconsistent with the act or any order of the President, any law or asserted liability which would operate to take the possession and control of the railroad property out of the hands of the government would be so inconsistent. Id.

Preventing the Director General of Railroads from transferring his employés from one point to another, and from regulating their duties, would to that extent be to take the control, pos-

session, use, and operation of the properties out of his hands, in contravention of the terms of this section and of the entire spirit and purpose of the act. Id.

Under this act and proclamation of President of December 27, 1917, right of levying executions, attachments, or other process against property of common carriers under federal control is suspended, but litigant is not prevented from bringing action against carrier, nor court from granting him relief in form of judgment or otherwise. Louisville & N. R. Co. v. Steel, 202 S. W. 878, 180 Ky. 290.

State court could entertain jurisdiction of action against a nonresident railroad wherein a debt owing defendant by railroad running through state was attached, whether or not an execution could be levied; the word "mesne," used in Act Cong. March 21, 1918, prohibiting execution or other mesne process against railroads, meaning intermediate; intervening; the middle between two extremes. L. N. Dantzler Lumber Co. v. Texas & P. Ry. Co. (Miss.) 80 So. 770.

The prohibition in this section that "no process, mesne or final, shall be levied against any property under such federal control" is effective without a court order modifying a judgment to prevent issue of execution. Le Clair v. Montpelier & W. R. R. Co. (Vt.) 106 A. 587.

Orders and regulations.—Under Act March 21, 1918, §§ 8, 10, and despite section 9, held, that orders of the Director General of Railroads through whom the President assumed control of the railroads pursuant to Act Aug. 29, 1916 (Comp. St. 1916, § 1974a), that suits against carriers while under federal control, should be brought in the county or district where the plaintiff resided at the time of the accrual of the action, were not effective to so limit that right, and where authorized by state law, a plaintiff might sue in a district other than that in which he resided at the time of accrual of the action, upon a cause of action not arising out of the railway company's duties as a common carrier. Friesen v. Chicago, R. I. & P. Ry. Co. (D. C.) 254 F. 875.

As the Director General is the carrier since the President has taken control and possession of railroads under Act Aug. 29, 1916, § 1 (Comp. St. 1916, § 1974a), Order No. 50 of the Director General providing for his substitution in case of actions against railroad company for causes of action arising since governmental control is warranted notwithstanding this section, providing that actions or suits may be brought against such carriers, for the Director General is the carrier, being analogous to a receiver, and it is proper that he be substituted in place of the railroad company. Ruthe v. Union Pac. R. Co. (D. C.) 254 F.

The provision of General Orde Director General of Railroads N of October 28, 1918, that pleadin pending actions for injuries agai railroad company "may" be ame by substituting the Director Ge and dismissing the company as de ant, must be construed as permi only, in view of this section, pr ing that carriers while under fe control, shall be subject to all and liabilities as common carriers, that actions may be brought ag them, "and judgments rendered as provided by law," and such sub tion of parties will not be mad motion of defendant. Jensen v. high Valley R. Co. (D. C.) 255 F.

Under Act Aug. 29, 1916, author President to take over transport systems, President's proclamatio December 26, 1917, delegating co to Director General of Railroads, section, and General Order No. 5 Director General, a personal i action commenced subsequent to eral Order No. 50 on a cause of a occurring during federal operation be maintained against Director eral of Railroads. Dahn v. McAdo C.) 256 F. 549.

It was competent for the federa rector General of Railroads to s late in what jurisdiction he migh sued, but his authority to make and regulations did not authoriz setting aside of the plain provisio this act. Johnson v. McAdoo (D 257 F. 757.

Order No. 50 of the Director eral of Railroads, directing that shall be instituted and prose against the Director General, can no reference to a suit filed prior adoption, particularly if the ca company had ceased to be operat the Director General. Scarborou Louisiana Ry. & Nav. Co. (La.) 8 286.

Railroad guard's right to damage breach of his contract of emplo is a vested right of property, enfo ble, under General Order No. 1 the federal Director General of roads, in the superior court, fo county where, in contemplation o the guard had his residence. W New York, N. H. & H. R. Co. (123 N. E. 621.

The President could direct and power the Director General of roads, as his representative, to cut the powers conferred upon hi Congress as to federal operatio railroads on account of the emer of the war. Id.

Notwithstanding its prior dele of powers over the railroads d the emergency of war, enumerat certain resolves and statutes, Con in the exercise of general legis

hority, could further provide by any ropriate enactments for the opera- of the systems of railroad trans- tation undertaken pursuant to the sident's proclamation, asserting the hority vested in him by Congress.

rder of federal Director General of lroads that suit against carrier, le under federal control, must be ught in the county where plaintiff des, or where the cause of action se, having been issued after action been begun for breach of contract employment by a railroad's dis- rged guard, held inapplicable, so the guard could resort to any court competent jurisdiction, though no chment on mesne process could be le, and, if a judgment was obtained, execution could be levied on the rail- d's property. Id.

rder of Railroad and Warehouse mission directing a railroad to t a new depot in a city, does not e within operation of this act, in of General Order No. 58 of Di- or General of Railroads, dated ruary 20, 1919. Commercial Club St. James v. Chicago, St. P., M. & Ry. Co. (Minn.) 171 N. W. 312.

rder No. 50, issued by Director eral of Railroads October 28, 1918, iring that actions for death or in- to person, growing out of posses- , control, or operation of railroads Director General, should be brought inst him, in so far as it prohibits ntenance of such an action against ailroad company, conflicts with this ion, and is void. Lavalle v. North- Pac. Ry. Co. (Minn.) 172 N. W.

he President or his agents had no er, under this section, to make or- affecting the jurisdiction of the e courts of actions against rail- ds, or affecting the right to main- actions therein, or to make an er whereby a right of action already ting against a railroad would be nguished or cut off. Benjamin ore & Co. v. Atchison, T. & S. F. Co. (Sup.) 174 N. Y. S. 60.

'here a bailee, employed to make material into shirts, improperly re- ed the material to plaintiff, the or, under an order bill of lading draft attached, held that General er No. 43 of the Director General Railroads, declaring that no prop- under federal control or derived n the operation of the carriers l be subject to garnishment or like cess, did not, in view of this act, vent the owner from replevying ds; the order not being applicable goods of private persons merely in sit. Salant v. Pennsylvania R. Co. p.) 177 N. Y. S. 475.

his section, empowering President to iate rates, fares, classifications, and ulations, construed with other provisions of act and the pre-existing method of regulation by agencies of federal and state governments, does not confer original authority to initiate intrastate rates which would supersede pre-existing lawful rates prescribed by Legislature or other competent authority. State v. Northern Pac. Ry. Co. (N. D.) 172 N. W. 324.

Rates initiated by President or Director General under this section are reviewable by the Interstate Commerce Commission under power previously vested in it under Interstate Commerce Act Feb. 4, 1887, c. 104, as amended, authorizing it to regulate intrastate rates as such. Id.

General Order No. 50, promulgated by the Director General of Railroads, requiring suits upon causes of actions arising subsequent to December 31, 1917, to be brought against the Director General, and authorizing his substitution for railroad company as party defendant and dismissal of action as to company, is not warranted by this act, in so far as it purports to be applicable to causes of action already vested. McGregor v. Great Northern Ry. Co. (N. D.) 172 N. W. 841.

Orders No. 18 and 18a of the Director General of Railroads dated April 9 and 18, 1918, in so far as they require all suits against carriers under federal control to be brought in county or district where plaintiff resides or resided at the time of the accrual of the cause or in the county or district where the cause arose, is inconsistent with and contrary to this section, providing "actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law." El Paso & S. W. R. Co. v. Lovick (Tex. Civ. App.) 210 S. W. 283.

The General Order No. 26 of the Director General of Railroads under federal control, May 23, 1918, ordering that actions and suits included under General Order No. 18 should abate during federal control, is inconsistent with, and contrary to this section, providing that actions at law or suits in equity may be brought by or against such carriers and judgments rendered as now provided by law. Id.

Refusal to continue trial in action against railroad instituted in Texas for injuries sustained in Illinois, upon application therefor based upon order of Director General of Railroads No. 26, was discretionary with court. Illinois Cent. R. Co. v. Ryan (Tex. Civ. App.) 214 S. W. 642.

In view of this section court did not abuse its discretion in refusing a third continuance of action against a railroad instituted in Texas for injuries sustained in Illinois, notwithstanding order of Director General of Railroads No. 26, where suit had been brought

before railroads were placed under Director General's control. Id.

Under this section action could be brought against the carrier in its corporate name and General Order No. 50 of the Director General, r actions to be brought against rector General, is invalid. Fr Chicago & N. W. Ry. Co. (W N. W. 701.

§ 3115¾k. (Act March 21, 1918, c. 25, § 11.) Violations o punishment.

Every person or corporation, whether carrier or shipper, c receiver, trustee, lessee, agent, or person acting for or emp by a carrier or shipper, or other person, who shall knowingl late or fail to observe any of the provisions of this Act, or knowingly interfere with or impede the possession, use, oper or control of any railroad property, railroad, or transpor system hitherto or hereafter taken over by the President, or knowingly violate any of the provisions of any order or r tion made in pursuance of this Act, shall be guilty of a m meanor, and shall, upon conviction, be punished by a fine more than $5,000, or, if a person, by imprisonment for not than two years, or both. Each independent transaction const a violation of, or a failure to observe, any of the provisions Act, or any order entered in pursuance hereof, shall con a separate offense. For the taking or conversion to his ow or the embezzlement of money or property derived from or u connection with the possession, use, or operation of said rai or transportation systems, the criminal statutes of the U States, as well as the criminal statutes of the various States applicable, shall apply to all officers, agents and employe gaged in said railroad and transportation service, while the is under Federal control, to the same extent as to persons emp in the regular service of the United States. Prosecutions fo lations of this Act or of any order entered hereunder shall the district courts of the United States, under the direction Attorney General, in accordance with the procedure for th lection and imposing of fines and penalties now existing i courts. (40 Stat. 457.)

See note to § 3115¾a, ante.

Offenses.—An employé, assisting in operating cars of an express company which has been taken over and is being operated by the government under this act, who steals express matter being carried by it for hire knowingly interferes with and impedes the "possession, use, operation, or control of * * * transportation system," which is made a criminal offense by this section. U. S. v. Kambeitz (D. C.) 256 F. 247.

Express matter being carried by an express company, while it is being operated by the government under this act, is "property derived from or used in connection with the possessi or operation of" the transp system, and its larceny by e constitutes a criminal offense the United States, under section

A "transportation system," this section, is a system which ports something from one place other. Id.

The "use" of the system, wit section, consists in taking up, c and putting down property. Id

The "operation" of the systen in this section, consists in runn cars and carrying therein prope ing moved from one point or p another. Id.

§ 3115¾l. (Act March 21, 1918, c. 25, § 12.) Operating re

Moneys and other property derived from the operation carriers during Federal control are hereby declared to be the erty of the United States. Unless otherwise directed by the ident, such moneys shall not be covered into the Treasur such moneys and property shall remain in the custody of the officers, and the accounting thereof shall be in the same m and form as before Federal control. Disbursements ther shall, without further appropriation, be made in the same m as before Federal control and for such purposes as under t

rstate Commerce Commission classification of accounts in force December twenty-seventh, nineteen hundred and seventeen, e chargeable to operating expenses or to railway tax accruals and r such other purposes in connection with Federal control as the resident may direct, except that taxes under Titles One and Two the Act entitled "An Act to provide revenue to defray war exnses, and for other purposes," approved October third, nineteen ndred and seventeen, or any Act in addition thereto or in amendent thereof, shall be paid by the carrier out of its own funds. If deral control begins or ends during the tax year for which any xes so chargeable to railway tax accruals are assessed, the taxes r such year shall be apportioned to the date of the beginng or ending of such Federal control, and disbursements shall made only for that portion of such taxes as is due for the part such tax year which falls within the period of Federal control.

At such periods as the President may direct, the books shall be osed and the balance of revenues over disbursements shall be vered into the Treasury of the United States to the credit of e revolving fund created by this Act. If such revenues are infficient to meet such disbursements, the deficit shall be paid t of such revolving fund in such manner as the President may rect. (40 Stat. 457.)

See note to § 3115¾a, ante.

Defense of suit and payment of revery.—Under this section it is inmbent on the Director General to fend a suit against a road, and to ke payment in the event of recovery out of his receipts; question of adjustment as between government and the railroad being for settlement when the roads shall be returned to their owners or otherwise disposed of. Johnson v. McAdoo (D. C.) 257 F. 757.

3115¾m. (Act March 21, 1918, c. 25, § 13.) Pending cases against carriers.

All pending cases in the courts of the United States affecting ilroads or other transportation systems brought under the Act regulate commerce, approved February fourth, eighteen hunred and eighty-seven, as amended and supplemented, including e commodities clause, so called, or under the Act to protect trade d commerce against unlawful restraints and monopolies, apoved July second, eighteen hundred and ninety, and amendents thereto, shall proceed to final determination as soon as may , as if the United States had not assumed control of transportan systems; but in any such case the court having jurisdiction ay, upon the application of the United States, stay execution of al judgment or decree until such time as it shall deem proper. 0 Stat. 458.)

See note to § 3115¾a, ante.

See L. N. Dantzler Lumber Co. v. Texas & P. Ry. Co. (Miss.) 80 So. 770.

3115¾n. (Act March 21, 1918, c. 25, § 14.) Time of federal control.

The Federal control of railroads and transportation systems rein and heretofore provided for shall continue for and during e period of the war and for a reasonable time thereafter, which all not exceed one year and nine months next following the date the proclamation by the President of the exchange of ratificans of the treaty of peace: Provided, however, that the President ay, prior to July first, nineteen hundred and eighteen, relinish control of all or any part of any railroad or system of transrtation, further Federal control of which the President shall em not needful or desirable; and the President may at any time ring the period of Federal control agree with the owners thereof

to relinquish all or any part of any railroad or system of transp tion. The President may relinquish all railroads and system transportation under Federal control at any time he shall c such action needful or desirable. No right to compensation accrue to such owners from and after the date of relinquishm for the property so relinquished. (40 Stat. 458.)

See note to § 3115¾a, ante.

§ 3115¾o. (Act March 21, 1918, c. 25, § 15.) Existing law powers of states.

Nothing in this Act shall be construed to amend, repeal, im or affect the existing laws or powers of the States in relatio taxation or the lawful police regulations of the several States cept wherein such laws, powers, or regulations may affect transportation of troops, war materials, Government supplie the issue of stocks and bonds. (40 Stat. 458.)

See note to § 3115¾a, ante.

See Northern Pac. Ry. Co. v. State of North Dakota ex rel. Langer, 39 S. Ct. 502, 63 L. Ed. —; L. N. Dantzler Lumber Co. v. Texas & P. Ry. Co. (Miss.) 80 So. 770.

Police power of state.—Provision of this section means that ordinary police regulations shall remain effective, except in so far as they are in conflict with the express provisions of the act, and does not allow effect to any state regulation inconsistent with the control of railroads by the government, given it by the act. Nueces Valley Town-Site Co. v. McAdoo (D. C.) 257 F. 143.

Under this section, pre-existi trastate rates continue in effect a ful police regulations. State v. ern Pac. Ry. Co. (N. D.) 172 324.

In the absence of a clear expr of intention to repeal existing regulations affecting intrastate merce, it will not be presume Congress so intended. Id.

Under this section, "police tions" are not limited to regu directly affecting health, live morals, but embrace those desig prevent discrimination and ec oppression. Id.

§ 3115¾p. (Act March 21, 1918, c. 25, § 16.) Act declared gency legislation.

This Act is expressly declared to be emergency legislatio acted to meet conditions growing out of war; and nothing h is to be construed as expressing or prejudicing the future p of the Federal Government concerning the ownership, contr regulation of carriers or the method or basis of the capitaliz thereof. (40 Stat. 458.)

See note to § 3115¾a, ante.

FEDERAL CONTROLLED TELEGRAPH, TELEPHONE; MARINE CA OR RADIO SYSTEMS

§ 3115¾x. (Res. July 16, 1918, c. 154.) Authority of Preside take possession of; compensation for; existing laws or po of States.

The President during the continuance of the present w authorized and empowered, whenever he shall deem it nece for the national security or defense, to supervise or to take po sion and assume control of any telegraph, telephone, marine c or radio system or systems, or any part thereof, and to operat same in such manner as may be needful or desirable for the tion of the war, which supervision, possession, control, or oper shall not extend beyond the date of the proclamation by the P dent of the exchange of ratifications of the treaty of peace: vided, That just compensation shall be made for such superv possession, control, or operation, to be determined by the P dent; and if the amount thereof, so determined by the Presi is unsatisfactory to the person entitled to receive the same,

person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code: Provided further, That nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems. (40 Stat. 904.)

This section was a resolution entitled a "Joint Resolution to authorize the President, in time of war, to supervise or take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems or any part thereof and to operate the same in such manner as may be needful or desirable for the duration of the war, and to provide just compensation therefor," cited above.

Proclamations under this section, omitting formal portions:

July 22, 1918, as follows:

"Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolution, and by virtue of all other powers thereto me enabling, do hereby take possession and assume control and supervision of each and every telegraph and telephone system, and every part thereof, within the jurisdiction of the United States, including all equipment thereof and appurtenances thereto whatsoever and all materials and supplies.

"It is hereby directed that the supervision, possession, control, and operation of such telegraph and telephone systems hereby by me undertaken shall be exercised by and through the Postmaster General, Albert S. Burleson. Said Postmaster General may perform the duties hereby and hereunder imposed upon him, so long and to such extent and in such manner as he shall determine, through the owners, managers, board of directors, receivers, officers, and employés of said telegraph and telephone systems.

"Until and except so far as said Postmaster General shall from time to time by general or special orders otherwise provide, the owners, managers, boards of directors, receivers, officers, and employés of the various telegraph and telephone systems shall continue the operation thereof in the usual and ordinary course of the business of said systems, in the names of their respective companies, associations, organizations, owners, or managers, as the case may be.

"Regular dividends hitherto declared, and maturing interest upon bonds, debentures, and other obligations, may be paid in due course; and such regular dividends and interest may continue to be paid until and unless the said Postmaster General shall, from time to time, otherwise by general or special orders determine; and, subject to the approval of said Postmaster General, the various telegraph and telephone systems may determine upon and arrange for the renewal and extension of maturing obligations.

"By subsequent order of said Postmaster General supervision, possession, control, or operation, may be relinquished in whole or in part to the owners thereof of any telegraph or telephone system or any part thereof supervision, possession, control, or operation of which is hereby assumed or which may be subsequently assumed in whole or in part hereunder.

"From and after twelve o'clock midnight on the 31st day of July, 1918, all telegraph and telephone systems included in this order and proclamation shall conclusively be deemed within the possession and control and under the supervision of said Postmaster General without further act or notice."

November 2, 1918, as follows:

"Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolution, and by virtue of all other powers thereto me enabling, do hereby take possession and assume control and supervision of each and every marine cable system and every part thereof owned or controlled and operated by any company or companies organized and existing under the laws of the United States, or any State thereof, including all equipment thereof and appurtenances thereto, whatsoever, and all materials and supplies.

"It is hereby directed that the supervision, possession, control, and operation of such marine cable systems hereby by me undertaken shall be exercised by and through the Postmaster General, Albert S. Burleson. Said Postmaster General may perform the duties hereby and hereunder imposed upon him, so long

and to such extent and in such manner as he shall determine, throug owners, managers, boards of directors, receivers, officers, and employés o marine cable systems.

"Until and except so far as said Postmaster General shall from time to by general or special orders otherwise provide, the owners, managers, boa directors, receivers, officers, and employés, of the various marine cable sy shall continue the operation thereof in the usual and ordinary course business of said systems, in the names of their respective companies, as tions, organizations, owners, or managers, as the case may be.

"Regular dividends hitherto declared, and maturing interest upon bond bentures, and other obligations, may be paid in due course; and such re dividends and interest may continue to be paid until and unless the said master General shall, from time to time, otherwise by general or special determine; and, subject to the approval of said Postmaster General, the ous marine cable systems may determine upon and arrange for the renewa extension of maturing obligations.

"From and after twelve o'clock midnight on the 2nd day of November, all marine cable systems included in this order and proclamation shall clusively be deemed within the possession and control and under the su sion of said Postmaster General without further act or notice."

Notes of Decisions

Validity and operation in general.— Under Joint Resolution July 16, 1918, authorizing the President during the continuance of the war, "whenever he shall deem it necessary for the national security or defense," to take possession and control of marine cables, the determination by the President that such necessity exists is not subject to judicial review. Commercial Cable Co. v. Burleson (D. C.) 255 F. 99.

Such joint resolution is within the constitutional power of Congress, is not unconstitutional because compensation for their use is deferred and to be fixed initially by the President, and was an appropriate war measure as placing in the President's control as chief executive and head of the army and navy an essential instrumentality both for military and naval operations and in negotiation of a peace treaty. Id.

The President, by proclamation of July 22, 1918, having taken over control of all telegraph and telephone systems within United States, pursuant to resolution of Congress of July 16, 1918, and Postmaster General, vested with control of systems by the President, having declared August 1, 1918, that he had assumed control, petition in equity of Public Service Commission of Massachusetts to enforce by injunction against telephone and telegraph company its order suspending taking effect of increases in toll charges between places within commonwealth cannot be entertained; United States, in legal effect a party though not named in record as such, not having consented to be sued, and matter of rates being its sole financial affair. Public Service Commission v. New England Telephone & Telegraph Co. (Mass.) 122 N. E. 567.

The joint resolution in providing that the act shall not affect the lawful police regulations of the several states, contemplates that the states shall continue to exercise their power to reasonably regulate intrastate rates and charges of telephone companies such power did not therefore pa the President or the Postmaster eral. State v. Dakota Central phone Co. (S. D.) 171 N. W. 277

The proviso that the lawful regulation of the state shall n affected, if ambiguous, should b solved in favor of the reserved of the state. Id.

Though the United States has over the operation of telegraph a telegraph company may institut continue condemnation proceedin acquire new rights of way; the pany's franchise and corporate not having been affected by the ernment's action. Postal Teleg Cable Co. v. Call (C. C. A.) 2 850.

The power to operate telegrap telephones as a public utility w the zone of military operations necessarily appurtenant to the of Commander in Chief of the Army, ed in the President by the Con tion, and can only be exercised b when authorized so to do by Con State v. Cumberland Telepho Telegraph Co. (Miss.) 81 So. 40

In Congressional Resolution o 16, 1918, providing that nothing in shall amend, etc., state laws ing to taxation or lawful police lations, except to the extent sary to safeguard the transmissi government messages and the iss of stocks and bonds by such "lawful police regulations" embra regulation fixing tolls for intr messages. Id.

The fact that the United State not operate telegraphs and telep when the state statutes conce such systems were enacted, and referred to therein, does not pr the application of such statutes the taking over of such lines b President under Congressional lution of July 16, 1918. Id.

An officer of a telegraph and phone company cannot justify a

hich disregards the state police regu-tions by the claim of power delegat-d to him by the President; the Presi-ent not being vested, by the Con-ressional Resolution July 16, 1918, ith any such power nor with any pow-r to authorize any subordinate so to o. Id.

A suit to restrain an officer of a tele-raph and telephone company from ollecting certain moneys, in excess of is authority, is not a suit to which he United States is a necessary party, lthough such moneys would be turned ver to the United States, and is a uit against a public officer which can e maintained. Id.

A suit for injunction to enjoin a tele-raph and telephone company from ollecting certain moneys, in excess of ts authority, is not an attempt to con-rol the discretion of the Postmaster General, but to restrain the abuse of ower. Id.

Congressional resolution authorizing resident "to supervise or to take pos-ession and assume control of" and 'operate" any telegraph or telephone ystem for duration of war, and pro-iding that resolution should not be onstrued to affect police regulations f state, held to authorize fixing of ntrastate rates, the words "posses-ion," "control," and "operation" im-orting absolute power over subject ithout interference, and "police regu-ations" referring merely to regula-ions to insure lives, health, and wel-are of public and employés. State v. Visconsin Telephone Co. (Wis.) 172 N. W. 225.

Under its war power, Congress pos-essed the right to confer upon the President, as it did by joint resolution f July 16, 1918, authority to take pos-ession and control of telegraph, tele-hone, marine cable, or radio systems, nd to operate the same as may be lesirable for duration of the war. Da-kota Cent. Telephone Co. v. State of South Dakota ex rel. Payne, 39 S. Ct. 507, 63 L. Ed. —.

In view of Act Oct. 30, 1918, the oint resolution of July 16, 1918, au-horizing the President to take pos-ession and control of telegraphs, tele-hones, and cable and radio systems, nd to operate the same during war, uthorized him, as he did in case of elegraphs and telephones, to take omplete possession and control of uch systems, and to operate the same s might be desirable for duration of he war. Id.

The joint resolution of July 16, 1918, id not reserve to the states the right nder the guise of police power to egulate intrastate rates of telegraph nd telephone companies after the President had taken possession and was perating the same, for the words "po-ice power" are capable of two sig-ifications, a comprehensive one em-racing in substance the whole field of state authority, and a narrower one including only state power to deal with health, safety, and morals, and the context showed that the latter was the one intended by Congress. Id.

The states cannot regulate intrastate rates, for there would be nothing upon which the state power could be exerted, except upon the power of the United States; that is, its authority to fix rates for the service it was rendering through a governmental agency. Id.

In Resolution July 16, 1918, "police regulations" is used in its narrow sense of regulations affecting the public safety, health, and morals, not in the broad sense of any regulation to promote the general welfare, and does not include regulation of rates, so that the Postmaster General can increase the rates without the consent of the state authorities. Southwestern Telegraph & Telephone Co. v. City of Houston (D. C.) 256 F. 690.

The resolution of July 16, 1918, being a war measure, should be liberally construed. Id.

The compensation to be paid the owners of telegraph and telephone lines was intrusted to the discretion of the President by the resolution of July 16, 1918, and the Postmaster General, in making contracts therefor, acts for the President, and his decision cannot be questioned by the court. Id.

The Postmaster General has by virtue of joint resolution of Congress July 16, 1918, the authority and power to prescribe local telephone rates applicable only to the city of Detroit, without reference to the laws of the state of Michigan relating thereto. Groesbeck v. Michigan State Telephone Co. (Mich.) 172 N. W. 799.

An injunction against collection of telephone rates prescribed by Postmaster General and payable to him for service rendered by telephone system in his possession as a war instrumentality, under resolution of Congress of July 16, 1918, and President's proclamation of July 22, 1918, cannot be granted in action against agents of Postmaster General carrying out his orders, as they have no individual interest in controversy, but relief is in fact sought against Postmaster General. Southwestern Bell Telephone Co. v. State (Okl.) 181 P. 487.

In action to enjoin collection of telephone rates in which effect of relief would be to control action of Postmaster General in operation of a telephone system in his possession as a governmental agency and an instrumentality of war, the Postmaster General is an indispensable party; his agents through whom he directs operation having no individual interest or authority to grant such relief. Id.

Under the joint resolution, a suit for damages was maintainable against a telegraph and cable company for delay in delivering a cable while the company

was under federal control; it being proper that plaintiff be allowed to establish his liability against the company despite federal control. C. F. Witherspoon & Sons v. Postal Telegraph & Cable Co. (D. C.) 257 F. 758.

Postmaster General, given control of telegraph and telephone lines, will not be enjoined by state from increasing the charges upon intrastate business. State v. Burleson (Ala.) 82 So. 458.

Under authority delegated President to the Postmaster pursuant to the joint resolu Congress of July 16, 1918, aut the President to assume contro telephone systems during the v Postmaster General in the exe such control had authority to fi state telephone rates. State State Telephone & Telegra (Minn.) 173 N. W. 856.

§ 3115¾xx. (Act Oct. 29, 1918, c. 197, § 1.) Tapping or in ing with lines or operation of systems; divulging conte messages; punishment.

Whoever during the period of governmental operation telephone and telegraph systems of the United States by the master General, under the Act of Congress approved Jul teenth, nineteen hundred and eighteen, and the proclamation President dated July twenty-second, nineteen hundred and een, shall, without authority and without the knowledge an sent of the other users thereof, except as may be necessary f eration of the service, tap any telegraph or telephone line, or fully interfere with the operation of such telephone and tele systems or with the transmission of any telephone or tele message, or with the delivery of any such message, or wh being employed in any such telephone or telegraph service divulge the contents of any such telephone or telegraph me to any person not duly authorized or entitled to receive the shall be fined not exceeding $1,000 or imprisoned for not more one year, or both. (40 Stat. 1017.)

This section and the four sections next following were an act entitl act providing for the protection of the users of the telephone and telegra ice and the properties and funds belonging thereto during Governme eration and control," cited above.

§ 3115¾xxx. (Act Oct. 29, 1918, c. 197, § 2.) Stealing or de ing property of systems; punishment.

Whoever shall steal, purloin, embezzle, or without authori stroy any money, property, record, voucher, or valuable whatever of the moneys, goods, chattels, records, or prope any telephone or telegraph system operated by the Postmaste eral under the Act of Congress approved July sixteenth, nin hundred and eighteen, and the proclamation of the Presiden ed July twenty-second, nineteen hundred and eighteen, sh fined not more than $5,000 or imprisoned not more than five or both. (40 Stat. 1018.)

See note to § 3115¾xx, ante.

§ 3115¾xxxx. (Act Oct. 29, 1918, c. 197, § 3.) Receiving o cealing property of systems; punishment.

Whoever shall receive, conceal, or aid in concealing, or have or retain in his possession with intent to convert to his use or gain any money, property, record, voucher, or va thing whatever of the moneys, goods, chattels, records, or p ty of any telephone or telegraph system operated by the Pos ter General under the Act of Congress approved July sixt nineteen hundred and eighteen, and the proclamation of the dent dated July twenty-second, nineteen hundred and eig which has been embezzled, stolen, or purloined by any othe son, knowing the same to be embezzled, stolen, or purloined, be fined not more than $1,000 or imprisoned not more tha

years, or both, and such person may be tried either before or after the conviction of the principal defendant. (40 Stat. 1018.)

See note to § 3115¾xx, ante.

§ 3115¾y. (Act Oct. 29, 1918, c. 197, § 4.) Breaking into buildings of systems; punishment.

Whoever shall forcibly break into, or attempt to break into, any telephone or telegraph office, or any building used in whole or in part as such telephone or telegraph office, of any telephone or telegraph system operated by the Postmaster General under the Act of Congress approved July sixteenth, nineteen hundred and eighteen, and the proclamation of the President dated July twenty-second, nineteen hundred and eighteen, with intent to commit in such telephone or telegraph office or building, or part thereof so used, any larceny or other depredation, shall be fined not more than $1,000 or imprisoned not more than five years, or both. (40 Stat. 1018.)

See note to § 3115¾xx, ante.

§ 3115¾yy. (Act Oct. 29, 1918, c. 197, § 5.) Assaulting or robbing persons in control of property of systems; punishment.

Whoever shall assault any person having lawful charge, control, or custody of any money or property of any telephone or telegraph system operated by the Postmaster General under the Act of Congress dated July sixteenth, nineteen hundred and eighteen, and the proclamation of the President dated July twenty-second, nineteen hundred and eighteen, with intent to rob, steal, or purloin such money or property, or any part thereof, or shall rob any such person of such money or property, or any part thereof, shall be imprisoned not more than five years; and if in the effecting or attempting to effect such robbery, he shall wound such person having custody of the money or property, or put his life in danger by the use of a dangerous weapon, shall be imprisoned not more than ten years. (40 Stat. 1018.)

See note to § 3115¾xx, ante.

WAR FINANCE CORPORATION AND CAPITAL ISSUES COMMITTEE

TITLE I—WAR FINANCE CORPORATION

§ 3115⅘a. (Act April 5, 1918, c. 45, § 1.) Persons composing.

The Secretary of the Treasury and four additional persons (who shall be the directors first appointed as hereinafter provided), are hereby created a body corporate and politic in deed and in law by the name, style, and title of the "War Finance Corporation" (herein called the Corporation), and shall have succession for a period of ten years: Provided, That in no event shall the Corporation exercise any of the powers conferred by this Act, except such as are incidental to the liquidation of its assets and the winding up of its affairs, after six months after the termination of the war, the date of such termination to be fixed by proclamation of the President of the United States. (40 Stat. 506.)

This section, and the thirty-one sections next following, were §§ 1–19, 200–206, 300–305, of an act entitled "An act to provide further for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to provide credits for industries and enterprises in the United States necessary or contributory to the prosecution of the war, and to supervise the issuance of securities, and for other purposes," cited above.

Section 20 of said act amends R. S. § 5202, post, § 9764.

Section 306 of said act repeals all inconsistent acts and parts of acts.

§ 3115⅘aa. (Act April 5, 1918, c. 45, § 2.) Capital stock.

The capital stock of the Corporation shall be $500,000,000, all of which shall be subscribed by the United States of America, and

such subscription shall be subject to call upon the vote of th fifths of the board of directors of the Corporation, with the app al of the Secretary of the Treasury, at such time or times as be deemed advisable; and there is hereby appropriated, out of money in the Treasury not otherwise appropriated, the sum $500,000,000, or so much thereof as may be necessary for the pose of making payment upon such subscription when and as ed. Receipts for payments by the United States of America fo on account of such stock shall be issued by the Corporation to Secretary of the Treasury, and shall be evidence of stock ow ship. (40 Stat. 506.)

See notes to § 3115⅘a, ante.

§ 3115⅘b. (Act April 5, 1918, c. 45, § 3.) Directors.

The management of the Corporation shall be vested in a boa directors, consisting of the Secretary of the Treasury, who sha chairman of the board, and four other persons, to be appointe the President of the United States, by and with the advice and sent of the Senate. No director, officer, attorney, agent, or ployee of the Corporation shall in any manner, directly or indi ly, participate in the determination of any question affecting personal interests, or the interests of any corporation, partner or association, in which he is directly or indirectly interested; each director shall devote his time, not otherwise required by business of the United States, principally to the business of Corporation. Before entering upon his duties, each of the fou rectors so appointed, and each officer, shall take an oath faith to discharge the duties of his office. Nothing contained in th any other Act shall be construed to prevent the appointment director of the Corporation of any officer or employee under United States or of a director of a Federal reserve bank.

Of the four directors so appointed, the President of the U States shall designate two to serve for two years, and two for years; and thereafter each director so appointed shall serve four years. Whenever a vacancy shall occur among the dire so appointed, the person appointed director to fill any such vac shall hold office for the unexpired term of the member whose he is selected to fill. Any director shall be subject to remova the President of the United States. Three members of the b of directors shall constitute a quorum for the transaction of ness. (40 Stat. 507.)

See notes to § 3115⅘a, ante.

§ 3115⅘c. (Act April 5, 1918, c. 45, § 4.) Same; salaries.

The four directors of the Corporation appointed as herein b provided shall receive annual salaries, payable monthly, of $1 Any director receiving from the United States any salary or pensation for services shall not receive as salary from the Cor tion any amount which, together with any salary or compens received from the United States, would make the total an paid to him by the United States and by the Corporation e $12,000. (40 Stat. 507.)

See notes to § 3115⅘a, ante.

§ 3115⅘cc. (Act April 5, 1918, c. 45, § 5.) Office; branch o

The principal office of the Corporation shall be located i District of Columbia, but there may be established agenci branch offices in any city or cities of the United States under and regulations prescribed by the board of directors. (40 507.)

See notes to § 3115⅘a, ante.

§ 3115⅘d. (Act April 5, 1918, c. 45, § 6.) Seal; corporate powers.

The Corporation shall be empowered and authorized to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may be necessary for the prosecution of its business; to sue and be sued; to complain and defend in any court of competent jurisdiction, State or Federal; to appoint, by its board of directors, and fix the compensation of such officers, employees, attorneys, and agents as are necessary for the transaction of the business of the Corporation, to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and to prescribe, amend, and repeal, by its board of directors, subject to the approval of the Secretary of the Treasury, by-laws regulating the manner in which its general business may be conducted and the privileges granted to it by law may be exercised and enjoyed, and prescribing the powers and duties of its officers and agents. (40 Stat. 507.)

See notes to § 3115⅘a, ante.

§ 3115⅘dd. (Act April 5, 1918, c. 45, § 7, as amended, Act Nov. 21, 1918, c. 212, § 5.) Advances to banks, bankers, or trust companies.

The Corporation shall be empowered and authorized to make advances, upon such terms, not inconsistent herewith, as it may prescribe, for periods not exceeding five years from the respective dates of such advances:

(1) To any bank, banker, or trust company, in the United States, which shall have made after April sixth, nineteen hundred and seventeen, and which shall have outstanding, any loan or loans to any person, firm, corporation, or association, conducting an established and going business in the United States, whose operations shall be necessary or contributory to the prosecution of the war, and evidenced by a note or notes, but no such advance shall exceed seventy-five per centum of the face value of such loan or loans; and

(2) To any bank, banker, or trust company, in the United States, which shall have rendered financial assistance, directly or indirectly, to any such person, firm, corporation, or association by the purchase after April sixth, nineteen hundred and seventeen, of its bonds or other obligations, but no such advance shall exceed seventy-five per centum of the value of such bonds or other obligations at the time of such advance, as estimated and determined by the board of directors of the Corporation.

All advances shall be made upon the promissory note or notes of such bank, banker, or trust company, secured by the notes, bonds, or other obligations, which are the basis of any such advance by the corporation, together with all the securities, if any, which such bank, banker, or trust company may hold as collateral for such notes, bonds, or other obligations.

The Corporation shall, however, have power to make advances (a) up to one hundred per centum of the face value of any such loan made by any such bank, banker, or trust company to any such person, firm, corporation, or association, and (b) up to one hundred per centum of the value at the time of any such advance (as estimated and determined by the board of directors of the Corporation) of such bonds or other obligations by the purchase of which financial assistance shall have been rendered to such person, firm, corporation, or association: Provided, That every such advance shall be secured in the manner described in the preceding part of this section and (except in the case of an advance secured by a loan

for agricultural purposes or a loan based on live stock) in addition thereto by collateral security, to be furnished by the bank, banker, or trust company of such character as shall be prescribed by the board of directors of a value at the time of such advance (as estimated and determined by the board of directors of the Corporation) equal to at least thirty-three per centum of the amount advanced by the Corporation. The Corporation shall retain power to require additional security at any time. (40 Stat. 508, 1049.)

See notes to § 3115⅘a, ante.

This section was amended by Act Nov. 21, 1918, c. 212, § 5, 40 Stat. 1049, cited above, by adding to the proviso thereto the words in parentheses "except in the case of an advance secured by a loan for agricultural purposes or a loan based on live stock," so as to make said proviso read as set forth above.

§ 3115⅘e. (Act April 5, 1918, c. 45, § 8.) Advances to savings banks, banking institutions or trust companies; security for.

The Corporation shall be empowered and authorized to make advances from time to time, upon such terms, not inconsistent herewith, as it may prescribe, for periods not exceeding one year, to any savings bank, banking institution or trust company, in the United States, which receives savings deposits, or to any building and loan association in the United States, on the promissory note or notes of the borrowing institution, whenever the Corporation shall deem such advances to be necessary or contributory to the prosecution of the war or important in the public interest: Provided, That such note or notes shall be secured by the pledge of securities of such character as shall be prescribed by the board of directors of the Corporation, the value of which, at the time of advance (as estimated and determined by the board of directors of the Corporation) shall be equal in amount to at least one hundred and thirty-three per centum of the amount of such advance. The rate of interest charged on any such advance shall not be less than one per centum per annum in excess of the rate of discount on ninety-day commercial paper prevailing at the time of such advance at the Federal reserve bank of the district in which the borrowing institution is located, but such rate of interest shall in no case be greater than the average rate receivable by the borrowing institution on its loans and investments made during the six months prior to the date of the advance, except that where the average rate so receivable by the borrowing institution is less than such rate of discount for ninety-day commercial paper the rate of interest on such advance shall be equal to such rate of discount. The Corporation shall retain power to require additional security at any time. (40 Stat. 508.)

See notes to § 3115⅘a, ante.

§ 3115⅘ee. (Act April 5, 1918, c. 45, § 9.) Advances to persons, firms or corporations.

The Corporation shall be empowered and authorized, in exceptional cases, to make advances directly to any person, firm, corporation, or association, conducting an established and going business in the United States, whose operations shall be necessary or contributory to the prosecution of the war (but only for the purpose of conducting such business in the United States and only when in the opinion of the board of directors of the Corporation such person, firm, corporation, or association is unable to obtain funds upon reasonable terms through banking channels or from the general public), for periods not exceeding five years from the respective dates of such advances, upon such terms, and subject to such rules and regulations as may be prescribed by the board of directors of the Corporation. In no case shall the aggregate amount of the advances made under this section exceed at any one time an

amount equal to twelve and one-half per centum of the sum of (1) the authorized capital stock of the Corporation plus (2) the aggregate amount of bonds of the Corporation authorized to be outstanding at any one time when the capital stock is fully paid in. Every such advance shall be secured by adequate security of such character as shall be prescribed by the board of directors of a value at the time of such advance (as estimated and determined by the board of directors), equal to (except in case of an advance made to a railroad in the possession and control of the President, for the purpose of making additions, betterments or road extensions to such railroad) at least one hundred and twenty-five per centum of the amount advanced by the Corporation. The Corporation shall retain power to require additional security at any time. The rate of interest charged on any such advance shall not be less than one per centum per annum in excess of the rate of discount for ninety-day commercial paper prevailing at the time of such advance at the Federal reserve bank of the district in which the borrower is located. (40 Stat. 509.)

See notes to § 3115⅘a, ante.

§ 3115⅘f. (Act April 5, 1918, c. 45, § 10.) Limitation of aggregate amount of advances.

In no case shall the aggregate amount of the advances made under this title to any one person, firm, corporation, or association exceed at any one time an amount equal to ten per centum of the authorized capital stock of the Corporation, but this section shall not apply in the case of an advance made to a railroad in the possession and control of the President, for the purpose of making additions, betterments or road extensions to such railroad. (40 Stat. 509.)

See notes to § 3115⅘a, ante.

§ 3115⅘ff. (Act April 5, 1918, c. 45, § 11.) Purchase of bonds of United States.

The Corporation shall be empowered and authorized to subscribe for, acquire, and own, buy, sell, and deal in bonds and obligations of the United States issued or converted after September twenty-fourth, nineteen hundred and seventeen, to such extent as the board of directors, with the approval of the Secretary of the Treasury, may from time to time determine. (40 Stat. 509.)

See notes to § 3115⅘a, ante.

§ 3115⅘g. (Act April 5, 1918, c. 45, § 12.) Bonds of Corporation; issue, etc.

The Corporation shall be empowered and authorized to issue and have outstanding at any one time its bonds in an amount aggregating not more than six times its paid-in capital, such bonds to mature not less than one year nor more than five years from the respective dates of issue, and to bear such rate or rates of interest, and may be redeemable before maturity at the option of the Corporation, as may be determined by the board of directors, but such rate or rates of interest shall be subject to the approval of the Secretary of the Treasury. Such bonds shall have a first and paramount floating charge on all the assets of the Corporation, and the Corporation shall not at any time mortgage or pledge any of its assets. Such bonds may be issued at not less than par in payment of any advances authorized by this title, or may be offered for sale publicly or to any individual, firm, corporation, or association, at such price or prices as the board of directors, with the approval of the Secretary of the Treasury, may determine.

Upon such terms not inconsistent herewith as may be determined from time to time by the board of directors, with the approval

of the Secretary of the Treasury, at or before the issue thereof, an of such bonds may be issued payable in any foreign money or fo eign moneys, or issued payable at the option of the respectiv holders thereof either in dollars or in any foreign money or foreig moneys at such fixed rate of exchange as may be stated in any suc bonds. For the purpose of determining the amount of bonds issue payable in any foreign money or foreign moneys the dollar equiv lent shall be determined by the par of exchange at the date of i sue thereof, as estimated by the Director of the Mint and pr claimed by the Secretary of the Treasury in pursuance of the pr visions of section twenty-five of the Act entitled "An Act to redu taxation, to provide revenue for the Government, and for oth purposes," approved August twenty-seventh, eighteen hundred an ninety-four. (40 Stat. 509.)

See notes to § 3115⅘a, ante.

§ 3115⅘gg. (Act April 5, 1918, c. 45, § 13.) Same; discount b Reserve Banks of obligations of member banks secured by.

The Federal reserve banks shall be authorized, subject to th maturity limitations of the Federal reserve Act and to regulatior of the Federal Reserve Board, to discount the direct obligations c member banks secured by such bonds of the Corporation and to r discount eligible paper secured by such bonds and indorsed by member bank. No discount or rediscount under this section sha be granted at a less interest charge than one per centum per ar num above the prevailing rates for eligible commercial paper c corresponding maturity.

Any Federal reserve bank may, with the approval of the Feder Reserve Board, use any obligation or paper so acquired for an purpose for which it is authorized to use obligations or paper s cured by bonds or notes of the United States not bearing the circu lation privilege: Provided, however, That whenever Federal r serve notes are issued against the security of such obligations c paper the Federal Reserve Board may make a special intere charge on such notes, which, in the discretion of the Federal R serve Board, need not be applicable to other Federal reserve note which may from time to time be issued and outstanding. All pr visions of law, not inconsistent herewith, in respect to the acquis tion by any Federal reserve bank of obligations or paper secure by such bonds or notes of the United States, and in respect to Fe eral reserve notes issued against the security of such obligation or paper, shall extend, in so far as applicable, to the acquisition c obligations or paper secured by the bonds of the Corporation an to the Federal reserve notes issued against the security of such ob ligations or paper. (40 Stat. 510.)

See notes to § 3115⅘a, ante.

§ 3115⅘h. (Act April 5, 1918, c. 45, § 14.) Authorization to com mence business.

The Corporation shall not exercise any of the powers granted b this title or perform any business except such as is incidental an necessarily preliminary to its organization until it has been autho ized by the President of the United States to commence busine under the provisions of this title. (40 Stat. 510.)

See notes to § 3115⅘a, ante.

§ 3115⅘hh. (Act April 5, 1918, c. 45, § 15, as amended, Act Marc 3, 1919, c. 100, § 10.) Net earnings to constitute reserve fun depositaries and fiscal agents.

All net earnings of the Corporation not required for its opera tions shall be accumulated as a reserve fund until such time as th Corporation liquidates under the terms of this title. Such reserv

nd shall, upon the direction of the board of directors, with the pproval of the Secretary of the Treasury, be invested in bonds d obligations of the United States, issued or converted after Sepmber 24, 1917, or upon like direction and approval may be desited in member banks of the Federal Reserve System, or in y of the Federal reserve banks, or be used from time to time, as ell as any other funds of the Corporation, in the purchase or remption of any bonds issued by the Corporation. The Federal serve banks are hereby authorized to act as depositaries for and fiscal agents of the Corporation in the general performance of e powers conferred by this title. Beginning twelve months after e termination of the war, the date of such termination to be fixed a proclamation of the President of the United States, the direcrs of the Corporation shall proceed to liquidate its assets and to ind up its affairs, but the directors of the Corporation, in their scretion, may, from time to time, prior to such date, sell and disse of any securities or other property acquired by the Corporan. Any balance remaining after the payment of all its debts all be paid into the Treasury of the United States as miscellanes receipts, and thereupon the Corporation shall be dissolved. (40 at. 510, 1314.)

See notes to § 3115⅘a, ante.

This section was amended by Act March 3, 1919, c. 100, § 10, cited above, to read as set forth above. Prior to this amendment this section read as follows: "All net earnings of the Corporation not required for its operations shall be accumulated as a reserve fund until such time as the Corporation liquidates under the terms of this title. Such reserve fund shall, upon the direction of the board of directors, with the approval of the Secretary of the Treasury, be invested in bonds and obligations of the United States, issued or converted after September twenty-fourth, nineteen hundred and seventeen, or upon like direction and approval may be deposited in member banks of the Federal Reserve System, or in any of the Federal reserve banks, or be used from time to time, as well as any other funds of the Corporation, in the purchase or redemption of any bonds issued by the Corporation. The Federal reserve banks are hereby authorized to act as depositaries for and as fiscal agents of the Corporation in the general performance of the powers conferred by this title. Beginning six months after the termination of the war, the date of such termination to be fixed by a proclamation of the President of the United States, the directors of the Corporation shall proceed to liquidate its assets and to wind up its affairs, but the directors of the Corporation, in their discretion, may, from time to time, prior to such date, sell and dispose of any securities or other property acquired by the Corporation. Any balance remaining after the payment of all its debts shall be paid into the Treasury of the United States as miscellaneous receipts, and thereupon the Corporation shall be dissolved."

3115⅘i. (Act April 5, 1918, c. 45, § 16.) Bonds of Corporation; exemption from taxation.

Any and all bonds issued by the Corporation shall be exempt, th as to principal and interest, from all taxation now or hereter imposed by the United States, any State, or any of the possions of the United States, or by any local taxing authority, expt (a) estate or inheritance taxes, and (b) graduated additional come taxes, commonly known as surtaxes, and excess-profits and r-profits taxes, now or hereafter imposed by the United States, on the income or profits of individuals, partnerships, corporans, or associations. The interest on an amount of such bonds e principal of which does not exceed in the aggregate $5,000, wned by any individual, partnership, corporation, or association, all be exempt from the taxes referred to in clause (b). The Corration, including its franchise and the capital and reserve or surus thereof, and the income derived therefrom, shall be exempt om all taxation now or hereafter imposed by the United States, y State, or any of the possessions of the United States, or by y local taxing authority, except that any real property of the

Corporation shall be subject to State, county, or municipal ta to the same extent, according to its value, as other real propert taxed. (40 Stat. 511.)

See notes to § 3115⅘a, ante.

§ 3115⅘ii. (Act April 5, 1918, c. 45, § 17.) Same; United St not liable for.

The United States shall not be liable for the payment of bond or other obligation or the interest thereon issued or incu by the Corporation, nor shall it incur any liability in respect of act or omission of the Corporation. (40 Stat. 511.)

See notes to § 3115⅘a, ante.

§ 3115⅘j. (Act April 5, 1918, c. 45, § 18.) Offenses; punishm

Whoever (1) makes any statement, knowing it to be false, the purpose of obtaining for himself or for any other person, f corporation, or association any advance under this title, shal punished by a fine of not more than $10,000, or by imprisonm for not more than five years, or both.

Whoever willfully overvalues any security by which any s advance is secured, shall be punished by a fine of not more t $5,000, or by imprisonment for not more than two years, or bot

Whoever (1) falsely makes, forges, or counterfeits any b coupon, or paper in imitation of or purporting to be in imitatio a bond or coupon issued by the Corporation; or (2) passes, ut or publishes, or attempts to pass, utter, or publish, any false, f ed, or counterfeited bond, coupon, or paper purporting to be iss by the Corporation, knowing the same to be falsely made, for or counterfeited; or (3) falsely alters any such bond, coupon paper; or (4) passes, utters, or publishes as true any falsely a ed or spurious bond, coupon, or paper issued or purporting to h been issued by the Corporation, knowing the same to be falsely tered or spurious, shall be punished by a fine of not more than $ 000, or by imprisonment for not more than five years, or both.

Whoever, being connected in any capacity with the Corporat (1) embezzles, abstracts, or willfully misapplies any mon funds, or credits thereof, or (2) with intent to defraud the Co ration or any other company, body politic or corporate, or any dividual, or to deceive any officer of the Corporation, (a) ma any false entry in any book, report, or statement of the Corp tion, or (b) without authority from the directors draws any o or assigns any note, bond, draft, mortgage, judgment, or de thereof, shall be punished by a fine of not more than $10,000, o imprisonment for not more than five years, or both.

The Secretary of the Treasury is hereby authorized to direct use the Secret Service Division of the Treasury Department to tect, arrest, and deliver into custody of the United States mar having jurisdiction any person committing any of the offenses p ishable under this section. (40 Stat. 511.)

See notes to § 3115⅘a, ante.

§ 3115⅘k. (Act April 5, 1918, c. 45, § 19.) Reports.

The Corporation shall file quarterly reports with the Secret of the Senate and with the Clerk of the House of Representativ stating as of the first day of each month of the quarter just en (1) the total amount of capital paid in, (2) the total amount bonds issued, (3) the total amount of bonds outstanding, (4) total amount of advances made under each of sections seven, eig and nine, (5) a list of the classes and amount of securities ta under each of such sections, (6) the total amount of advances standing under each of sections seven, eight, and nine, and

such other information as may be hereafter required by either House of Congress.

The Corporation shall make a report to Congress on the first day of each regular session, including a detailed statement of receipts and expenditures. (40 Stat. 512.)

See notes to § 3115⅘a, ante.

§ 3115⅘k(1). (Act April 5, 1918, c. 45, § 21, as added, Act March 3, 1919, c. 100, § 9.) Advances to exporters or persons making advances to exporters; amount; time limit for making.

(a) The Corporation shall be empowered and authorized, in order to promote commerce with foreign nations through the extension of credits, to make advances upon such terms, not inconsistent with the provisions of this section, as it may prescribe, for periods not exceeding five years from the respective dates of such advances:

(1) To any person, firm, corporation, or association engaged in the business in the United States of exporting therefrom domestic products to foreign countries, if such person, firm, corporation, or association is, in the opinion of the board of directors of the Corporation, unable to obtain funds upon reasonable terms through banking channels. Any such advance shall be made only for the purpose of assisting in the exportation of such products, and shall be limited in amount to not more than the contract price therefor, including insurance and carrying or transportation charges to the foreign point of destination if and to the extent that such insurance and carrying or transportation charges are payable in the United States by such exporter to domestic insurers and carriers. The rate of interest charged on any such advance shall not be less than 1 per centum per annum in excess of the rate of discount for ninety-day commercial paper prevailing at the time of such advance at the Federal reserve bank of the district in which the borrower is located; and

(2) To any bank, banker, or trust company in the United States which after this section takes effect makes an advance to any such person, firm, corporation, or association for the purpose of assisting in the exportation of such products. Any such advance shall not exceed the amount remaining unpaid of the advances made by such bank, banker, or trust company to such person, firm, corporation, or association for such purpose.

(b) The aggregate of the advances made by the Corporation under this section remaining unpaid shall never at any time exceed the sum of $1,000,000,000.

(c) Notwithstanding the limitation of section 1 the advances provided for by this section may be made until the expiration of one year after the termination of the war between the United States and the German Government as fixed by proclamation of the President. Any such advance made by the Corporation shall be made upon the promissory note or notes of the borrower, with full and adequate security in each instance by indorsement, guaranty, or otherwise. The Corporation shall retain power to require additional security at any time. The Corporation in its discretion may upon like security extend the time of payment of any such advance through renewals, the substitution of new obligations, or otherwise, but the time for the payment of any such advance shall not be extended beyond five years from the date on which it was originally made. (40 Stat. 1313.)

This section was added by amendment to Act April 5, 1918, c. 45, by Act March 3, 1919, c. 100, § 9, cited above.

TITLE II—CAPITAL ISSUES COMMITTEE

§ 3115⅘kk. (Act April 5, 1918, c. 45, § 200.) Members; interest of members.

There is hereby created a committee to be known as the "Capital Issues Committee," hereinafter called the Committee, and to be composed of seven members to be appointed by the President of the United States, by and with the advice and consent of the Senate. At least three of the members shall be members of the Federal Reserve Board.

No member, officer, attorney, agent, or employee of the Committee shall in any manner, directly or indirectly, participate in the determination of any question affecting his personal interests, or the interest of any corporation, partnership, or association in which he is directly or indirectly interested. Before entering upon his duties, each member and officer shall take an oath faithfully to discharge the duties of his office. Nothing contained in this or any other Act shall be construed to prevent the appointment as a member of the Committee, of any officer or employee under the United States or of a director of a Federal reserve bank.

The terms during which the several members of the Committee shall respectively hold office shall be determined by the President of the United States, and the compensation of the several members of the Committee who are not members of the Federal Reserve Board shall be $7,500 per annum, payable monthly, but if any such member receives any other compensation from any office or employment under the United States the amount so received shall be deducted from such salary, and if such other compensation is $7,500 or more, such member shall receive no salary as a member of the Committee. Any member shall be subject to removal by the President of the United States. The President shall designate one of the members as chairman, but any subsequent vacancy in the chairmanship shall be filled by the Committee. Four members of the Committee shall constitute a quorum for the transaction of business. (40 Stat. 512.)

See notes to § 3115⅘a, ante.

§ 3115⅘*l*. (Act April 5, 1918, c. 45, § 201.) Officers and employés.

The Committee may employ and fix the compensation of such officers, attorneys, agents, and other employees as may be deemed necessary to conduct its business, who shall be appointed without regard to the provisions of the Act entitled "An Act to regulate and improve the civil service of the United States," approved January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto or any rules or regulations made in pursuance thereof. No such officer, attorney, agent, or employee shall receive more compensation than persons performing services of like or similar character under the Federal Reserve Board. (40 Stat. 513.)

See notes to § 3115⅘a, ante.

§ 3115⅘*ll*. (Act April 5, 1918, c. 45, § 202.) Expenses; office.

All the expenses of the Committee, including all necessary expenses for transportation incurred by the members or by its officers, attorneys, agents, or employees under its orders in making an investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

The Committee may rent suitable offices for its use, and purchase such furniture, equipment, and supplies as may be necessary, but shall not expend more than $10,000 annually for offices in the District of Columbia.

The principal office of the Committee shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Committee may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States. (40 Stat. 513.)

See notes to § 3115⅘a, ante.

3115⅘m. (Act April 5, 1918, c. 45, § 203.) Powers as to issue of securities by corporations.

The Committee may, under rules and regulations to be prescribed by it from time to time, investigate, pass upon, and determine whether it is compatible with the national interest that there should be sold or offered for sale or for subscription any issue, or any part of any issue, of securities hereafter issued by any person, firm, corporation, or association, the total or aggregate par or face value of which issue and any other securities issued by the same person, firm, corporation, or association since the passage of this Act is in excess of $100,000. Shares of stock of any corporation or association without nominal or par value shall for the purpose of this section be deemed to be of the par value of $100 each. Any securities which upon the date of the passage of this Act are in the possession or control of the corporation, association, or obligor issuing the same shall be deemed to have been issued after the passage of this Act within the meaning hereof.

Nothing in this title shall be construed to authorize such Committee to pass upon (1) any borrowing by any person, firm, corporation, or association in the ordinary course of business as distinguished from borrowing for capital purposes, (2) the renewing or refunding of indebtedness existing at the time of the passage of this Act, (3) the resale of any securities the sale or offering of which the Committee has determined to be compatible with the national interest, (4) any securities issued by any railroad corporation the property of which may be in the possession and control of the President of the United States, or (5) any bonds issued by the War Finance Corporation.

Nothing done or omitted by the Committee hereunder shall be construed as carrying the approval of the Committee or of the United States of the legality, validity, worth, or security of any securities. (40 Stat. 513.)

See notes to § 3115⅘a, ante.

3115⅘mm. (Act April 5, 1918, c. 45, § 204.) Appropriation.

There is hereby appropriated out of any money in the Treasury not otherwise appropriated, for the remainder of the fiscal year ending June thirtieth, nineteen hundred and eighteen, and the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of $200,000 for the purpose of defraying the expenses of the establishment and maintenance of the Committee, including the payment of the salaries and rents herein authorized. (40 Stat. 514.)

See notes to § 3115⅘a, ante.

3115⅘n. (Act April 5, 1918, c. 45, § 205.) Reports.

The Committee shall make a report to Congress on the first day of each regular session, including a detailed statement of receipts and expenditures, and also including the names of all officers and employees and the salary paid to each. (40 Stat. 514.)

See notes to § 3115⅘a, ante.

§ 3115⅘nn. (Act April 5, 1918, c. 45, § 206.) Time of effective operation of Title.

This title shall continue in effect until, but not after, the expiration of six months after the termination of the war, the date of such termination to be determined by a proclamation of the President of the United States, but the President may at any time by proclamation declare that this title is no longer necessary, and thereupon it shall cease to be in effect. (40 Stat. 514.)

See notes to § 3115⅘a, ante.

TITLE III—MISCELLANEOUS

§ 3115⅘o. (Act April 5, 1918, c. 45, § 300.) Offenses; punishment.

Whoever willfully violates any of the provisions of this Act, except where a different penalty is provided in this Act, shall, upon conviction in any court of the United States of competent jurisdiction, be fined not more than $10,000 or imprisoned for not more than one year, or both; and whoever knowingly participates in any such violation, except where a different penalty is provided in this Act, shall be punished by a like fine or imprisonment, or both. (40 Stat. 514.)

See notes to § 3115⅘a, ante.

§ 3115⅘p. (Act April 5, 1918, c. 45, § 302.) Partial invalidity of act.

If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, or, in case any court of competent jurisdiction shall adjudge to be invalid any provisions hereof in respect of any class or classes of securities, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, part, or subject matter of this Act directly involved in the controversy in which such judgment shall have been rendered. (40 Stat 514.)

See notes to § 3115⅘a, ante.

§ 3115⅘pp. (Act April 5, 1918, c. 45, § 303.) "Securities" defined.

The term "securities," as used in this Act, includes stocks, shares of stock, bonds, debentures, notes, certificates of indebtedness, and other obligations. (40 Stat. 514.)

See notes to § 3115⅘a, ante.

§ 3115⅘q. (Act April 5, 1918, c. 45, § 304.) Amendment or repeal of act.

The right to amend, alter, or repeal this Act is hereby expressly reserved. (40 Stat. 515.)

See notes to § 3115⅘a, ante.

§ 3115⅘qq. (Act April 5, 1918, c. 45, § 305.) Short title of act.

The short title of this Act shall be the "War Finance Corporation Act." (40 Stat. 515.)

See notes to § 3115⅘a, ante.

HOUSING FOR WAR-INDUSTRY EMPLOYÉS

§ 3115⅚a. (Act May 16, 1918, c. 74, § 1.) Acquisition of lands, houses and furnishings.

The President, for the purposes of providing housing, local transportation and other general community utilities for such industrial workers as are engaged in arsenals and navy yards of the United States and in industries connected with and essential to the national defense, and their families, and also employees of the United States whose duties require them to reside in the Dis-

trict of Columbia, and whose services are essential to war needs, and their families, only during the continuation of the existing war, is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To purchase, acquire by lease, construct, requisition, or acquire by condemnation or by gift such houses, buildings, furnishings, improvements, local transportation and other general community utilities and parts thereof as he may determine to be necessary for the proper conduct of the existing war.

(b) To purchase, lease, requisition, or acquire by condemnation or by gift any improved or unimproved land, or any right, title, or interest therein on which such houses, buildings, improvements, local transportation and other general community utilities and parts thereof have been or may be constructed: Provided, That colleges, museums, libraries, State or municipal buildings, and the furnishings in private dwellings shall not be acquired except by contract, nor shall any occupied dwelling or place of abode be taken under the powers in this Act given except by contract unless the necessity thereof shall be determined by a judge of the circuit or district court of the United States exercising jurisdiction in the locality on petition setting forth the reason and necessity for such taking; the hearing on such petition shall be upon notice to the owner and occupant of such dwelling, and the determination of such judge shall be final, but in no event shall any occupied private dwelling house be taken except by contract unless such dwelling be upon lands desired for the construction of a Government structure: Provided further, That no existing limitation upon the right of any person to make a contract with the United States shall apply to owners whose property the President determines is necessary for Government purposes and desires to either lease or purchase by contract under this or any other Act authorizing the President to acquire property by lease or purchase.

(c) To equip, manage, maintain, alter, rent, lease, exchange, sell, and convey such lands, or any right, title, or interest therein, houses, buildings, improvements, local transportation and other general community utilities, parts thereof, and equipment upon such terms and conditions as he may determine: Provided, That no sale and conveyance shall be made hereunder on credit without reserving a first lien on such property for the unpaid purchase money: Provided further, That in no case shall any property hereby acquired be given away, nor shall rents be furnished free, but the rental charges shall be reasonable and just as between the employees and the Government.

(d) To aid in providing, equipping, managing, and maintaining houses, buildings, improvements, local transportation and other general community utilities by loan or otherwise to such person or persons and upon such terms and conditions as he may determine: Provided, That no loan shall be made at a less rate of interest than five per centum per annum, and such loan shall be properly secured by lien, mortgage, or otherwise: And provided further, That no loan shall be made and no house or money given under this Act to any person not an American citizen.

(e) To take possession of, alter, repair, improve, and suitably arrange for living purposes to be used under the terms of this Act all houses on square six hundred and thirty-three except the Maltby Building, owned by the United States, together with any other houses in the District of Columbia owned by the Government and not now occupied. The President shall, in the construction of

buildings in the District of Columbia, make use of any lands owned by the Government of the United States deemed by him to be suitable for the purpose and which have not heretofore been dedicated by Act of Congress for specific buildings.

The President may exercise any power or discretion herein granted, and may enter into any arrangement or contract incidental thereto, through such agency or agencies as he may create or designate: Provided, That houses erected by the Government under the authority of this Act shall be of only a temporary character except where the interests of the Government will be best subserved by the erection of buildings of a permanent character: Provided further, That whenever it is practicable to use any part of the office or field force of the Office of the Supervising Architect of the Treasury Department in or about any of the work contemplated by this Act, the President shall do so. (40 Stat. 550.)

This section, and sections 3115⅚b–3115⅚g, 3115⅚h, following, were an act entitled "An act to authorize the President to provide housing for war needs," cited above.

§ 3115⅚b. (Act May 16, 1918, c. 74, § 2.) Compensation for property acquired.

Whenever the President shall purchase, lease, requisition, or acquire by condemnation or by gift such land or right, title, or interest therein, or such houses, buildings, furnishings, improvements, local transportation and other general community utilities, and parts thereof, he shall make just compensation therefor, to be determined by him, and if the amount thereof so determined is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined and shall be entitled to sue the United States to recover such further sum as, added to such seventy-five per centum, will make up such amount as will be just compensation therefor in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. (40 Stat. 551.)

See note to § 3115⅚a, ante.

§ 3115⅚c. (Act May 16, 1918, c. 74, § 3.) Possession and occupancy of property.

Upon the requisition of or the filing of a petition for the condemnation hereunder of such land, or any right, title, or interest therein, or such houses, buildings, furnishings, improvements, local transportation, and other general community utilities, and parts thereof, immediate possession thereof may be taken to the extent of the interest to be acquired and the same may be occupied, occupant being given ten days' notice in which to vacate, and used, and the provisions of section three hundred and fifty-five of the Revised Statutes, providing that no public money shall be expended upon such land until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land is located has been given, shall be, and the same are hereby, suspended as to all real estate acquired hereunder. (40 Stat. 551.)

See note to § 3115⅚a, ante.

§ 3115⅚d. (Act May 16, 1918, c. 74, § 4.) "Person" defined.

The word "person" used herein shall include any person, trustee, firm, or corporation. (40 Stat. 552.)

See note to § 3115⅚a, ante.

§ 3115⅚e. (Act May 16, 1918, c. 74, § 5.) Disposition of property on termination of act.

The power and authority granted herein shall cease with the termination of the present war, except the power and authority to care for, sell, or rent such property as remains undisposed of and to conclude and execute contracts for the sale of property made during the war. Such property shall be sold as soon after the conclusion of the war as it can be advantageously done: Provided, That before any sale is consummated the same must be authorized by Congress. (40 Stat. 552.)

See note to § 3115⅚a, ante.

§ 3115⅚f. (Act May 16, 1918, c. 74, § 6.) Reports to Congress.

At the beginning of each session of Congress the President shall make to Congress a full and detailed report covering all of the transactions with relation to the subject matter of this Act, describing each parcel of land purchased, leased, or otherwise acquired, the improvements made thereon, together with the amount of money spent in connection therewith and the disposition of the same; descriptions of all parcels of property sold, to whom, the terms of sale, and the status of the title at the time of the making of such report; description of each piece of property purchased under the terms of this Act and still owned by the Government and the estimated value; a list showing the names of all persons who have been employed in any capacity to aid in carrying out the provisions of this Act, the service rendered by each and the amount of compensation, including fees, commissions, allowances, and traveling expenses paid to each, and a full, detailed, itemized statement showing each and every transaction in the execution of the trust herein created, and immediately after the declaration of peace the President shall make a final report to Congress covering in detail all the operations and transactions, under and by virtue of the terms of this Act. (40 Stat. 552.)

See note to § 3115⅚a, ante.

§ 3115⅚g. (Act May 16, 1918, c. 74, § 7, as amended, Act June 4, 1918, c. 92.) Contracts; letting.

No work to be done or contract to be made under or by authority of any provision of this Act shall be done or made on or under a percentage or cost-plus percentage basis, nor shall any contract be let involving more than $1,000 until at least three responsible competing contractors shall have been notified and considered in connection with such contract, and all contracts to be awarded to the lowest responsible bidder, the Government reserving the right to reject any and all bids. (40 Stat. 552, 595.)

See note to § 3115⅚a, ante.

The amendment by Act June 4, 1918, c. 92, cited above, consisted in the insertion of the clause "involving more than $1,000," as set forth here.

§ 3115⅚gg. (Act June 4, 1918, c. 92.) Corporations to carry out act.

The President, if in his judgment such action is deemed necessary or advantageous, may authorize the creation of a corporation or corporations for the purpose of carrying out the Act entitled "An Act to authorize the President to provide housing for war needs," approved May sixteenth, nineteen hundred and eighteen, such corporation or corporations to have or obtain all powers necessary or appropriate therefor. The total capital stock of the corporation or corporations authorized hereunder shall not exceed $60,000,000: Provided, That where such corporation or corporations are created by authority of the President, representatives appointed by the

President, or by such agency as he may designate to carry out the purposes of the said Act, shall subscribe to, own, and vote the capital stock thereof for and on behalf of the United States, and shall do all other things in regard thereto necessary to protect the interests of the United States and to carry out the provisions of the said Act: Provided further, That section six hundred and five of the Code of the District of Columbia prohibiting a corporation from buying, selling or dealing in real estate shall not apply to such corporation or corporations so created or designated, with respect to buying, selling or dealing in real estate in furtherance of the provisions of the said Act: Provided further, That the Act entitled "An Act to amend section five hundred and fifty-two of the Code of Laws for the District of Columbia, relating to incorporations," approved February fourth, nineteen hundred and five, shall not apply to any corporation or corporations created under the authority contained in this paragraph. (40 Stat. 595.)

§ 3115⅚h. (Act May 16, 1918, c. 74, § 8.) Appropriation.

For carrying out the provisions of this Act and for the administration thereof the sum of $60,000,000, or so much thereof as may be necessary, is hereby authorized: Provided, That $10,000,000, or so much thereof as may be necessary, of the amount hereby authorized shall be used only to build or acquire, as herein provided, housing accommodations within the District of Columbia for such Government employees as can not be used as advantageously in other cities in the service of the Government, of which the sum of $75,000, or so much thereof as shall be necessary therefor, shall be used by the Superintendent of the United States Capitol Buildings and Grounds to convert the building known as the Maltby Building into an apartment house or for office purposes: Provided further, That the expenditure in the District of Columbia shall be made with a view to caring for the alley population of the District when the war is over, so far as it can be done without interfering with war housing purposes. (40 Stat. 552.)

See note to § 3115⅚a, ante.

§ 3115⅚hh. (Act July 8, 1918, c. 139, § 1.) Appropriation; increase.

The authorization fixed by section eight of the Act entitled "An Act to authorize the President to provide housing for war needs," approved May sixteenth, nineteen hundred and eighteen, is increased from $60,000,000 to $100,000,000, and there is appropriated for the purposes thereof, including rental of offices in the District of Columbia, contingent and miscellaneous expenses, printing and binding, and personal services in the District of Columbia and elsewhere, $40,000,000, to be expended in accordance with the authority and under the conditions prescribed in the said Act as amended by the deficiency appropriation Act approved June fourth, nineteen hundred and eighteen and to continue available during the fiscal year nineteen hundred and nineteen. (40 Stat. 821.)

This section was a provision of the deficiency appropriation act on account of war expenses for the fiscal year ending June 30, 1918, cited above.

§ 3115⅚i. (Act June 4, 1918, c. 92.) Revolving fund.

All moneys received by the United States in carrying out the Act entitled "An Act to authorize the President to provide housing for war needs," approved May sixteenth, nineteen hundred and eighteen, may be used as a revolving fund until June thirtieth, nineteen hundred and nineteen, for further carrying out the purposes of the said Act. (40 Stat. 595.)

WAR EMERGENCY SERVICES

§ 3115⅞a. (Act July 1, 1918, c. 113, § 1.) Appropriation for wages.

To enable the Secretary of Labor, during the present emergency, to furnish such information and to render such assistance in the employment of wage earners throughout the United States as may be deemed necessary in the prosecution of the war and to aid in the standardization of all wages paid by the Government of the United States and its agencies, including personal services in the District of Columbia and elsewhere, per diem in lieu of subsistence at not exceeding $4, traveling expenses, rental of quarters in the District of Columbia and elsewhere, heat and light, telegraph and telephone service, supplies and equipment, and printing and binding, $5,500,000: Provided, That no money now or hereafter appropriated for the payment of wages not fixed by statute shall be available to pay wages in excess of the standard determined upon by the War Labor Policies Board. (40 Stat. 696.)

This section was a part of the sundry civil appropriation act for the fiscal year 1919, cited above.

COMMITTEE ON PUBLIC INFORMATION

§ 3115⅞b. (Act July 1, 1918, c. 113, § 1.) Appropriation.

For all expenses of the Committee on Public Information, in connection with the work that may be specifically assigned to it by the President, including personal services and rent in the District of Columbia or elsewhere, printing and binding, and for such expenses of every character as the President in his discretion may deem necessary in carrying on the work assigned to the committee, $1,250,000: Provided, That when necessary, advances for expenses that shall be warranted in connection with the authorized work of the committee may be made under proper safeguards in amounts not exceeding $1,000: Provided further, That all moneys received through the motion picture activities of the committee shall be paid into the Treasury to the credit of the appropriation and be available for the said activities: Provided further, That a detailed report of the receipts and expenditures under this appropriation, which shall also contain a list of employees and salaries paid, shall be made to Congress on the first day of each regular session: Provided further, That no part of this appropriation shall be used for the payment of the salary of any person who on the fifth of June, nineteen hundred and seventeen, was between the ages of twenty-one and thirty-one years, unless he has been placed in a deferred classification by his local board on account of physical defects, which incapacitate him for military duty. (40 Stat. 646.)

This section was a part of the sundry civil appropriation act for the fiscal year 1919, cited above.

CONDEMNATION OF PROPERTY FOR GENERATING ELECTRIC ENERGY

§ 3115 11/12a. (Act July 9, 1918, c. 143, subchapter XXIV, § 1.) Authority to condemn; procedure.

During the pendency of the present war, any person, association, or corporation, for the purpose of furnishing electric power to the United States or to persons, associations, or corporations engaged in the manufacture of ships, explosives, or munitions of war, or other articles and things for the use of the United States

or its allies, upon compliance with the conditions hereinafter set forth, may institute proceedings in any district court of the United States or in any court of any State having jurisdiction of the property to be condemned, for the acquirement by condemnation of any land, the temporary use thereof, or other interest therein, or right pertaining thereto, required for the location or construction of any line or lines for the transmission of electric power for the operation of any plants which are or may be employed in the production of the articles and things hereinbefore mentioned: Provided, That nothing herein shall be construed to authorize the appropriation of any property already devoted to such use. That proceedings for the condemnation of property required for the generation and transmission of such electric power shall be prosecuted in accordance with the procedure prescribed for the condemnation of property in the State wherein the proceedings may be instituted. (40 Stat. 895.)

This section, and the three sections next following, were a part of the Army appropriation act for the fiscal year 1919, cited above.

§ 3115¹¹/₁₂b. (Act July 9, 1918, c. 143, subchapter XXIV, § 2.) Submission of plans.

Before any person, association, or corporation, furnishing or to furnish electric power for the purposes mentioned in section one of this Act, shall have the right to institute proceedings for condemnation, they shall submit to the Secretary of War a full and complete statement of the plan for furnishing power and the nature and extent of the easements or property which they desire to acquire under condemnation proceedings, for the purposes stated in the preceding section. If the Secretary of War approve such plan and finds that the construction or extension of such facilities for the generation or transmission of power and that the condemnation herein authorized is necessary to increase the supply of power for the objects and purposes stated in section one of this Act, then such person, association, or corporation shall, upon the approval of such plan by the Secretary of War, have the right to construct, maintain, and operate the facilities described in such plan, and may cause proceedings to be instituted in any court having jurisdiction thereof for the acquirement by condemnation of any lands, the temporary use thereof, or other interest therein, or right pertaining thereto, as may be needed for the construction, maintenance, and operation of such facilities: Provided, That nothing in this section shall be construed as authorizing any rights in any public lands of the United States, or in any waters of the United States except such as may be necessary to build such transmission lines along or across said waters as may be approved by the Secretary of War: Provided further, That the Secretary of War may, prior to granting his approval as above set forth, require such person, association, or corporation to file with him a bond, in an amount and with a surety or sureties satisfactory to him, conditioned upon the prompt construction of the proposed facilities and the diligent maintenance and operation of the same to the satisfaction of the Secretary of War during the present war. (40 Stat. 895.)

See note to § 3115¹¹/₁₂a.

§ 3115¹¹/₁₂c. (Act July 9, 1918, c. 143, subchapter XXIV, § 3.) Immediate possession on filing bond.

Any person, association, or corporation having secured the approval of the Secretary of War and filed a petition for condemnation as herein provided may, upon filing with the court in which such petition is filed a bond to secure payment of just compen-

sation to the owners of property taken, in a form and an amount and with a surety or sureties approved by said court after such notice and such hearing as the court may prescribe, have the right of immediate possession and use of such property or rights. (40 Stat. 896.)

See note to § 3115$^{11}/_{12}$a.

§ 3115$^{11}/_{12}$d. (Act July 9, 1918, c. 143, subchapter XXIV, § 4.) Limitation on operative effect of provisions.

No plan for the construction or extension of any facilities shall be submitted to or approved by the Secretary of War hereunder after the existing state of war between the United States and its enemies shall have terminated, and the fact of such termination shall be ascertained and proclaimed by the President, but such termination of the existing state of war so ascertained and proclaimed shall not interfere with the condemnation of any land or other property or rights needed for the construction, maintenance, and operation of any facilities approved hereunder by the Secretary of War before such proclamation: Provided, however, That the Secretary of War may upon such termination of the existing state of war and prior to the entry of judgment in any condemnation proceeding hereunder and the commencement of construction or extension of the proposed facilities revoke any approval given hereunder to the plan for such proposed facilities: Provided further, That nothing in this chapter shall be construed as granting any franchise to utilize such facilities after the termination of the existing state of war.

All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed. (40 Stat. 896.)

See note to § 3115$^{11}/_{12}$a.

PROHIBITION ZONES

§ 3115$^{11}/_{12}$e. (Act Nov. 21, 1918, c. 212, § 1.) Establishment of zones where sale, etc., of intoxicating liquors may be prohibited.

That the President of the United States be, and hereby is, authorized and empowered, at any time after the passage of this Act, to establish zones of such size as he may deem advisable about coal mines, munition factories, shipbuilding plants, and such other plants for war material as may seem to him to require such action whenever in his opinion the creation of such zones is necessary to, or advisable in, the proper prosecution of the war, and that he is hereby authorized and empowered to prohibit the sale, manufacture, or distribution of intoxicating liquors in such zones, and that any violation of the President's regulations in this regard shall be punished by imprisonment for not more than one year, or by fine of not more than $1,000, or by both such fine and imprisonment. (40 Stat. 1047.)

This was a provision of Act Nov. 21, 1918, c. 212, § 1, 40 Stat., cited above. It is identical in language with Res. Sept. 12, 1918, c. 170, 40 Stat. 958. See, also, § 3115$^{11}/_{12}$h.

MANUFACTURE, SALE, ETC., OF INTOXICATING LIQUORS

§ 3115$^{11}/_{12}$f. (Act Nov. 21, 1918, c. 212, § 1.) Distilled spirits; sale or removal from bond for beverage purposes.

After June thirtieth, nineteen hundred and nineteen, until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States, for the purpose of

conserving the man power of the Nation, and to increase efficiency in the production of arms, munitions, ships, food, and clothing for the Army and Navy, it shall be unlawful to sell for beverage purposes any distilled spirits, and during said time no distilled spirits held in bond shall be removed therefrom for beverage purposes except for export. (40 Stat. 1046.)

This section, and §§ 3115$^{11}/_{12}$ff–3115$^{11}/_{12}$ggg, post, were parts of section 1 of an act entitled "An Act to enable the Secretary of Agriculture to carry out, during the fiscal year ending June thirtieth, nineteen hundred and nineteen, the purposes of the Act entitled 'An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products,' and for other purposes," cited above.

§ 3115$^{11}/_{12}$ff. (Act Nov. 21, 1918, c. 212, § 1.) Malt or vinous liquors; use of food products for manufacture of for beverage purposes.

After May first, nineteen hundred and nineteen, until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States, no grains, cereals, fruit, or other food product shall be used in the manufacture or production of beer, wine, or other intoxicating malt or vinous liquor for beverage purposes. (40 Stat. 1046.)

See note to § 3115$^{11}/_{12}$f, ante.

§ 3115$^{11}/_{12}$fff. (Act Nov. 21, 1918, c. 212, § 1.) Same; sale for beverage purposes.

After June thirtieth, nineteen hundred and nineteen, until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States, no beer, wine, or other intoxicating malt or vinous liquor shall be sold for beverage purposes except for export. (40 Stat. 1046.)

See note to § 3115$^{11}/_{12}$f, ante.

§ 3115$^{11}/_{12}$g. (Act Nov. 21, 1918, c. 212, § 1.) Distilled spirits, and wine for sacramental purposes; regulations for manufacture, sale, or removal from bond.

The Commissioner of Internal Revenue is hereby authorized and directed to prescribe rules and regulations, subject to the approval of the Secretary of the Treasury, in regard to the manufacture and sale of distilled spirits and removal of distilled spirits held in bond after June thirtieth, nineteen hundred and nineteen, until this Act shall cease to operate, for other than beverage purposes; also in regard to the manufacture, sale, and distribution of wine for sacramental, medicinal, or other than beverage uses. (40 Stat. 1046.)

See note to § 3115$^{11}/_{12}$f, ante.

§ 3115$^{11}/_{12}$gg. (Act Nov. 21, 1918, c. 212, § 1.) Intoxicating liquors; import.

After the approval of this Act no distilled, malt, vinous, or other intoxicating liquors shall be imported into the United States during the continuance of the present war and period of demobilization: Provided, That this provision against importation shall not apply to shipments en route to the United States at the time of the passage of this Act. (40 Stat. 1047.)

See note to § 3115$^{11}/_{12}$f, ante.

§ 3115$^{11}/_{12}$ggg. (Act Nov. 21, 1918, c. 212, § 1.) Violations of five preceding sections; punishment.

Any person who violates any of the foregoing provisions shall be punished by imprisonment not exceeding one year, or by fine

not exceeding $1,000, or by both such imprisonment and fine. (40 Stat. 1047.)

See note to § 3115$^{11}/_{12}$f, ante.

§ 3115$^{11}/_{12}$gggg. (Act Nov. 21, 1918, c. 212, § 2.) Distilled spirits; import from Porto Rico.

Under such rules, regulations, and bonds as the Secretary of the Treasury may prescribe, distilled spirits or alcohol produced prior to October third, nineteen hundred and seventeen, from products the growth of the island of Porto Rico may be admitted from said island into the United States for industrial purposes in the arts and sciences. Such alcohol or distilled spirits shall not be used for beverage purposes nor in the production of any article used as a beverage.

Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000 or imprisoned not more than two years. He shall, in addition, be liable to double the tax evaded, together with the tax, to be collected by assessment or on any bond given. (40 Stat. 1048.)

This was section 2 of an act entitled "An Act to enable the Secretary of Agriculture to carry out, during the fiscal year ending June thirtieth, nineteen hundred and nineteen, the purposes of the Act entitled 'An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products,' and for other purposes," cited above.

§ 3115$^{11}/_{12}$h. (Act Nov. 21, 1918, c. 212, § 1.) Effect on powers under Act Aug. 10, 1917, c. 53, § 15.

Nothing in this Act shall be construed to interfere with the power conferred upon the President by section fifteen of the food-control Act, approved August tenth, nineteen hundred and seventeen (Public Numbered Forty, Sixty-fifth Congress). (40 Stat. 1047.)

This section was a provision of section 1 of an act entitled "An Act to enable the Secretary of Agriculture to carry out, during the fiscal year ending June thirtieth, nineteen hundred and nineteen, the purposes of the Act entitled 'An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products,' and for other purposes," cited above.

ADJUSTMENT OF WAR CONTRACTS

§ 3115[14]/[15]a. (Act March 2, 1919, c. 94, § 1.) Adjustment of contracts not executed according to law; limitation on amount of awards; time limit; report to Congress; effect of adjustment; witnesses.

That the Secretary of War be, and he is hereby, authorized to adjust, pay, or discharge any agreement, express or implied, upon a fair and equitable basis that has been entered into, in good faith during the present emergency and prior to November twelfth, nineteen hundred and eighteen, by any officer or agent acting under his authority, direction, or instruction, or that of the President, with any person, firm, or corporation for the acquisition of lands, or the use thereof, or for damages resulting from notice by the Government of its intention to acquire or use said lands, or for the production, manufacture, sale, acquisition or control of equipment, materials or supplies, or for services, or for facilities, or other purposes connected with the prosecution of the war, when such agreement has been performed in whole or in part, or expenditures have been made or obligations incurred upon the faith of the same by any such person, firm, or corporation prior to November twelfth, nineteen hundred and eighteen, and such agreement has not been executed in the manner prescribed by law: Provided, That in no case shall any award either by the Secretary of War, or the Court of Claims include prospective or possible profits on any part of the contract beyond the goods and supplies delivered to and accepted by the United States and a reasonable remuneration for expenditures and obligations or liabilities necessarily incurred in performing or preparing to perform said contract or order: Provided further, That this Act shall not authorize payment to be made of any claim not presented before June thirtieth, nineteen hundred and nineteen: And provided further, That the Secretary of War shall report to Congress at the beginning of its next session following June thirtieth, nineteen hundred and nineteen, a detailed statement showing the nature, terms, and conditions of every such agreement and the payment or adjustment thereof: And provided further, That no settlement of any claim arising under any such agreement shall bar the United States Government through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right of recovery of any money paid by the Government to any party under any settlement entered into, or payment made under the provisions of this Act, if the Government has been defrauded, and the right of recovery in all such cases shall exist against the executors, administrators, heirs, successors, and assigns, of any party or parties: And provided further, That nothing in this Act shall be construed to relieve any officer or agent of the United States from criminal prosecution under the provisions of any statute of the United States for any fraud or criminal conduct: And provided further, That this Act shall in no way relieve or excuse any officer or his agent from such criminal prosecution because of any irregularity or illegality in the manner of the execution of such agreement: And provided further, That in all proceedings hereunder witnesses may be compelled to attend, appear, and testify, and produce books, papers and letters, or other documents; and the claim that any such testimony or evidence may tend to criminate the person giving the same shall not excuse such witness from testifying but such evidence or testimony shall not be used

gainst such person in the trial of any criminal proceeding. (40 tat. 1272.)

This section, and the four sections next following, are an act entitled "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," cited above.

3115[14]/15b. (Act March 2, 1919, c. 94, § 2.) Same; jurisdiction of Court of Claims.

The Court of Claims is hereby given jurisdiction on petition of ny individual, firm, company or corporation referred to in Section hereof, to find and award fair and just compensation in the cases pecified in said Section in the event that such individual, firm, ompany or corporation shall not be willing to accept the adjustnent, payment or compensation offered by the Secretary of War s hereinbefore provided, or in the event that the Secretary of War hall fail or refuse to offer a satisfactory adjustment, payment or ompensation as provided for in said Section. (40 Stat. 1273.)

See note to § 3115[14]/15a, ante.

3115[14]/15c. (Act March 2, 1919, c. 94, § 3.) Adjustment of agreements with foreign governments or nationals thereof.

The Secretary of War, through such agency as he may designate r establish is empowered, upon such terms as he or it may deermine to be in the interest of the United States, to make equitable nd fair adjustments and agreements, upon the termination or in ettlement or readjustment of agreements or arrangements entered nto with any foreign government or governments or nationals nereof, prior to November twelfth, nineteen hundred and eighteen, or the furnishing to the American Expeditionary Forces or otherwise for War purposes of supplies, materials, facilities, services or ne use of property, or for the furnishing of any thereof by the Jnited States to any foreign government or governments, whether r not such agreements or arrangements have been entered into in ccordance with applicable statutory provisions; and the other rovisions of this Act shall not be applicable to such adjustments. 40 Stat. 1273.)

See note to § 3115[14]/15a, ante.

3115[14]/15d. (Act March 2, 1919, c. 94, § 4.) Protection of subcontractors on adjustment of contracts.

Whenever, under the provisions of this Act, the Secretary of Var shall make an award to any prime contractor with respect o any portion of his contract which he shall have sublet to any ther person, firm, or corporation who has in good faith made exenditures, incurred obligations, rendered service, or furnished naterial, equipment, or supplies to such prime contractor, with the nowledge and approval of any agent of the Secretary of War duly uthorized thereunto, before payment of said award the Secreary of War shall require such prime contractor to present satisactory evidence of having paid said subcontractor or of the conent of said subcontractor to look for his compensation to said rime contractor only; and in the case of the failure of said prime ontractor to present such evidence or such consent, the Secretary f War shall pay directly to said subcontractor the amount found o be due under said award; and in case of the insolvency of any rime contractor the subcontractor of said prime contractor shall ave a lien upon the funds arising from said award prior and suerior to the lien of any general creditor of said prime contracor. (40 Stat. 1273.)

See note to § 3115[14]/15a, ante.

§ 3115[14]/15e. (Act March 2, 1919, c. 94, § 5.) Adjustment of net losses of persons supplying certain minerals; limitation on amounts; appropriation; time for filing claims; effect of adjustments; report to Congress.

That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: Provided, however, That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: And provided further, That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: And provided further, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: And provided further, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: And provided further, That the settlement of any claim arising under the provisions of this section shall not bar the United States Gov-

rnment, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of eview of such settlement, nor the right to recover any money aid by the Government to any party under and by virtue of he provisions of this section, if the Government has been derauded, and the right of recovery in all such cases shall extend o the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including reeipts and disbursements, shall be made to Congress on or before he first Monday in December of each year.

That nothing in this section shall be construed to confer jurisiction upon any court to entertain a suit against the United tates: Provided further, That in determining the net losses of ny claimant the Secretary of the Interior shall, among other nings, take into consideration and charge to the claimant, the hen market value of any ores or minerals on hand belonging to he claimant, and also the salvage or usable value of any machinry or other appliances which may be claimed was purchased to quip said mine for the purpose of complying with the request or emand of the agencies of the Government above mentioned in the anner aforesaid. (40 Stat. 1274.)

See note to § 3115[14]/[15]a, ante.

TITLE XVIII—DIPLOMATIC AND CONSULAR OFFICERS

CHAPTER ONE—DIPLOMATIC OFFICERS

Sec.
3116. Definition of official designations.
3117. Salaries.
3126. Interpreter of legation to Turkey.
3130b. Secretaries, consuls general, consuls; classification; salaries.
3133. Clerks to be citizens.

§ 3116. (R. S. § 1674, as amended, Act Feb. 5, 1915, c. 23, § 6, and Act July 1, 1916, c. 208.) Definition of official designations.

Ambassadors.—The certificate of the ambassador of a foreign country to the United States as to the law of his country or the personnel and authority of officials of his government is admissible in the courts of the United States. Agency of Canadian Car & Foundry Co. v. American Can Co. (D. C.) 253 F. 152.

Consuls.—The rights of consuls and consular officials rest on international law as well as on treaty stipulations, and international law regards consuls and consular officials as mercantile agents of the government appointing them, authorized to protect the commercial interests of its citizens in the country to which they are accredited, and clothed only with authority for commercial purposes. Hamilton v. Erie R. Co. 114 N. E. 399, 219 N. Y. 343, Ann. Cas. 1918A, 928, affirming judgment (Sup.) 154 N. Y. S. 1125, 170 App. Div. 901.

§ 3117. (R. S. § 1675.) Salaries.

The current diplomatic and consular appropriation act, Act March 4, 1919, c. 123, 40 Stat. 1325, makes the following appropriations for salaries of ambassadors, etc.:

"Salaries of Ambassadors and Ministers

"Ambassadors extraordinary and plenipotentiary to Austria-Hungary, Argentina, Brazil, Chile, France, Germany, Great Britain, Italy, Japan, Mexico, Peru, Russia, Spain, and Turkey, at $17,500 each, $245,000;

"Envoys extraordinary and ministers plenipotentiary to Belgium, China, Cuba, and the Netherlands and Luxemburg, at $12,000 each, $48,000;

"Envoys extraordinary and ministers plenipotentiary to Czecho-Slovakia and Poland, at the rate of $12,000 per annum each from March 1, 1919, to June 30, 1920, both dates inclusive, $32,000;

"Envoys extraordinary and ministers plenipotentiary to Bulgaria, and Serbia, at the rate of $10,000 per annum each, from March 1, 1919, to June 30, 1919, both dates inclusive, $6,666.68.

"Envoys extraordinary and ministers plenipotentiary to Bolivia, Bulgaria, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Greece and Montenegro, Guatemala, Haiti, Honduras, Nicaragua, Norway, Panama, Paraguay, Uruguay, Persia, Portugal, Roumania, Salvador, Serbia, Siam, Sweden, Switzerland, and Venezuela, at $10,000 each, $250,000;

"Minister resident and consul general to Liberia, $5,000;

"Agent and consul general at Tangier, $7,500;

"Agent and consul general at Cairo, $6,500;

"Provided, That no salary herein appropriated shall be paid to any official receiving any other salary from the United States Government;

"Total, $600,666.68.

"Salaries, Chargés D'Affaires Ad Interim

"For salaries for chargés d'affaires ad interim, $50,000."

§ 3126. (R. S. § 1678.) Interpreter of legation to Turkey.

The current diplomatic and consular appropriation act, Act March 4, 1919, c. 123, 40 Stat. 1325, makes the following appropriations for salaries of interpreters to embassies and legations:

"Salaries of Interpreters to Embassies and Legations

"Interpreter to legation and consulate general to Persia, $2,000;

"Interpreter to legation and consulate general to Bangkok, Siam, $2,000;

"For ten student interpreters in China, who shall be citizens of the United States, and whose duty it shall be to study the Chinese language with a view to supplying interpreters to the legation and consulates in China, at $1,500 each, $15,000: Provided, That the method of selecting said student inter-

preters shall be nonpartisan: And provided further, That upon receiving such appointment each student interpreter shall sign an agreement to continue in the service as interpreter to the legation and consulates in China so long as his services may be required within a period of five years:

"For the payment of the cost of tuition of student interpreters in China, at the rate of $200 per annum each, $2,000;

"For six student interpreters in Japan, who shall be citizens of the United States, and whose duty it shall be to study the Japanese language with a view to supplying interpreters to the embassy and consulates in Japan, at $1,500 each, $9,000: Provided, That the method of selecting said student interpreters shall be nonpartisan: And provided further, That upon receiving such appointment each student interpreter shall sign an agreement to continue in the service as interpreter to the embassy and consulates in Japan so long as his services may be required within a period of five years;

"For the payment of the cost of tuition of student interpreters in Japan, at the rate of $200 per annum each, $1,200;

"For ten student interpreters in Turkey, who shall be citizens of the United States, and whose duty it shall be to study the language of Turkey and any other language that may be necessary to qualify them for service as interpreters to the embassy and consulates in Turkey, at $1,500 each, $15,000: Provided, That the method of selecting said student interpreters shall be nonpartisan: And provided further, That upon receiving such appointment each student interpreter shall sign an agreement to continue in the service as interpreter to the embassy and consulates in Turkey so long as his services may be required within a period of five years;

"For the payment of the cost of tuition of student interpreters in Turkey, at the rate of $200 per annum each, $2,000;

"No person drawing the salary of interpreter or student interpreter as above provided shall be allowed any part of the salary appropriated for any secretary of legation or other officer;

"Total, $48,200."

3130b. (Act Feb. 5, 1915, c. 23, § 2.) Secretaries, consuls general, consuls; classification; salaries.

The current diplomatic and consular appropriation act, Act March 4, 1919, c. 123, 40 Stat. 1325, makes the following appropriation for salaries of secretaries in the Diplomatic Service:

"Salaries of Secretaries in the Diplomatic Service

"For secretaries in the Diplomatic Service, as provided in the Act of February 5, 1915, entitled 'An Act for the improvement of the foreign service,' as amended by the Act making appropriations for the Diplomatic and Consular Service for the fiscal year ending June 30, 1917, approved July 1, 1916, $289,458.33, of which sum $5,083.33 shall be immediately available.

"Secretary-interpreter of embassy to Japan, $3,600;

"Secretary-interpreter of embassy to Turkey, $3,600;

"Secretary-interpreter of legation to China, $3,600;

"Assistant secretary-interpreter to the legation to China, to be appointed from the corps of student interpreters, $2,000;

"Assistant secretary-interpreter to the embassy to Japan, to be appointed from the corps of student interpreters, $2,000;

"Assistant secretary-interpreter to the embassy to Turkey, to be appointed from the corps of student interpreters, $2,000.

"Total $306,258.33."

3133. (Act March 4, 1919, c. 123.) Clerks to be citizens.

For the employment of necessary clerks at the embassies and legations, who, whenever hereafter appointed, shall be citizens of the United States. * * (40 Stat. 1327.)

This section is a provision of the diplomatic and consular appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

CHAPTER TWO—CONSULAR OFFICERS

Sec.
3141a. Expenses of inspectors.
3142a. Consuls general, consuls, vice consuls, and consular agents to be citizens.
3145. Interpreters at consulates in China and Japan.
3154. Consular assistants; appointment.
3155a. Consular assistants; salaries.
3162. Estates of decedents; duties of Auditor for State and other Departments, as conservator, etc.
3176. No consular fees for official services to American vessels or seamen.

§ 3141a. (Act March 4, 1919, c. 123.) Expenses of inspectors.

Expenses of Consular Inspectors. For the actual and necessary traveling and subsistence expenses of consular inspectors while traveling and inspecting under instructions from the Secretary of State * *: Provided, That inspectors shall be allowed actual and necessary expenses for subsistence, itemized not exceeding an average of $8 per day. (40 Stat. 1334.)

This section is a provision of the diplomatic and consular appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 3142a. (Act April 15, 1918, c. 52.) Consuls general, consuls, vice consuls, and consular agents to be citizens.

For salaries of consuls general, consuls, and vice consuls, as provided in the Act approved February fifth, nineteen hundred and fifteen, entitled "An Act for the improvement of the foreign service," $1,208,500. No portion of this sum shall be paid as compensation to vice consuls who are not American citizens: Provided, That if in any case the Secretary of State deems it impracticable immediately to secure a competent vice consul who is an American citizen, he may appoint or retain as vice consul and compensate from this fund a person not an American citizen until such time as he is able to designate a competent American citizen for such post. Every consul general, consul, and, wherever practicable, every consular agent shall be an American citizen. (40 Stat. 528.)

These were provisions of the diplomatic and consular service appropriation act for the fiscal year 1919, cited above.

The current diplomatic and consular appropriation act, Act March 4, 1919, c. 123, 40 Stat. 1325, makes the following appropriation for salaries of the Consular Service:

"Salaries of the Consular Service

"For salaries of consuls general, consuls, and vice consuls, as provided in the Act approved February 5, 1915, entitled 'An Act for the improvement of the foreign service,' $1,974,500. Every consul general, consul, vice consul, and, wherever practicable, every consular agent shall be an American citizen.

"For salaries of seven consular inspectors, at $5,000 each, $35,000;

"Total, $2,009,500."

§ 3145. (Act June 11, 1874, c. 275, § 3.) Interpreters at consulates in China and Japan.

See note to § 3126, ante.

§ 3154. (R. S. § 1704.) Consular assistants; appointment.

See post, § 3155a.

§ 3155a. (Act March 4, 1919, c. 123.) Consular assistants; salaries.

Salaries of Consular Assistants. * * From and after the 1st day of July, 1918, the salaries of consular assistants shall be at the rate of $1,500 for the first year of continuous service, $1,650 for the second year of continuous service, $1,800 for the third year, and $2,000 for the fourth year of continuous service and for each year thereafter, and section 1704, Revised Statutes, its amendatory

Act of June 11, 1874, and all other Acts inconsistent with this provision are hereby so amended. (40 Stat. 1334.)

This section is a part of the diplomatic and consular appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

3162. (R. S. § 1709, as amended, Act March 3, 1911, c. 223.) Estates of decedents; duties of Auditor for State and other Departments, as conservator, etc.

Duty of consuls.—To conserve and guard the property within their territorial jurisdiction of their countrymen dying therein, is an important right and duty of consular officials; but the general law of nations does not sustain as valid the settlement by a consul general with a railroad for its negligent killing within his consular jurisdiction of a countryman of the consul. Hamilton v. Erie R. Co., 114 N. E. 399, 219 N. Y. 343, Ann. Cas. 1918A, 928, affirming judgment (Sup.) 154 N. Y. S. 1125, 170 App. Div. 901.

3176. (Act June 26, 1884, c. 121, § 12.) No consular fees for official services to American vessels or seamen.

Cited without definite application, Sandberg v. McDonald, 39 S. Ct. 84, 63 L. Ed. —.

CHAPTER THREE—PROVISIONS COMMON TO DIPLOMATIC AND CONSULAR OFFICERS

3198. (R. S. § 1740.) Term during which salary is payable.

The current diplomatic and consular appropriation act, Act March 4, 1919, c. 123, 40 Stat. 1325, contains the following provision:

Salaries of Diplomatic and Consular Officers While Receiving Instructions and Making Transits

"To pay the salaries of ambassadors, ministers, consuls, vice consuls, and other officers of the United States for the periods actually and necessarily occupied in receiving instructions and in making transits to and from their posts, and while awaiting recognition and authority to act. in pursuance of the provisions of section 1740 of the Revised Statutes, $65,000, or so much thereof as may be necessary."

3198a. (Act April 15, 1918, c. 52.) Additional compensation during existing war.

To enable the President, in his discretion and in accordance with such regulations as he may prescribe, to make special allowances, during pendency of existing war and for six months after its termination, by way of additional compensation to consular and diplomatic officers in belligerent countries and countries contiguous thereto, including China and the officers at Hongkong, Saigon, Tsingtau, Darien, and Vladivostok in order to adjust their official income to the ascertained cost of living at the posts to which they may be assigned. * * (40 Stat. 528.)

This was a provision of the diplomatic and consular service appropriation act for the fiscal year 1919, cited above.

3198b. (Act March 4, 1919, c. 123.) Additional compensation to meet increased cost of living.

Post Allowances to Consular and Diplomatic Officers. To enable the President, in his discretion and in accordance with such regulations as he may prescribe, to make special allowances by way of additional compensation to consular and diplomatic officers and consular assistants and officers of the United States Court for China in order to adjust their official income to the ascertained cost of living at the posts to which they may be assigned. * * (40 Stat. 1334.)

This section is a provision of the diplomatic and consular appropriation act for the fiscal year 1920, cited above.

§ 3208. (R. S. § 1748.) Expenses of legations, consulates, etc.

The current diplomatic and consular appropriation act, Act March 4, 1919, c. 123, 40 Stat. 1325, contains the following provision:

"To pay the itemized and verified statements of the actual and necessary expenses of transportation and subsistence under such regulations as the Secretary of State may prescribe, of diplomatic and consular officers and clerks in embassies, legations, and consulates and their families and effects in going to and returning from their posts, or when traveling under orders of the Secretary of State, but not including any expense incurred in connection with leaves of absence, $145,000."

TITLE XIX—PROVISIONS APPLICABLE TO SEVERAL CLASSES OF PUBLIC OFFICERS AND EMPLOYÉS

CHAPTER A—APPOINTMENT, QUALIFICATION, COMPENSATION, AND SERVICES, IN GENERAL

Sec.
3214a. Preference to honorably discharged soldiers, sailors, and marines, and widows.
3215b. Reinstatement of drafted employees.
3224. Unauthorized office, no salary for.
3230b. Double salaries; teachers in public schools of District of Columbia.
3230c. Double salaries; employés of community center department of public schools, D. C.
3231. Holding other lucrative office.
3231a. Receiving salary from source other than United States.
3233. Extra services.
3234. Extra allowances.
3248a. Leaves of absence; accrued leaves to civilian employés of Ordnance Department.
3259. Taking oaths, acknowledgments, etc.
Sec.
3263a. Railroad transportation to certain civilian employées on discharge from service.
3263b. Same; time for application for; unlawful sale or transfer of transportation.
3263c. Same; appropriations from which payable.
3263d. Same; refund to employees leaving District prior to passage of Act; supplements to transportation prohibited; employees not entitled to.
3265a. Purchase of material supplies and equipment from other Government services.
3270a. Additional compensation.
3270b. Joint Commission on Reclassification of Salaries; members; appointment; salaries; powers and duties; report.

§ 3214a. (Act March 3, 1919, c. 97, § 6.) Preference to honorably discharged soldiers, sailors, and marines, and widows.

Hereafter in making appointments to clerical and other positions in the executive departments and in independent governmental establishments preference shall be given to honorably discharged soldiers, sailors, and marines, and widows of such, if they are qualified to hold such positions. (40 Stat. 1293.)

This section is a part of section 6 of an act entitled "An act to provide for the fourteenth and subsequent decennial censuses," cited above.

§ 3215b. (Act Feb. 25, 1919, c. 39, § 1.) Reinstatement of drafted employees.

All former Government employees who have been drafted or enlisted in the military service of the United States in the war with Germany shall be reinstated on application to their former positions, if they have received an honorable discharge and are qualified to perform the duties of the position. (40 Stat. 1164.)

This section is a provision of the "Second Deficiency Appropriation Act 1919," cited above.

§ 3224. (R. S. § 1760.) Unauthorized office, no salary for.

Right to salary.—When an office with fixed salary has been created by statute, and a person duly appointed to it has qualified and entered upon his duties, he is entitled, during incumbency, to be paid salary prescribed by statute; and effect will not be given to any attempt to deprive him thereof, whether by unauthorized agreement, by condition, or otherwise. MacMath v. U. S., 39 S. Ct. 31, 63 L. Ed. —.

§ 3230b. (Act Oct. 6, 1917, c. 79, § 9.) Double salaries; teachers in public schools of District of Columbia.

Section six of the legislative, executive, and judicial appropriation Act, approved May tenth, nineteen hundred and sixteen, as amended

by the naval appropriation Act, approved August twenty-ninth, nineteen hundred and sixteen, shall not apply to teachers in the public schools of the District of Columbia who are also employed as teachers of night schools and vacation schools. (40 Stat. 384.)

This was section 9 of the urgent deficiency appropriation act for the fiscal year 1918, cited above.

See U. S. Comp. St. 1916, § 3230a.

§ 3230c. (Act July 8, 1918, c. 139, § 1.) Double salaries; employés of community center, department of public schools, D. C.

Section six of the legislative, executive, and judicial appropriation Act, approved May tenth, nineteen hundred and sixteen, as amended, shall not apply to employees of the community center department of the public schools of the District of Columbia. (40 Stat. 823.)

This section was a provision of the deficiency appropriation act on account of war expenses for the fiscal year ending June 30, 1918, cited above.

§ 3231. (Act July 31, 1894, c. 174, § 2.) Holding other lucrative office.

Holding two offices.—Where the compensation of an officer is fixed by statute, it may not be diminished by regulation of a department or order of the President unless empowered thereto by Congress; but where appointment to two certain offices is claimed and to so hold would involve a construction that the appointment was invalid under this section, the court must adopt the view that a legal appointment was contemplated, and hence that the claimant was not appointed to two offices. McMath v. U. S., 51 Ct. Cl. 356.

Superior court's assignment of member of bar holding office of United States district attorney to prosecute for state in necessary absence of solicitor of district was not improper, under Const. N. C. art. 14, § 7, prohibiting person from holding two offices. State v. Wood, 95 S. E. 1050, 175 N. C. 809.

Appointment of retired naval officer.—A retired naval officer, whose compensation as such amounts to $2,500 per annum, is ineligible to appointment as a commercial attaché under the provisions of this section. 30 Op. Atty. Gen. 298.

§ 3231a. (Act March 3, 1917, c. 163, § 1.) Receiving salary from source other than United States.

On and after July first, nineteen hundred and nineteen, no Government official or employee shall receive any salary in connection with his services as such an official or employee from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality, and no person, association, or corporation shall make any contribution to, or in any way supplement the salary of, any Government official or employee for the services performed by him for the Government of the United States. Any person violating any of the terms of this proviso shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $1,000 or imprisonment for not less than six months, or by both such fine and imprisonment as the court may determine. (39 Stat. 1106.)

These were provisions of the legislative, executive, and judicial appropriation act for the fiscal year 1918, cited above.

§ 3233. (R. S. § 1764.) Extra services.

Cited without definite application,
30 Op. Atty. Gen. 129.

§ 3234. (R. S. § 1765.) Extra allowances.

The current legislative, executive, and judicial appropriation act, Act March 1, 1919, c. 86, § 1, 40 Stat. 1213, contains the following provisions:

"For reporting the decisions of the court and superintending the printing of the fifty-fourth volume of the reports of the Court of Claims, $1,000, to be paid on the order of the court to the reporter, notwithstanding section 1765 of the Revised Statutes or section 3 of the Act of June 20, 1874.

"For custodian of the building occupied by the Court of Claims, $500, to

be paid on the order of the court, notwithstanding section 1765 of the Revised Statutes or section 3 of the Act of June 20, 1874."

Notes of Decisions

Persons included within prohibition.—A shipping commissioner, receiving fixed salary, held, under this section, ot entitled to fees from the wages of deceased seaman, which he is reuired to deposit in the registry of the ourt. In re MacDonald (D. C.) 248 . 983.

Services for which extra compensaon is prohibited.—Surveyor general of Louisiana held not entitled to fees under Act March 3, 1831, § 5 (Comp. St. 1916, § 4459), for furnishing copies of surveys from records of his office; this section not being inapplicable, because of Act April 21, 1806, giving surveyor general of Louisiana the same authority as the principal deputy surveyors. Lewis v. U. S., 37 S. Ct. 570, 244 U. S. 134, 61 L. Ed. 1039, affirming judgment 50 Ct. Cl. 226.

3248a. (Act May 12, 1917, c. 12.) Leaves of absence; accrued leaves to civilian employés of Ordnance Department.

Hereafter any civilian employee of the Ordnance Department vho is a citizen of the United States and employed at any station utside the continental limits of the United States may, in the disretion of the Secretary of War, after at least two years' continuus, faithful, and satisfactory service abroad, and subject to the nterests of the public service, be granted accrued leave of absence, vith pay, for each year of service, and if an employee should elect o postpone the taking of any or all of the leave to which he may e entitled in pursuance hereof such leave may be allowed to ccumulate for a period of not exceeding four years, the rate of ay for accrued leave to be the rate obtaining at the time the leave granted. (40 Stat. 65.)

This was a provision of the Army appropriation act for the fiscal year 1918, cited above.

3259. (R. S. § 1778.) Taking oaths, acknowledgments, etc.

Powers of notaries.—Notaries public ave no authority under the laws of e United States to administer any aths in connection with criminal prosutions, and hence an information, xpressly stating that it was made pon the oath of parties whose affidavits were annexed, was defective, where three of the affidavits were taken before notaries public, and the fourth, standing alone, was of no avail. U. S. v. Schallinger Produce Co. (D. C.) 230 F. 290.

3263a. (Act March 1, 1919, c. 86, § 4.) Railroad transportation to certain civilian employees on discharge from service.

The heads of the several executive departments and other govrnmental establishments in the District of Columbia are hereby uthorized and directed to furnish to such civilian employees, reeiving compensation, exclusive of the additional $120, at the ate of not more than $1,400 per annum or less than $100 per anum, under their respective jurisdiction as have come to the Disrict of Columbia since April 6, 1917, whose services are no longer equired and whose employment has been or may be terminated y the Government without delinquency or misconduct on their art, or who may resign from their positions, during the period rom November 11, 1918, to March 31, 1919, inclusive, their actual ailroad transportation, including sleeping-car accommodations, rom the District of Columbia to the place from which they acepted employment or to their legal residence, or to such other lace not a greater distance as the employee may elect. (40 Stat. 266.)

This section, and the three sections next following, are section 4 of the legislative, executive and judicial appropriation act for the fiscal year 1920, cited above. These sections superseded Act Jan. 7, 1919, c. 4, 40 Stat. 1052, which read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the heads of the several ex-

ecutive departments and other governmental establishments in the District of Columbia are authorized to furnish to such civilian employees, receiving compensation, exclusive of the additional $120, at the rate of not more than $1,400 per annum or less than $100 per annum, under their respective jurisdiction as have come to the District of Columbia since April sixth, nineteen hundred and seventeen, whose services are no longer required and whose employment has been or may be terminated by the Government without delinquency or misconduct on their part during the period from November eleventh, nineteen hundred and eighteen, to February twentieth, nineteen hundred and nineteen, inclusive, their actual railroad transportation, including sleeping-car accommodations, from the District of Columbia to the place from which they accepted employment or to their legal residence, or to such other place not a greater distance as the employee may elect.

"2. That such transportation must be applied for within ten days after the termination of service and shall be used within five days after issuance unless an extension of time on account of illness be granted by the proper authority: Provided, That as to the employees whose services have been terminated during the period between November eleventh, nineteen hundred and eighteen, and the date of the passage of this Act, inclusive, the time within which transportation shall be applied for shall be twenty days from the date of the passage of this Act. Any person who shall sell, exchange, or transfer such transportation for the use of another shall be punished by a fine of not more than $100.

"3. That the expenses authorized by this Act shall be paid from the following appropriations for the fiscal year nineteen hundred and nineteen, which hereby are made available therefor:

"For the War Department, from 'Transportation of the Army and its supplies.'

"For the Navy Department, from 'Pay, miscellaneous.'

"For all other executive departments and independent establishments, from the appropriations for the support of the services in which such persons are employed.

"4. That any employee who would be entitled to transportation, including sleeping-car accommodation under this Act and who has left the District of Columbia prior to the passage of this Act, but not before December tenth, nineteen hundred and eighteen, upon application and presentation within sixty days after the passage of this Act of proper proof shall have refunded the cost of actual railroad transportation, including sleeping-car accommodation, from the District of Columbia to the place from which employment was accepted, or to their legal residence, or to such other place not a greater distance to which the employee may have gone: Provided, That payment to any employee for leave of absence not earned in proportion to the term of employment shall be deducted from the refund authorized in this section.

"5. That the provision made in this Act for the transportation of employees shall not be supplemented in any manner by the various services in which they are employed.

"6. That the provisions made in this act for the transportation of employees shall not apply to those who enter such service after the passage of this Act."

§ 3263b. (Act March 1, 1919, c. 86, § 4.) Same; time for application for; unlawful sale or transfer of transportation.

Such transportation must be applied for within ten days after the termination of service and shall be used within five days after issuance unless an extension of time on account of illness be granted by the proper authority. As to the employees whose services have been terminated during the period between November 11, 1918, and the date of the passage of this Act, inclusive, the time within which transportation shall be applied for shall be twenty days from the date of the passage of this Act. Any person who shall sell, exchange, or transfer such transportation for the use of another shall be punished by a fine of not more than $100. (40 Stat. 1266.)

See note to § 3263a, ante.

§ 3263c. (Act March 1, 1919, c. 86, § 4.) Same; appropriations from which payable.

The expenses authorized by this Act shall be paid from the following appropriations for the fiscal year 1920, which hereby are made available therefor immediately upon approval of this Act:

For the War Department, from "Temporary Employees."

For the Navy Department, from "Temporary Employees."

For all other executive departments and independent establishments, from the appropriations for the support of the services in which such persons are employed. (40 Stat. 1266.)

See note to § 3263a, ante.

§ 3263d. (Act March 1, 1919, c. 86, § 4.) Same; refund to employees leaving District prior to passage of Act; supplements to transportation prohibited; employees not entitled to.

Any employee who would be entitled to transportation, including sleeping-car accommodation under this Act and who has left the District of Columbia prior to the passage of this Act, but not before December 10, 1918, upon application and presentation within sixty days after the passage of this Act of proper proof shall have refunded the cost of actual railroad transportation, including sleeping-car accommodation, from the District of Columbia to the place from which employment was accepted, or to their legal residence, or to such other place not a greater distance to which the employee may have gone. The provisions made for the transportation of employees shall not apply to those who enter such service after January 7, 1919: Provided, That payment to any employee for leave of absence not earned in proportion to the term of employment shall be deducted from the refund authorized in this section and the provision made in this Act for the transportation of employees shall not be supplemented in any manner by the various services in which they are employed. (40 Stat. 1266.)

See note to § 3263a, ante.

§ 3265a. (Act March 1, 1919, c. 86, § 8.) Purchase of material, supplies and equipment from other Government services.

The heads of the several executive departments and other responsible officials, in expending appropriations contained in this Act, so far as possible shall purchase material, supplies, and equipment, when needed and funds are available, from other services of the Government possessing material, supplies, and equipment no longer required because of the cessation of war activities. It shall be the duty of the heads of the several executive departments and other officials, before purchasing any of the articles described herein, to ascertain from the other services of the Government whether they have articles of the character described that are serviceable. And articles purchased by one service from another, if the same have not been used, shall be paid for at a reasonable price not to exceed actual cost, and if the same have been used, at a reasonable price based upon length of usage. The various services of the Government are authorized to sell such articles under the conditions specified, and the proceeds of such sales shall be covered into the Treasury as a miscellaneous receipt: Provided, That this section shall not be construed to amend, alter, or repeal the Executive order of December 3, 1918, concerning the transfer of office material, supplies, and equipment in the District of Columbia falling into disuse because of the cessation of war activities. (40 Stat. 1268.)

This section is section 8 of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

§ 3270a. (Act March 1, 1919, c. 86, § 7.) Additional compensation.

All civilian employees of the Governments of the United States and the District of Columbia who receive a total of compensation at the rate of $2,500 per annum or less, except as otherwise provided in this section, shall receive, during the fiscal year ending June 30, 1920, additional compensation at the rate of $240 per annum: Provided, That such employees as receive a total of an-

nual compensation at a rate more than $2,500 and less than $2,740 shall receive additional compensation at such a rate per annum as may be necessary to make their salaries, plus their additional compensation, at the rate of $2,740 per annum, and no employee shall receive additional compensation under this section at a rate which is more than sixty per centum of the rate of the total annual compensation received by such employee: Provided further, That the increased compensation at the rate of $120 per annum for the fiscal year ending June 30, 1919, shall not be computed as salary in construing this section: Provided further, That where an employee in the service on June 30, 1918, has received during the fiscal year 1919, or shall receive during the fiscal year 1920 an increase of salary at a rate in excess of $200 per annum, or where an employee whether previously in the service or not, has entered the service since June 30, 1918, whether such employee has received an increase in salary or not, such employees shall be granted the increased compensation provided herein only when and upon the certification of the person in the legislative branch or the head of the department or establishment employing such persons of the ability and qualifications personal to such employees as would justify such increased compensation: Provided further, That the increased compensation provided in this section to employees whose pay is adjusted from time to time through wage boards or similar authority shall be taken into consideration by such wage boards or similar authority in adjusting the pay of such employees.

The provisions of this section shall not apply to the following: Employees paid from the postal revenues and sums which may be advanced from the Treasury to meet deficiencies in the postal revenues; employees of the Panama Canal on the Canal Zone; employees of the Alaskan Engineering Commission in Alaska; employees paid from lump-sum appropriations in bureaus, divisions, commissions, or any other governmental agencies or employments created by law since January 1, 1916, except that employees of the Bureau of War Risk Insurance shall receive increased compensation at one-half the rate allowed by this section for other employees: Provided, That employees of said bureau who are compensated at rates below $400 per annum shall receive additional compensation only at the rate of 60 per centum of the annual rates of compensation received by such employees; employees whose duties require only a portion of their time, except charwomen, who shall be included; employees whose services are utilized for brief periods at intervals; persons employed by or through corporations, firms, or individuals acting for or on behalf of or as agents of the United States or any department or independent establishment of the Government of the United States in connection with construction work or the operation of plants; employees who receive a part of their pay from any outside sources under cooperative arrangements with the Government of the United States or the District of Columbia; employees who serve voluntarily or receive only a nominal compensation, and employees who may be provided with special allowances because of their service in foreign countries. The provisions of this section shall not apply to employees of the railroads, express companies, telegraph, telephone, marine cable, or radio system or systems, taken over by the United States, and nothing contained herein shall be deemed a recognition of the employees of such railroads, express companies, telegraph, telephone, marine cable, or radio system or systems, as employees of the United States.

Section six of the legislative, executive, and judicial appropriation Act approved May 10, 1916, as amended by the naval appropriation Act approved August 29, 1916, shall not operate to prevent anyone from receiving the additional compensation provided in this section who otherwise is entitled to receive the same.

Such employees as are engaged on piecework, by the hour, or at per diem rates, if otherwise entitled to receive the additional compensation shall receive the same at the rate to which they are entitled in this section when their fixed rate of pay for the regular working hours and on the basis of three hundred and thirteen days in the said fiscal year would amount to $2,500 or less: Provided, That this method of computation shall not apply to any per diem employees regularly paid a per diem for every day in the year.

So much as may be necessary to pay the additional compensation provided in this section to employees of the Government of the United States is appropriated out of any money in the Treasury not otherwise appropriated.

So much as may be necessary to pay the increased compensation provided in this section to employees of the government of the District of Columbia is appropriated, one-half out of any money in the Treasury not otherwise appropriated and one-half out of the revenues of the District of Columbia, except to employees of the Washington Aqueduct and the water department, which shall be paid entirely from the revenues of the water department.

So much as may be necessary to pay the increased compensation provided in this section to persons employed under trust funds who may be construed to be employees of the Government of the United States or of the District of Columbia is authorized to be paid, respectively, from such trust funds.

Reports shall be submitted to Congress on the first day of the next regular session showing for the first four months of the fiscal year the average number of employees in each department, bureau, office, or establishment receiving the increased compensation at the rate of $240 per annum and the average number by grades receiving the same at each other rate. (40 Stat. 1267.)

This section is section 7 of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been substantially repeated in prior appropriation acts.

§ 3270b. (Act March 1, 1919, c. 86, § 9.) Joint Commission on Reclassification of Salaries; members; appointment; salaries; powers and duties; report.

A joint commission is created to be known as the "Joint Commission on Reclassification of Salaries," which shall consist of three Senators, who are now Members of the Congress, to be appointed by the President of the Senate, and three Representatives, who are now Members of the Congress, to be appointed by the Speaker. Said commission shall submit its report and recommendations as early as possible, and, in any event, by the second Monday in January, 1920, and the members of such commission shall receive a compensation at the rate of $625 per month, unless they are receiving other compensation from the Government. Vacancies occurring in the membership of the commission shall be filled in the same manner as the original appointments.

It shall be the duty of the commission to investigate the rates of compensation paid to civilian employees by the municipal government and the various executive departments and other governmental establishments in the District of Columbia, except the navy yard and the Postal Service, and report by bill or otherwise, as soon as practicable, what reclassification and readjustment of com-

pensation should be made so as to provide uniform and equitable pay for the same character of employment throughout the District of Columbia in the services enumerated.

The commission is authorized to sit during the sessions or recess of Congress, to send for persons and papers, to administer oaths, to summon and compel the attendance of witnesses, and to employ such personal services and incur such expenses as may be necessary to carry out the purposes of this section.

The heads of the various governmental services and the Commissioners of the District of Columbia shall furnish office space and equipment, detail officers and employees, furnish data and information, and make investigations whenever requested by the commission in connection with the purposes of this section.

For payment of the expenses authorized to be incurred, there is appropriated $25,000, or so much thereof as may be necessary, to be available immediately and to be disbursed upon vouchers approved by the commission; which approval shall be conclusive upon the accounting officers of the Treasury Department. (40 Stat. 1269.)

This section is section 9 of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

CHAPTER B—CIVIL SERVICE COMMISSION AND CLASSIFIED CIVIL SERVICE

Sec.
3271. Civil Service Commission; appointment; removal; vacancies; salaries and expenses.
3273. Members and representatives of Commission authorized to administer oaths to witnesses.
3278. Appointments and promotions in classified service to be made only upon examination.
3279. Appointments of deputy collectors of internal revenue and deputy marshals, without regard to Civil Service Act.
3281. Restriction on appointments of members of same family.
3284. Place of examinations; persons afflicted with tuberculosis; certificate of health; appointments from same family.
3284a. [Repealed.]
3285. System of efficiency ratings for classified service.
3286e. Bureau of Efficiency; investigation of methods of examining and auditing claims.
3286f. Same; investigation of work of subtreasuries.
3286g. Same; investigation of methods of transacting public business in Civil Service Commission.
3286h. Same; investigation of rates of pay of employés of States.
3286i. Same; information furnished to by executive departments.
3286j. Same; investigation of classification of employés of Departments.
3286k. Same; investigation of duplication of service in Departments.
3287. Removals from classified civil service only for cause, to promote efficiency.
3287a. Civil service status of soldiers, sailors, and marines.

§ 3271. (Act Jan. 16, 1883, c. 27, § 1.) Civil Service Commission; appointment; removal; vacancies; salaries and expenses.

Cited without definite application,
U. S. v. Lapp, 244 F. 377, 157 C. C. A. 3.

§ 3273. (Act Aug. 23, 1912, c. 350, § 1.) Members and representatives of Commission authorized to administer oaths to witnesses.

False swearing.—An applicant for a civil service position, who made false answers in his application sworn to before the recorder, held, in view of Civil Service Act and this section, guilty of perjury under Penal Code, § 125. U. S. v. Crandol (D. C.) 233 F. 331.

§ 3278. (Act Jan. 16, 1883, c. 27, § 7.) Appointments and promotions in classified service to be made only upon examination.

9. Promotions.—Promotion from the position of messenger boy, in the classified nonapportioned service to the position of laborer with classified duties, which is subject to the rule of apportionment, is prohibited by section 6 of rule XI of the civil service rules. 30 Op. Atty. Gen. 10.

An applicant, by passing the civil service examination, does not acquire a vested right to promotion in accordance with the rules in force at the time the examination is held. Id.

§ 3279. (Act Oct. 22, 1913, c. 32.) Appointments of deputy collectors of internal revenue and deputy marshals, without regard to Civil Service Act.

Validity.—It was within the power of Congress to authorize United States marshals to revoke the appointment of deputy marshals at their discretion, as was done by this section. U. S. v. Lapp, 244 F. 377, 157 C. C. A. 3.

Construction and application in general.—That this section was a rider to an appropriation bill cannot affect its construction. U. S. v. Lapp, 244 F. 377, 157 C. C. A. 3.

This section held in conflict with Act Aug. 24, 1912, c. 389, § 6 (Comp. St. 1916, § 3287), and to supersede it so far as removal of deputy marshals is concerned. Id.

Power of removal.—Under this section a deputy marshal could be removed by the marshal without notice or a hearing, and mandamus will not issue to control discretion of United States marshal in removing him. U. S. v. Lapp, 244 F. 377, 157 C. C. A. 3.

§ 3281. (Act Jan. 16, 1883, c. 27, § 9.) Restriction on appointments of members of same family.

Effect of erroneous appointment.—Where person, two members of whose family were already in civil service, was, through mistake, certified as eligible for appointment, in violation of Comp. St. 1916, § 3281, the error was not jurisdictional, and could not be corrected after appointment. 30 Op. Atty. Gen. 169.

§ 3284. (Act March 3, 1919, c. 97, § 7.) Place of examinations; persons afflicted with tuberculosis; certificate of health; appointments from same family.

Hereafter all examinations of applicants for positions in the Government service, from any State or Territory, shall be had in the State or Territory in which such applicant resides, and no person shall be eligible for such examination or appointment unless he or she shall have been actually domiciled in such State or Territory for at least one year previous to such examination: Provided further, That the Civil Service Commission shall hold examinations of applicants temporarily absent from the places of their legal residence or domicile in the District of Columbia and elsewhere in the United States where examinations are usually held, upon proof satisfactory to the commission that such applicants are bona fide residents of the States or Territories in which such applicants claim to have legal residence or domicile: Provided further, That nothing herein shall be so construed as to abridge the existing law of apportionment or change the requirements of existing law as to legal residence or domicile of such applicants: And provided further, That no person afflicted with tuberculosis shall be appointed and that each applicant for appointment shall accompany his or her application with a certificate of health from some reputable physician: And provided further, That in no instance shall more than one person be appointed from the same family. (40 Stat. 1293.)

This section is a part of section 7 of an act entitled "An act to provide for the fourteenth and subsequent decennial censuses," cited above. Section 34

of said act repeals Act July 2, 1909, c. 2, § 7, 36 Stat. 3 (Comp. St. 1916, § 3284), which contained provisions similar to those of this section.

Notes of Decisions

Construction and application in general.—The proviso of section 7 of the Census Act of July 2, 1909 (Comp. St. 1916, § 3284), which requires that all examinations for positions in the government service shall be had in the State or Territory in which the applicant resides, does not apply to the so-called nonassembled examinations. 30 Op. Atty. Gen. 194.

§ 3284a. (Res. March 27, 1918, c. 27.) [Repealed.]

This section, which was amendatory of Act July 2, 1909, was repealed by Act March 3, 1919, c. 97, § 34, 40 Stat. 1302, repealing said Act July 2, 1909, and acts amendatory thereof. See preceding section and note thereunder.

§ 3285. (Act Aug. 23, 1912, c. 350, § 4.) System of efficiency ratings for classified service.

Preference to ex-soldiers and sailors.—The proviso of this section, relating to the reduction in rank and salary of honorably discharged soldiers and sailors, does not prohibit the head of a department from conforming the salary of such employees to the grade or character of work they may be called upon to perform. 30 Op. Atty. Gen. 167.

§ 3286e. (Act March 3, 1917, c. 163, § 1.) Bureau of Efficiency; investigation of methods of examining and auditing claims.

The Bureau of Efficiency shall investigate the methods of examining and auditing claims against the United States and accounts of disbursing officers, and of accounting for receipts and disbursements and shall submit a report to the Secretary of the Treasury and to Congress, with recommendations, at its next regular session. (39 Stat. 1080.)

This section and the six sections next following were provisions of the legislative, executive, and judicial appropriation act for the fiscal year 1918, cited above.

§ 3286f. (Act March 3, 1917, c. 163, § 1.) Same; investigation of work of subtreasuries.

The Bureau of Efficiency shall investigate the work performed by the Subtreasuries and report to the Secretary of the Treasury and to Congress at the beginning of the next regular session what part of the work of the Subtreasuries may be transferred to other offices of the Government, banks of the Federal Reserve System or Farm Loan Banks, and for the purpose of this investigation the representatives of the Bureau of Efficiency shall have access to all necessary books and other records of the Government. (39 Stat. 1080.)

See note to § 3286e, ante.

§ 3286g. (Act March 3, 1917, c. 163, § 1.) Same; investigation of methods of transacting public business in Civil Service Commission.

The Bureau of Efficiency shall investigate the methods of transacting the public business in the Civil Service Commission and report to Congress through the President at the next regular session of Congress. The officers and employees of the Civil Service Commission are hereby directed to furnish said bureau with such information as it may require to carry out this provision. (39 Stat. 1080.)

See note to § 3286e, ante.

§ 3286h. (Act March 3, 1917, c. 163, § 1.) Same; investigation of rates of pay of employés of States.

The Bureau of Efficiency shall ascertain the rates of pay of employees of various State and municipal governments and commer-

cial institutions in different parts of the United States, and shall submit to Congress at its next regular session a report showing how such rates compare with the rates of pay of employees of the Federal Government performing similar services. (39 Stat. 1081.)

See note to § 3286e, ante.

§ 3286i. (Act March 3, 1917, c. 163, § 1.) Same; information furnished to by executive departments.

Officers and employees of the executive departments and other establishments shall furnish authorized representatives of the Bureau of Efficiency with all information that the bureau may require for the performance of the duties imposed on it by law, and shall give such representatives access to all records and papers that may be needed for that purpose. (39 Stat. 1081.)

See note to § 3286e, ante.

§ 3286j. (Act March 3, 1917, c. 163, § 1.) Same; investigation of classification of employés of Departments.

The Bureau of Efficiency shall investigate the classification, salary, and efficiency of the employees of the Departments and Independent Establishments of the Government in the District of Columbia and report fully or partially to Congress by January first, nineteen hundred and eighteen, as to needed equalization or reclassification, and if a partial report be submitted then a full report shall be submitted as soon thereafter as possible with such recommendations as the Bureau may deem proper. (39 Stat. 1081.)

See note to § 3286e, ante.

§ 3286k. (Act March 3, 1917, c. 163, § 8.) Same; investigation of duplication of service in Departments.

The Bureau of Efficiency shall investigate duplication of service in the various executive departments and establishments of the Government, including bureaus and divisions, and make a report to the President thereon, and the President is hereby authorized, after such report shall have been made to him, wherever he finds such duplications to exist to abolish the same. Report of the action taken hereunder shall be made to Congress at its next regular session. (39 Stat. 1122.)

See note to § 3286e, ante.

§ 3287. (Act Aug. 24, 1912, c. 389, § 6.) Removals from classified civil service only for cause, to promote efficiency.

Construction and application in general.—Act Oct. 22, 1913, c. 32 (Comp. St. 1916, § 3279), held in conflict with this section, and to supersede it so far as removal of deputy marshals is concerned. U. S. v. Lapp, 244 F. 377, 157 C. C. A. 3.

Officers protected.—Terms of office of deputy collectors of internal revenue expire automatically with appointment of collector to succeed their own collector, as indicated by R. S. § 3149 (Comp. St. 1916, § 5854), and R. S. § 3148 (superseded), as to removal of deputies, and their terms are unaffected by Act Aug. 24, 1912, § 6, 37 Stat. 555 (U. S. Comp. St. § 3287), as to removals from civil service. 30 Op. Atty. Gen. 1.

This section does not apply to persons occupying excepted positions. 30 Op. Atty. Gen. 181.

Determination of cause for removal.—Where an employé in the classified civil service is regularly removed from office under charges, and the officers removing him were empowered by law so to do, the question as to whether there was just cause for such removal is one for the executive authorities, and the courts deal only with any departure from the law itself. Eberlein v. U. S., 53 Ct. Cl. 466.

A person in the classified civil service cannot be deprived of his status in the service, except by removal as provided in this section, and it is for the head of a department, and not the civil service commission, to determine when there exists proper cause for the removal. 30 Op. Atty. Gen. 79.

Regulations restricting removal.—Civil service regulations held not to have the force of law, and the courts cannot

enforce them or review the removal of an employé. U. S. v. Lapp, 244 F. 377, 157 C. C. A. 3.

A civil service employé, whose position was in the engineer department at large, may be suspended without pay by the officer in charge, in conformity with the provisions of paragraph 13, section V, of General Orders No. 5, Office of Chief of Engineers, and with the instructions governing the classified civil service as applied to the engineer department at large. Burnap v. U. S., 53 Ct. Cl. 605.

Compensation after wrongful removal.—Where an employé of the United States in the classified civil service is discharged from the service and claims the pay of the office subsequent to his removal, it must appear affirmatively that he was willing and able to discharge the duties of the office during said period. Nicholas v. U. S., 53 Ct. Cl. 463.

Removal of officers not subject to act.—In the absence of constitutional or statutory regulations, the power of appointment carries with it, as an incident, the power to remove when no definite term is attached to the office by law. U. S. v. Lapp, 244 F. 377, 157 C. C. A. 3.

Where an authority vested by law with the power of appointment removes an employé whose term of office is not for a fixed period, and the right to remove is not forbidden by the Constitution or statute, the court will not review the causes of removal. Costello v. U. S., 51 Ct. Cl. 257.

§ 3287a. (Act March 1, 1919, c. 86, § 1.) Civil service status of soldiers, sailors, and marines.

The period of time during which soldiers, sailors, and marines, both enlisted and drafted men, who, prior to entering the service of their country, had a civil service status, and whose names appear upon the eligible list of the Civil Service Commission, shall not be counted against them in the determination of their eligibility for appointment under the law, rules and regulations of the Civil Service Commission now in effect, and at the time of demobilization their civil service status shall be the same as when they entered the service. (40 Stat. 1224.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

TITLE XIX A—OFFICIAL [AND PENAL] BONDS

§ 3294. (Act Aug. 13, 1894, c. 282, § 2.) Appointment of agents in judicial districts where suretyship is undertaken.

Service of process on agent.—See U. S. v. Southern Dredging Co. (D. C.) 251 F. 400.

§ 3301a. (Act Feb. 24, 1919, c. 18, § 1320.) Liberty or other United States bonds in lieu of surety bonds; return; contractors' bonds.

Wherever by the laws of the United States or regulations made pursuant thereto, any person is required to furnish any recognizance, stipulation, bond, guaranty, or undertaking, hereinafter called "penal bond," with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security with the official having authority to approve such penal bond, United States Liberty bonds or other bonds of the United States in a sum equal at their par value to the amount of such penal bond required to be furnished, together with an agreement authorizing such official to collect or sell such bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such United States bonds in lieu of surety or sureties required by law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, post-office money orders, or cash, for the penalty or amount of such penal bond. The bonds deposited hereunder, and such other United States bonds as may be substituted therefor from time to time as such security, may be deposited with the Treasurer, or an Assistant Treasurer of the United States, a Government depository, Federal Reserve bank, or member bank, which shall issue receipt therefor, describing such bonds so deposited. As soon as security for the performance of such penal bond is no longer necessary, such bonds so deposited, shall be returned to the depositor: Provided, That in case a person or persons supplying a contractor with labor or material as provided by the Act of Congress, approved February 24, 1905 (33 Stat. 811), entitled "An Act to amend an Act approved August thirteenth, eighteen hundred and ninety-four, entitled 'An Act for the protection of persons furnishing materials and labor for the construction of public works,'" shall file with the obligee, at any time after a default in the performance of any contract subject to said Acts, the application and affidavit therein provided, the obligee shall not deliver to the obligor the deposited bonds nor any surplus proceeds thereof until the expiration of the time limited by said Acts for the institution of suit by such person or persons, and, in case suit shall be instituted within such time, shall hold said bonds or proceeds subject to the order of the court having jurisdiction thereof: Provided further, That nothing herein contained shall affect or impair the priority of the claim of the United States against the bonds deposited or any right or remedy granted by said Acts or by this section to the United States for default upon any obligation of said penal bond: Provided further, That all laws inconsistent with this section are hereby so modified as to conform to the provisions hereof: And provided further, That nothing contained herein shall affect the authority of

courts over the security, where such bonds are taken as security in judicial proceedings, or the authority of any administrative officer of the United States to receive United States bonds for security in cases authorized by existing laws. The Secretary may prescribe rules and regulations necessary and proper for carrying this section into effect. (40 Stat. 1148.)

This section is § 1320 of the Revenue Act of 1918 (Title XIII—General Administrative Provisions), cited above.

Act Feb. 24, 1905, c. 778, referred to in this section, is set forth in U. S. Comp. St. 1916 as § 6923 thereof.

TITLE XXI—SEAT OF GOVERNMENT, INCLUDING THE PUBLIC BUILDINGS AND GROUNDS, PARKS, AND RESERVATIONS

CHAPTER A—PUBLIC BUILDINGS AND GROUNDS, PARKS AND WHARVES

Sec.
3311a. Washington aqueduct; superintendence of by Secretary of War.
3328. State, War, and Navy building.
3329a. State, War, and Navy building; duties of superintendent extended to buildings on Henry Park Reservation.
3329b. Same; duties of superintendent extended to buildings in certain parks.
3329c. Same; duties of superintendent extended to temporary office buildings.
3329cc. Same; distribution of employés.
3331b. Rentals for gas governors.
3332a. Central heating, lighting and power plants; buildings supplied from.
3345a. Part of Washington Aqueduct for play ground purposes.
3360a. Rock Creek Park and Piney Branch Parkway part of park system.
3361c. Potomac Park; tidal basin bathing beach.
3363a. Anacostia Park.
3369aa. Public Buildings Commission; members; powers and duties.
3369b. Use of flag for advertising purposes; mutilation of flag.
3369c. Free tuition in schools for children of officers and men of Army and Navy.
3369d. Special instruction in schools to soldiers and sailors.
3369e. Government fuel yards.
3369ee. Appropriation for fuel; use.

§ 3311a. (Act Aug. 31, 1918, c. 164, § 1.) Washington aqueduct; superintendence of by Secretary of War.

Washington aqueduct. * * Nothing herein shall be construed as affecting the superintendence and control of the Secretary of War over the Washington Aqueduct, its rights, appurtenances, and fixtures connected with the same and over appropriations and expenditures therefor as now provided by law. (40 Stat. 951.)

This was a provision accompanying appropriations for the Washington Aqueduct in the District of Columbia appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

§ 3328. (Act March 3, 1883, c. 128, § 1.) State, War, and Navy building.

The current legislative, executive, and judicial appropriation act, Act March 1, 1919, c. 86, § 1, 40 Stat. 1213, contains the following appropriation:

"Office of Superintendent: Assistant superintendent, $2,000; clerks—two of class one, one $1,000; chief engineer, $1,800; five assistant engineers, at $1,200 each; electrical machinist, $1,200; captain of the watch, $1,200; two lieutenants of the watch, at $840 each; forty-two watchmen; carpenter, $1,000; chief electrician, $1,400; electrician, $1,200; machinist, $1,000; painter, $1,000; plumber, $1,000; three dynamo tenders, at $900 each; nine skilled laborers or mechanics, at $840 each; messenger; foreman of laborers, $840; sixteen firemen; twenty elevator conductors, at $720 each; two foremen or forewomen, at $780 each; fifty-five laborers; three second-class firemen, at $660 each; gardener, $720; three attendants at $480 each; in all, $133,980."

§ 3329a. (Act March 28, 1918, c. 28, § 1.) State, War, and Navy building; duties of superintendent extended to buildings on Henry Park Reservation.

War and Navy Department Buildings (Henry Park Reservation): * *

The superintendent of the State, War, and Navy Department Buildings shall serve in a similar capacity in connection with these buildings. (40 Stat. 482.)

This section, and the section next following, were provisions of the urgent deficiency appropriation act for the year 1918, and prior years, on account of war expenses, cited above.

§ 3329b. (Act March 28, 1918, c. 28, § 1.) Same; duties of superintendent extended to buildings in certain parks.

For two three-story temporary office buildings of reinforced concrete with wings sixty feet wide, one for the Navy Department to contain approximately nine hundred and forty thousand square feet and one for the War Department to contain approximately eight hundred and thirty-five thousand square feet, to be erected under the direction of the Secretary of the Navy in Potomac Park west of Seventeenth Street and south of B Street, beginning with the Navy Department Building at a point not less than two hundred and thirty-five feet west of the westerly curb line of Seventeenth Street and fifty feet south from the southerly curb line of B Street and extending southerly not more than six hundred and twenty feet from the said B street curb line and westerly to a point not beyond the easterly building line of Twenty-first Street. * *

For two three-story temporary office buildings of the type erected in Henry Park, one to be located in Seaton Park (north) between Four-and-a-half and Sixth Streets and south of Missouri Avenue and to contain approximately three hundred and seventy thousand square feet and one to be located on the Mall between Seventh and Ninth Streets and B Street north and B Street south and to contain approximately three hundred thousand square feet, and for a three-story temporary office building of reinforced concrete to be located in Seaton Park (south) between Four-and-a-half and Sixth Streets and north of Maine Avenue and to contain approximately two hundred and seventy thousand square feet. * *

The maintenance and protection of all of the foregoing temporary buildings when completed shall be under the supervision and direction of the superintendent of the State, War, and Navy Department Buildings. (40 Stat. 483.)

See note to § 3329a, ante.

§ 3329c. (Act June 4, 1918, c. 92.) Same; duties of superintendent extended to temporary office buildings.

The maintenance and protection of the temporary office building erected by the War Department between Eighteenth and Nineteenth Streets and B Street and Virginia Avenue northwest shall be under the supervision of the superintendent of the State, War, and Navy Department Building. (40 Stat. 598.)

§ 3329cc. (Act July 8, 1918, c. 139, § 1.) Same; distribution of employés.

The Superintendent of the State, War, and Navy Department Building may from time to time alter the distribution among the various office buildings under his direction and control of the employees allowed by law as he may find it necessary and proper to do. (40 Stat. 831.)

This section was a provision of the deficiency appropriation act on account of war expenses for the fiscal year ending June 30, 1918, cited above.

§ 3331b. (Act July 1, 1918, c. 113, § 1.) Rentals for gas governors.

Rentals shall not be paid for such gas governors greater than thirty-five per centum of the actual value of the gas saved thereby,

which saving shall be determined by such tests as the Secretary of the Treasury shall direct. (40 Stat. 640.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 3332a. (Act June 12, 1917, c. 27, § 1.) Central heating, lighting, and power plants; buildings supplied from.

The Secretary of the Treasury is authorized, in his discretion, to include among the buildings to be supplied with heat, light, and power from the central heating, lighting, and power plant, the Pan American Building, the building occupied by the Civil Service Commission, and the municipal fish market, and the limit of cost of said central heating, lighting, and power plant is hereby increased in the sum of $68,000, which amount is hereby appropriated: Provided, That the foregoing buildings shall not be included among the buildings to be supplied with heat, light, and power, from the said power plant, if such inclusion shall interfere in any way with the completion of the said plant at the earliest date possible. (40 Stat. 112.)

These were provisions of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 3345a. (Act Aug. 31, 1918, c. 164, § 1.) Part of Washington Aqueduct for play ground purposes.

The Chief of Engineers is hereby authorized to transfer for playground purposes the possession, use and control of all that portion of the land of the Washington Aqueduct adjacent to the Champlain Avenue pumping station and lying outside of the existing fence around said pumping station to the control and jurisdiction of the Commissioners of the District of Columbia. (40 Stat. 951.)

This was a provision of the District of Columbia appropriation act for the fiscal year 1919, cited above.

§ 3360a. (Act July 1, 1918, c. 113, § 1.) Rock Creek Park and Piney Branch Parkway part of park system.

Rock Creek Park and the Piney Branch Parkway are hereby made a part of the park system of the District of Columbia defined by section two of the Act of Congress approved July first, eighteen hundred and ninety-eight (Thirtieth Statutes at Large, page five hundred and seventy). (40 Stat. 650.)

This section was a part of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 3361c. (Act June 12, 1917, c. 27, § 1.) Potomac Park; tidal basin bathing beach.

The Chief of Engineers of the United States Army is authorized and directed to establish and maintain at a suitable place upon the shore of the Tidal Basin, in Potomac Park, a public bathhouse, with the necessary equipment, with a sloping sandy beach in the Tidal Basin, and to install a proper equipment to purify the water entering the basin so that it will not endanger the health of those bathing in it. The direction and control of said public bathing facilities shall be vested in the Chief of Engineers of the United States Army, who shall prescribe such regulations for their use as may be necessary to insure the greatest benefit to the public: Provided, That no charge shall be made for the use of the bathhouse or beach, except that uniform fees may be collected for the hire of bathing suits, soap, towels, and such other conveniences as may be provided upon the request of persons desiring to use them. To enable the Chief of Engineers to begin construction of the bathhouse, beach, and purification plant herein provided for, $35,000, to be im-

mediately available; and the limit of cost of such construction sh not exceed that amount. (40 Stat. 133.)

These were provisions of the sundry civil appropriation act for the fis year 1918, cited above.

§ 3363a. (Act Aug. 31, 1918, c. 164, § 1.) Anacostia Park.

Anacostia River and Flats. For continuing the reclamation a development of the Anacostia River and Flats from the mouth the river to the District line, * * That the entire area reclaim and to be reclaimed from the mouth of the river to the District li be, and the same is hereby, made and declared a part of the pa system of the District of Columbia and designated Anacos Park: * * (40 Stat. 950, 951.)

This was a provision accompanying an appropriation for the reclamat and development of certain portions of the Anacostia River and Flats the District of Columbia appropriation act for the fiscal year 1919, ci above.

§ 3369aa. (Act March 1, 1919, c. 86, § 10.) Public Buildings Co mission; members; powers and duties.

With a view to the control and allotment of space in owned leased Government buildings in the District of Columbia, a Pu Buildings Commission is hereby created to be composed of Senators to be appointed by the President of the Senate and Members of the House of Representatives to be appointed by Speaker, who shall serve thereon only so long as they are M bers of Congress, and the Superintendent of the Capitol Bu il and Grounds, the officer in charge of public buildings and grou and the Supervising Architect or the Acting Supervising Arch of the Treasury during any vacancy in said office. Said com sion shall elect one of its members as chairman of the commis and is authorized to employ such expert clerical or other ser as it may deem necessary.

Any vacancies in said commission shall be filled in the same ner as the original appointments were made.

Said commission shall have the absolute control of and th lotment of all space in the several public buildings owned or b ings leased by the United States in the District of Columbia, the exception of the Executive Mansion and office of the Presic Capitol Building, the Senate and House Office Buildings, the itol power plant, the buildings under the jurisdiction of the Reg of the Smithsonian Institution, and the Congressional Lib Building, and shall from time to time assign and allot, for the of the several activities of the Government, all such space.

For expenses of said commission, $10,000, to be immedia available and remain available until expended and to be paid on vouchers signed by the chairman of said commission. (40 S 1269.)

This section is section 10 of the legislative, executive, and judicial ap priation act for the fiscal year 1920, cited above.

§ 3369b. (Act Feb. 8, 1917, c. 34.) Use of flag for advertis purposes; mutilation of flag.

Hereafter any person who, within the District of Columbia any manner, for exhibition or display, shall place or cause to placed any word, figure, mark, picture, design, drawing or any vertisement of any nature upon any flag, standard, colors or ens of the United States of America; or shall expose or cause to be posed to public view any such flag, standard, colors or ensign u which shall have been printed, painted or otherwise placed, o which shall be attached, appended, affixed or annexed any w figure, mark, picture, design or drawing, or any advertisemen any nature; or who, within the District of Columbia, shall ma

facture, sell, expose for sale or to public view or give away or have in possession for sale or to be given away or for use for any purpose, any article or substance being an article of merchandise, or a receptacle for merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, colors or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed; or who, within the District of Columbia, shall publicly mutilate, deface, defile or defy, trample upon or cast contempt, either by word or act, upon any such flag, standard, colors or ensign, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $100 or by imprisonment for not more than thirty days, or both, in the discretion of the court. The words "flag, standard, colors, or ensign," as used herein, shall include any flag, standard, colors, ensign or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors or ensign of the United States of America or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America. (39 Stat. 900.)

This was an act entitled "An act to prevent and punish the desecration, mutilation, or improper use, within the District of Columbia, of the flag of the United States of America," cited above.

§ 3369c. (Act Aug. 31, 1918, c. 164, § 1.) Free tuition in schools for children of officers and men of Army and Navy.

The children of officers and men of the United States Army and Navy stationed outside of the District of Columbia shall be admitted to the public schools without payment of tuition. (40 Stat. 937.)

This was a provision of the District of Columbia appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

§ 3369d. (Act March 28, 1918, c. 28, § 1.) Special instruction in schools to soldiers and sailors.

Soldiers and sailors of the United States not residents of the District of Columbia who are on duty at stations adjacent to the District of Columbia shall be admitted for special instruction to the day schools and night schools of the District of Columbia without payment of tuition. (40 Stat. 470.)

This was a provision of the urgent deficiency appropriation act for the year 1918, and prior years, on account of war expenses, cited above.

§ 3369e. (Act July 1, 1918, c. 113, § 1.) Government fuel yards.

The Secretary of the Interior is authorized and directed to establish in the District of Columbia storage and distributing yards for the storage of fuel for the use of and delivery to all branches of the Federal service and the municipal government in the District of Columbia and such parts thereof as may be situated immediately without the District of Columbia and economically can be supplied therefrom, and to select, purchase, contract for, and distribute all fuel required by the said services. Authority is granted the Secretary of the Interior, in connection with the establishment of the said yards, to procure by purchase, requisition for immediate use, condemnation, or lease for such period as may be necessary, land, wharves, and railroad trestles and sidings requisite therefor. All

branches of the Federal service and the municipal government the District of Columbia, from and after the establishment of said fuel yards, shall purchase all fuel from the Secretary of the terior and make payment therefor from applicable appropriation the actual cost thereof to the United States, including all exper connected therewith. (40 Stat. 672.)

This section was a part of the sundry civil appropriation act for fiscal year 1919, cited above.

§ 3369ee. (Act July 1, 1918, c. 113, § 1.) Appropriation for f use.

For the purchase and transportation of fuel; storing and handl fuel in yards; maintenance and operation of yards and equipm including motor-propelled passenger-carrying vehicles for insp tors, rentals, and all other expenses requisite for and incident th to, including personal services in the District of Columbia, $1,1 088, to be available immediately: * * Provided further, Tha part of any moneys herein or hereafter appropriated shall be u for the purpose of taking over or in any way interfering with yards or coal dumps or other facilities for storage and distribu of coal that have been used and occupied in the past year by dealers for supplying the general public. (40 Stat. 673.)

This section was a provision of the sundry civil appropriation act fo fiscal year 1919, cited above.

CHAPTER B—CAPITOL BUILDING AND GROUNDS

§ 3370. (Act Feb. 14, 1902, c. 17.) Superintendent of Ca Buildings and Grounds.

The appropriation for employés under the Superintendent of Capitol ings and Grounds for the current year was by Act March 1, 1919, c. 86 40 Stat. 1213.

§ 3391. (Act March 3, 1903, c. 1012, § 34.) Intoxicating liq not to be sold in Capitol.

The manufacture, importation and sale of intoxicating liquors in the trict of Columbia was prohibited by Act March 3, 1917, c. 165, § 1, po 3421¼a–3421¼s.

§ 3408a. (Act July 1, 1918, c. 113, § 1.) Capitol police; additi force.

For an additional uniformed police force during the period o war for the protection of the Capitol Building and Grounds, Senate and House Office Buildings, and the Capitol Power P and for emergencies, and each and every item incident the $30,000, one-half to be disbursed by the Secretary of the Senate one-half by the Clerk of the House of Representatives: Prov That the appointment to the positions herein provided shal made by the Sergeants-at-Arms of the two Houses and the Su intendent of the Capitol Building and Grounds, and shall be solely on account of efficiency and special qualifications. (40 697.)

This section was a provision of the sundry civil appropriation act fo fiscal year 1919, cited above.

CHAPTER BB—INTOXICATING LIQUORS IN THE DISTRICT OF COLUMBIA

Sec.
3421¼a. Manufacture, importation, sale, or gift prohibited; alcoholic liquors denned.
3421¼aa. Liquors permitted to be manufactured.
3421¼b. Transportation into District; records.
3421¼bb. Sale by pharmacists; physicians' prescriptions.
3421¼c. Permits for wine for sacramental purposes.
3421¼cc. Licenses for manufacture or sale of permitted liquors.
3421¼d. Records of sales or shipments.
3421¼dd. Delivery of liquors by carriers.
3421¼e. Maintenance of places for receiving or keeping liquors.
3421¼ee. Keeping or giving away of liquors to evade act.
3421¼f. Advertisements.
3421¼ff. Searches and seizures.
3421¼g. Drinking or being drunk in or on streets.
3421¼gg. Payment of special taxes prima facie evidence of keeping.
3421¼h. Liquor nuisances; maintenance.
3421¼hh. Same; abatement of and injunction against.
3421¼i. Restraining violations of act.
3421¼j. Liquor nuisance; maintenance by tenant.
3421¼k. Same; permitting maintenance.
3421¼l. Property rights in liquors illegally manufactured; searches and seizures.
3421¼m. Civil actions for damages.
3421¼n. Intoxication by locomotive engineers, conductors or brakemen, etc.
3421¼o. Enforcement of act; failure; punishment.
3421¼p. Informations for violations of act; conduct of prosecutions.
3421¼q. Partial invalidity of act.
3421¼r. Singular number includes plural.
3421¼s. Time of taking effect of act; excise board abolished.

§ 3421¼a. (Act March 3, 1917, c. 165, § 1.) Manufacture, importation, sale or gift prohibited; alcoholic liquors defined.

On and after the first day of November, Anno Domini nineteen hundred and seventeen, no person or persons, or any house, company, association, club, or corporation, his, its, or their agents, officers, clerks, or servants, directly or indirectly, shall, in the District of Columbia, manufacture for sale or gift, import for sale or gift, sell, offer for sale, keep for sale, traffic in, barter, export, ship out of the District of Columbia, or exchange for goods or merchandise, or solicit or receive orders for the purchase of, any alcoholic or other prohibited liquors for beverage purposes or for any other than scientific, medicinal, pharmaceutical, mechanical, sacramental, or other nonbeverage purposes.

Wherever the term "alcoholic liquors" is used in this Act it shall be deemed to include whisky, brandy, rum, gin, wine, ale, porter, beer, cordials, hard or fermented cider, alcoholic bitters, ethyl alcohol, all malt liquors, and all other alcoholic liquors.

That any person or persons, or any house, company, association, club, or corporation, his, its, or their agents, officers, clerks, or servants, who shall directly or indirectly violate the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $300 nor more than $1,000, and shall be imprisoned in the District jail or workhouse for a period of not less than thirty days nor more than one year for each offense. (39 Stat. 1123.)

This section and the twenty-six sections next following were an act entitled "An act to prevent the manufacture and sale of alcoholic liquors in the District of Columbia, and for other purposes," cited above.

§ 3421¼aa. (Act March 3, 1917, c. 165, § 2.) Liquors permitted to be manufactured.

The provisions of this Act shall not be construed to prevent the manufacture, importation, exportation, or sale of denatured or of

methyl alcohol, or of ethyl alcohol, for scientific, medicinal, ph maceutical, or mechanical purposes, nor to prevent the sale of coholic or other prohibited liquors by druggists for medicinal p poses on prescriptions of physicians under the regulations set in section three of this Act: Provided, That the manufacture a sale of ethyl alcohol or of alcoholic liquors for sacramental purpo within the District of Columbia shall be restricted to manufactur and druggists licensed, respectively, to make and sell such alco and alcoholic or other prohibited liquors, as hereinafter provid for scientific, mechanical, pharmaceutical, medicinal, or sacram tal purposes only. (39 Stat. 1123.)

See note to § 3421¼a, ante.

§ 3421¼b. (Act March 3, 1917, c. 165, § 2a.) Transportation i District; records.

All railroad, steamboat, or other boat companies, express transportation companies of any kind, which shall in any mar at any time transport intoxicating liquors into the District, hereby required to keep a record, alphabetically arranged, in w shall be entered immediately upon receipt thereof the name of ery person shipping or to whom intoxicating liquors are ship the amount and kind of liquor, the date of delivery, by whom to whom delivered, and the affidavit of the person receiving liquor as provided herein. After this record is made and before livery it shall be signed by the consignee. The book shall be to the inspection of any person during the business hours of company. Such books or a copy of such records, attested b officer of the company or verified by affidavit, shall be admiss as evidence in any court and shall be prima facie evidence of fact therein stated in any trial or proceeding for the enforcemen the provisions of this Act.

An employee or agent of any express company, railroad pany, steamboat company, or transportation company charged the duty of keeping such record who shall fail to keep such re shall be guilty of a misdemeanor.

Any railroad company, express company, steamboat compan transportation company who shall not require some one of its ployees to keep such record shall be fined not less than $25 more than $100 for every day or portion thereof during which failure shall continue.

No railroad or other transportation company shall receive a p age of liquor to be shipped or carried into the District without ing attached to it the affidavit of the consignee stating the am of the liquors, the kinds of liquors ordered, and that it is not chased for, nor will such liquors be used by the consignee fo illegal purpose. (39 Stat. 1123.)

See note to § 3421¼a, ante.

§ 3421¼bb. (Act March 3, 1917, c. 165, § 3.) Sale by pharmac physicians' prescriptions.

Regularly licensed and registered druggists or pharmacis the District of Columbia shall not sell alcoholic or other prohi liquors nor compound nor mix any composition thereof, nor sel malt extract or other proprietary medicines containing alcoho cept such compounds, compositions, malt extracts, or propri medicines be so medicated as to be medicinal preparations or pounds unfit for use as beverages, except upon a written and fide prescription of a duly licensed and regularly practicing p cian in the District of Columbia, whose name shall be si thereto. Such prescription shall contain a statement that the ease of the patient requires such a prescription, shall be numb

in the order of receiving, and shall be canceled by writing on it the word "canceled" and the date on which it was presented and filled, and kept on file in consecutive order, subject to public inspection at all times during business hours. No such prescription shall be filled more than once. Every druggist or pharmacist selling intoxicating liquors as herein provided shall keep a book provided for the purpose, and shall enter therein at the time of every sale a true record of the date of the sale, the name of the purchaser, who shall sign his name in said book as a part of the entry, his residence (giving the street and house number, if there be such), the kind and quantity and price of such liquor, the purpose for which it was sold, and the name of the physician giving the prescription therefor. Such book shall be open to public inspection during business hours, and shall be in form substantially as follows:

Date.	Name of purchaser.	Residence.	Kind and quantity.	Purpose of use.	Price.	Name of physician.	Signature of purchaser.

Said book shall be produced before the Commissioners of the District of Columbia or the courts when required, and shall also contain a statement of the kind and amount of alcoholic and other prohibited liquors on hand when this Act shall go into effect, and thereafter such druggist or pharmacist shall, on the order of the court or the Commissioners of the District, make a statement of the amount of intoxicating liquor sold or used in any manner since the last statement and the amount on hand at the date when such court or commissioners require such statement: Provided, That ethyl alcohol may be sold without a physician's prescription for mechanical, medicinal, pharmaceutical, or scientific purposes by registered and licensed druggists or pharmacists, or by licensed manufacturers, each and all of whom shall keep a book for the purpose of registering such sales in a similar manner and form as required for the sale of other alcoholic and other prohibited liquors by the provisions of this section: Provided further, That any person who shall make any false statement as to the purpose or use of alcohol purchased under the provisions of this section shall be deemed guilty of a misdemeanor and be fined for each offense not less than $50 nor more than $300, and in default of the payment of such fine shall be imprisoned in the jail or workhouse of said District not more than six months.

Any druggist or pharmacist who shall sell or dispense any alcoholic or other prohibited liquors, except in such manner as provided in this section, or who shall fail or refuse to keep the record herein required, or who shall refill any prescription, or who shall violate any other provisions of this Act, shall be guilty of illegal selling, and upon conviction thereof shall be subject to the penalties prescribed in section one of this Act. Upon a second conviction for said offense, in addition to the penalties prescribed in said section one, it shall be a part of the judgment of conviction that the license of such druggist or pharmacist to practice pharmacy shall be revoked, and the court before which such person is tried and convicted shall cause a certified copy of such judgment of conviction to be certified to the board having authority to issue license to practice pharmacy in the District of Columbia.

Any physician who shall prescribe any alcoholic or other pro-

hibited liquor except for treatment of disease, which, after hi personal diagnosis, he shall deem to require such treatment be deemed guilty of a misdemeanor, and upon conviction t shall be fined not less than $100 nor more than $500, and fault of payment of said fine shall be imprisoned in the Distri or workhouse for not less than thirty nor more than ninety and upon a second conviction for said offense, in addition penalty above provided, it shall be a part of the judgment o viction that the license of such physician to practice medici revoked, and the court before which such physician is trie convicted shall cause a certified copy of such judgment of c tion to be certified to the board having authority to issue li to practice medicine in the District of Columbia. (39 Stat.

See note to § 3421¼a, ante.

§ 3421¼c. (Act March 3, 1917, c. 165, § 4.) Permits for wi sacramental purposes.

When any minister, pastor, or priest of a religious congre or church desires wine for sacramental purposes in the usu ligious exercises of his denomination, he may apply to the Co sioners of the District of Columbia for a permit, stating the a desired, for what period, and for what purpose, and said co sioners, if satisfied of the good faith of the application, shall a written permit to the applicant permitting the shipment t or the purchase by him, of such amount as is shown to b sonably necessary, which amount shall be stated in the perm gether with the purpose for which it is to be used and the to be covered by such use; the amount of wine permitted shipped or purchased under one permit shall not exceed fiv lons, and the said permit shall be attached to the outside package by the shipper and remain so attached until delive the consignee when it shall be canceled by the carrier. Sai mit shall be void after twenty days, and shall not be used for than one shipment. (39 Stat. 1125.)

See note to § 3421¼a, ante.

§ 3421¼cc. (Act March 3, 1917, c. 165, § 5.) Licenses for ma ture or sale of permitted liquors.

Any person, company, or corporation desiring to manufact coholic or other prohibited liquors for the purposes permit this Act shall on or before the first day of November of eac obtain a license from the Commissioners of the District of C bia for the year beginning November first upon the paym $100, which money shall be deposited with other license fu the District. Druggists, wholesale or retail, desiring to s coholic or other prohibited liquors for the purposes permit this Act shall obtain a license in the same way for the same p the fee for wholesale druggists being $25, for retail druggist The Commissioners shall have power to refuse or revoke censes referred to in this section if doubtful of the good faith licensee and his intention to comply with this Act. Manuf ers licensed according to this section shall sell alcoholic and prohibited liquors within the District of Columbia to drug hospitals, and scientific laboratories only, and only to such gists as are licensed under the terms of this section. No than druggists and manufacturers licensed according to thi tion may manufacture or sell alcoholic and other prohibited li in the District of Columbia, and these only for the purpose mitted by this Act. Violations of this section shall be punish fine of not less than $300 nor more than $1,000, and by imp ment in the District jail or workhouse for not less than thirty

nor more than one year: Provided, That nothing in this Act shall prevent any executive department or other establishment of the United States Government from purchasing or importing into the District of Columbia, free of tax and for its own uses, denatured, methyl, or ethyl alcohol for scientific, medicinal, pharmaceutical, or mechanical purposes. (39 Stat. 1125.)

See note to § 3421¼a, ante.

§ 3421¼d. (Act March 3, 1917, c. 165, § 5a.) Records of sales or shipments.

Every licensed manufacturer of alcoholic liquor not herein prohibited shall keep a permanent record of all sales and shipments of alcoholic liquor. Such record shall set forth the following information: The name of the consignee or purchaser, the quantity of liquor, the express company or other carrier by which such liquor was shipped, the date of sale or shipment, and the purpose of the purchase as set forth in the affidavit accompanying the order. Each common or special carrier of alcoholic liquors within the District shall keep a record as above provided, and a certified copy of such record with a copy of the affidavits shall be filed with the District Commissioners not later than the fifth day of each month for the calendar month preceding. No shipment of alcoholic liquors shall be made until the purchaser signs an affidavit that such alcoholic liquors are not purchased for nor will such liquors be used or sold by the consignee for beverage purposes. The District Commissioners shall keep a public record of such sales, shipments, and affidavits, alphabetically arranged. Copies of the affidavit shall be attached permanently at the end of the record of each shipment or sale, and to each package containing liquor until delivered to the consignee. Any violation of this section shall be deemed a misdemeanor and be subject to the same penalties as provided in section one of this Act. (39 Stat. 1126.)

See note to § 3421¼a, ante.

§ 3421¼dd. (Act March 3, 1917, c. 165, § 6.) Delivery of liquors by carriers.

It shall be unlawful for any common or other carrier, express company, or any person to deliver to any person, company, corporation, club, or association or order, his, or its agents, clerks or employees, any liquors in the District of Columbia knowing the same to be such, and in the case of shipments of liquors for purposes not prohibited it shall be unlawful to bring the same into the District of Columbia, or to deliver the same therein, in original packages or otherwise, on any Sunday or on any other day before six o'clock antemeridian and after five o'clock postmeridian. Any common or other carrier, express company, or any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $100 or more than $500, or be confined in the District jail or workhouse not less than one nor more than six months, or by both fine and imprisonment in the discretion of the court. (39 Stat. 1126.)

See note to § 3421¼a, ante.

§ 3421¼e. (Act March 3, 1917, c. 165, § 7.) Maintenance of places for receiving or keeping liquors.

Every person who shall directly or indirectly keep or maintain by himself or by associating with others, or who shall in any manner aid, assist, or abet in keeping or maintaining any club house, or other place in which any alcoholic liquor is received or kept for the purpose of gift, barter, or sale, or for distribution or division among the members of any club or association by any means whatsoever, or who shall maintain what is commonly known as the

"locker system" or other device for evading the provisions of Act, and every person who shall use, barter, sell, or assist or in bartering, selling any liquors so received or kept, shall be dee guilty of a misdemeanor and upon conviction thereof be subje the penalties prescribed in section one of this Act; and in all c the members, shareholders, associates or employees in any clu association mentioned in this section shall be competent witn to prove any violations of the provisions of this section of this or of any fact tending thereto; and no person shall be excused testifying as to any offense committed by another against an the provisions of this Act by reason of his testimony tendin criminate himself, but the testimony given by such person sha no case be used against him. (39 Stat. 1126.)

See note to § 3421¼a, ante.

§ 3421¼ee. (Act March 3, 1917, c. 165, § 8.) Keeping or gi away of liquors to evade act.

The keeping or giving away of alcoholic or other prohibitec uors for the purpose of evading the provisions of this Act sha deemed an unlawful selling, subject to the penalties provide section one of this Act. (39 Stat. 1127.)

See note to § 3421¼a, ante.

§ 3421¼f. (Act March 3, 1917, c. 165, § 9.) Advertisements.

If any person shall advertise or give notice by signs, billbo newspapers, periodicals, or otherwise for himself or anothe manufacture, offering for sale, or keeping for sale of alcohol other prohibited liquors for purposes forbidden or prohibited u this Act, or shall circulate or distribute any price list, circula order blanks advertising such liquors, or publish or distribute newspaper, magazine, periodical, or other written or printed p in which such advertisements of liquors appear, or shall perm be posted upon his premises, or premises under his control (in ing billboards) or shall permit the same to so remain upon premises, he shall be guilty of a misdemeanor and be fined not than $100 nor more than $500. (39 Stat. 1127.)

See note to § 3421¼a, ante.

§ 3421¼ff. (Act March 3, 1917, c. 165, § 10.) Searches and ures.

If one or more persons who are competent witnesses shall ch on oath or affirmation before the corporation counsel of the Dis of Columbia or any of his assistants duly authorized to act for presenting that any person, company, copartnership, associa club, or corporation has or have violated or is violating the p sions of this Act by manufacturing, offering for sale, keepin sale, trafficking in, bartering, exchanging for goods, or other furnishing alcoholic liquor, shall request said corporation co or any of his assistants duly authorized to act for him to iss warrant, said attorney or any of his assistants shall issue such rant, in which warrant the room, house, building, or other pla which the violation is alleged to have occurred or is occurring be specifically described, and said warrant shall be placed in hands of the captain or acting captain of the police precin which the room, house, building, or other place above referre is located, commanding him to at once thoroughly search sai scribed room, house, building, or other place, and the appurtena thereof, and if any such be found, to take into his possession safely keep, to be produced as evidence when required, all alco liquors and all the means of dispensing the same, also all the p phernalia or part of the paraphernalia of a barroom or othe coholic liquor establishment, and any United States internal-

ue tax receipt or certificate for the manufacture or sale of alcoholic liquor effective for the period of time covering the alleged offense, and forthwith report all the facts to the corporation counsel of the District of Columbia, and such alcoholic liquor or the means or dispensing same, or the paraphernalia of a barroom or other alcoholic liquor establishment, or any United States internal-revenue tax receipt or certificate for the sale of alcoholic liquor effective as aforesaid, shall be prima facie evidence of the violation of the provisions of this Act. (39 Stat. 1127.)

See note to § 3421¼a, ante.

3421¼g. (Act March 3, 1917, c. 165, § 11.) Drinking or being drunk in or on streets.

Any person who shall, in the District of Columbia, in any street, or public or private road, alley, or in any public place or building or in or upon any street car, any other vehicle commonly used for the transportation of passengers, or in or about any depot, platform or waiting station, drink any alcoholic liquor of any kind, or if any person shall be drunk or intoxicated in any street, alley, or public or private road or in any railroad passenger train, street car, or any public place or building, or at any public gathering, or if any person shall be drunk or intoxicated and shall disturb the peace of any person anywhere, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $10 nor more than $100, or by imprisonment for not less than five days nor more than thirty days in the workhouse or jail of the District of Columbia, or by both such fine and imprisonment. (39 Stat. 1127.)

See note to § 3421¼a, ante.

3421¼gg. (Act March 3, 1917, c. 165, § 12.) Payment of special taxes prima facie evidence of keeping.

The payment of the special tax required of wholesale or retail liquor dealers by the United States by any person or persons other than manufacturers or druggists licensed under section five of this Act, within the District of Columbia, shall be prima facie evidence that such person or persons are engaged in keeping and selling, offering and exposing for sale alcoholic liquors contrary to the provisions of this Act, and a certificate from the collector of internal revenue, his agents, clerks, or deputies showing the payment of such tax, and the name or names of person to whom issued, and the names of the person or persons, if any, associated with the person to whom such tax receipt is issued, shall be sufficient evidence of the payment of such tax and of the association of such persons for the selling and keeping, offering and exposing for sale of liquors contrary to the provisions of this Act in all trials or legal inquiries. (39 Stat. 1128.)

See note to § 3421¼a, ante.

3421¼h. (Act March 3, 1917, c. 165, § 13.) Liquor nuisances; maintenance.

All houses, boathouses, buildings, club rooms, and places of every description, including drug stores, where alcoholic liquors are manufactured, sold, vended, or furnished contrary to law (including those in which clubs, orders, or associations sell, barter, distribute, or dispense intoxicating liquors to their members, by any means or device whatever, as provided in section eight of this Act) shall be held, taken, and deemed common and public nuisances. And any person who shall maintain, or shall aid or abet, or knowingly be associated with others in maintaining such common and public nuisance, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to the penalties prescribed in section

one of this Act, and judgment shall be given that such house, building, or other place, or any room therein, be abated or closed up as a place for the sale or keeping of such liquor contrary to law, as the court may determine. (39 Stat. 1128.)

See note to § 3421¼a, ante.

§ 3421¼hh. (Act March 3, 1917, c. 165, § 14.) Same; abatement of and injunction against.

The United States district attorney for the District of Columbia, or any citizen of the District of Columbia, may maintain an action in equity in the name of the United States to abate and perpetually enjoin such a nuisance as defined in the preceding section. The injunction shall be granted at the commencement of the action, and no bond shall be required. Any person violating the terms of any injunction granted in such proceedings shall be punished for contempt by a fine of not less than $100 nor more than $500 and by imprisonment in the District jail or workhouse for not less than thirty days nor more than six months, in the discretion of the court. (39 Stat. 1128.)

See note to § 3421¼a, ante.

§ 3421¼i. (Act March 3, 1917, c. 165, § 15.) Restraining violations of act.

When any violation of this Act is threatened, or shall have occurred, or is occurring, the doing of, or the continuance or repetition of the unlawful act, or any of like kind by the offending party may be prevented by a writ of injunction out of a court of equity upon a bill filed in all respects as in cases of liquor nuisances; in like manner the writ of injunction may be employed to compel obedience to any provision of this Act. (39 Stat. 1128.)

See note to § 3421¼a, ante.

§ 3421¼j. (Act March 3, 1917, c. 165, § 16.) Liquor nuisance; maintenance by tenant.

If a tenant of a building or tenement uses such premises, or any part thereof, in maintaining a common nuisance as hereinbefore defined, or knowingly permits such use by another, such use shall render void the lease under which he holds, and shall cause the right of possession to revert to the owner or lessor, who may, without process of law, make immediate entry upon the premises, or may avail himself of the remedy provided for the forcible detention thereof. (39 Stat. 1128.)

See note to § 3421¼a, ante.

§ 3421¼k. (Act March 3, 1917, c. 165, § 17.) Same; permitting maintenance.

Anyone who knowingly permits any building owned or leased by him or under his control, or any part thereof, to be used in maintaining a common nuisance hereinbefore described in section fourteen of this Act, after being notified in writing of such use, neglects to take all reasonable measures to eject therefrom the person so using the same, shall be deemed guilty of assisting in maintaining such nuisance. (39 Stat. 1129.)

See note to § 3421¼a, ante.

§ 3421¼*l*. (Act March 3, 1917, c. 165, § 18.) Property rights in liquors illegally manufactured; searches and seizures.

That no property rights of any kind shall exist in alcoholic liquors or beverages illegally manufactured, received, possessed, or stored under this Act, and in all such cases the liquors are forfeited to the District of Columbia and may be searched for and seized and ordered to be destroyed by the court after a conviction when such liquors have been seized for use as evidence, or upon

satisfactory evidence to the court presented by the corporation counsel that such liquors are contraband. (39 Stat. 1129.)

See note to § 3421¼a, ante.

§ 3421¼m. (Act March 3, 1917, c. 165, § 19.) Civil actions for damages.

Every wife, child, parent, guardian, or employer, or other person who shall be injured in person or property or means of support by any intoxicated person, or in consequence of intoxication, habitual or otherwise, of any person, such wife, child, parent, or guardian shall have a right of action, in his or her own name, against any person who shall, by selling or bartering intoxicating liquors, have caused the intoxication of such person, for all damages actually sustained, as well as for exemplary damages; and a married woman shall have the right to bring suit, prosecute, and control the same, and the amount recovered the same as if unmarried; and all damages recovered by a minor under this Act shall be paid either to such minor or to his or her parents, guardian, or next friend, as the court shall direct. (39 Stat. 1129.)

See note to § 3421¼a, ante.

§ 3421¼n. (Act March 3, 1917, c. 165, § 20.) Intoxication by locomotive engineers, conductors or brakemen, etc.

If any person while in charge of a locomotive engine, or while acting as a conductor or brakeman of a car or train of cars, or while in charge of any street car, steamboat, launch, or other water craft, or while in charge of or operating any automobile or horse vehicle in the District of Columbia shall be intoxicated, he shall be guilty of a misdemeanor, and if convicted shall be punished by a fine of not less than $25 nor more than $300, and in default in payment of said fine shall be imprisoned in the District jail or workhouse for not exceeding three months, or both fine and imprisonment in the discretion of the court. (39 Stat. 1129.)

See note to § 3421¼a, ante.

§ 3421¼o. (Act March 3, 1917, c. 165, § 21.) Enforcement of act; failure; punishment.

It shall be the duty of the Commissioners of the District of Columbia to enforce the provisions of this Act. They shall detail qualified members of the police force to detect violations of the Act, if any, and to report promptly all knowledge or information they may have concerning such violations, together with the names of any witnesses by whom they may be proven to the corporation counsel; but it shall be the duty of all members of the police force to detect violations of the Act and to promptly report any information or knowledge concerning the same to the corporation counsel, together with the names of witnesses, by whom such violations may be proven; and the corporation counsel shall bring such alleged violators of the law to trial with all due diligence.

If any such officer shall fail to comply with the provisions of this section, he shall upon conviction be fined in any sum not less than $100 nor more than $500; and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had shall in addition to imposition of the fine aforesaid order and adjudge the forfeiture of his said office. For a failure or neglect of official duty in the enforcement of this Act any official herein referred to may be removed by court action. (39 Stat. 1129.)

See note to § 3421¼a, ante.

§ 3421¼p. (Act March 3, 1917, c. 165, § 22.) Informations for violations of act; conduct of prosecutions.

Prosecutions for violations of the provisions of this Act shall be on information filed in the police court by the corporation counsel of the District of Columbia or any of his assistants duly authorized to act for him, and said corporation counsel or his assistants shall file such information upon the presentation to him or his assistants of sworn information that the law has been violated; and such corporation counsel and his assistants shall have power to administer oaths to such informant or informants, and such others as present themselves, and anyone making a false oath to any material fact shall be deemed guilty of perjury and subject to the same penalties as now provided by law for such offense.

When, however, it appears to the Commissioners of the District of Columbia that it will be in the interest of more effective enforcement of the provisions of this Act, they may request the United States district attorney for the District of Columbia to prosecute persons charged with offenses against the law, and when so requested by said Commissioners the said district attorney shall proceed before the grand jury and in the Supreme Court of the District of Columbia to prosecute such offenders in manner now prescribed by law for the prosecution of persons charged with violations of the laws against crime in the District of Columbia. (39 Stat. 1129.)

See note to § 3421¼a, ante.

§ 3421¼q. (Act March 3, 1917, c. 165, § 23.) Partial invalidity of act.

If for any reason any section, paragraph, provision, clause, or part of this Act shall be held unconstitutional or invalid, that fact shall not effect or destroy any other section, paragraph, provision, clause, or part of the Act not in and of itself invalid, but the remaining parts of sections shall be enforced without regard to that so invalidated. (39 Stat. 1130.)

See note to § 3421¼a, ante.

§ 3421¼r. (Act March 3, 1917, c. 165, § 24.) Singular number includes plural.

In the interpretation of this Act words of the singular number shall be deemed to include their plurals, and words of the masculine gender shall be deemed to include the feminine, as the case may be. (39 Stat. 1130.)

See note to § 3421¼a, ante.

§ 3421¼s. (Act March 3, 1917, c. 165, § 25.) Time of taking effect of act; excise board abolished.

This Act shall be in full force and effect on and after the first day of November, nineteen hundred and sixteen, and all laws and parts of laws inconsistent herewith, be, and they are, hereby repealed. And that the excise board for the District of Columbia, provided for and established under the Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, be, and it is hereby, abolished upon the taking effect of this Act. (39 Stat. 1130.)

See note to § 3421¼a, ante.

CHAPTER BBB—WOMEN AND MINOR EMPLOYES IN DISTRICT OF COLUMBIA

Sec.
3421½a. Definitions.
3421½b. Minimum Wage Board; appointment; quorum.
3421½c. Same; organization; secretary.
3421½d. Same; testimony before.
3421½e. Same; rules and regulations.
3421½f. Same; report.
3421½g. Appropriation.
3421½h. Minimum Wage Board; investigation of wages; employers' registers.
3421½i. Same; standards of minimum wages.
3421½j. Same; conferences to determine minimum wages.
3421½k. Same; conferences to determine minimum wages; report and recommendations.
3421½l. Same; approval, etc., of recommendations; hearings.
3421½m. License to work at less than minimum wage.
3421½n. Minimum Wage Board; determination of wages of minors.
3421½o. Conferences to determine minimum wages; separate inquiries.
3421½p. Minimum Wage Board; investigations as to compliance with orders.
3421½q. Same; review of decisions of.
3421½r. Violations of act; punishment.
3421½s. Discharge of or discrimination against employés; punishment.
3421½t. Violations of act by officer, agent, etc.
3421½u. Prosecutions.
3421½v. Recovery of under payment of wages.
3421½w. Citation and purposes of act.

§ 3421½a. (Act Sept. 19, 1918, c. 174, § 1.) Definitions.

The term "Board" means the Minimum Wage Board created by section two;

The term "Commissioners" means the Commissioners of the District of Columbia;

The term "woman" includes only a woman of eighteen years of age or over;

The term "minor" means a person of either sex under the age of eighteen years;

The term "occupation" includes a business, industry, trade, or branch thereof, but shall not include domestic service. (40 Stat. 960.)

This section, and the 22 sections next following, were an act entitled "An act to protect the lives and health and morals of women and minor workers in the District of Columbia, and to establish a Minimum Wage Board, and define its powers and duties, and to provide for the fixing of minimum wages for such workers, and for other purposes," cited above.

§ 3421½b. (Act Sept. 19, 1918, c. 174, § 2.) Minimum Wage Board; appointment; quorum.

There is hereby created a Board to be known as the "Minimum Wage Board," to be composed of three members to be appointed by the Commissioners of the District of Columbia. As far as practicable, the members shall be so chosen that one will be representative of employees, one representative of employers, and one representing the public.

The Commissioners shall make their first appointments hereunder within thirty days after this Act takes effect, and shall designate one of the three members first appointed to hold office until January first, nineteen hundred and nineteen; one to hold office until January first, nineteen hundred and twenty; and one to hold office until January first, nineteen hundred and twenty-one. On or before the first day of January of each year, beginning with the year nineteen hundred and nineteen, the Commissioners shall appoint a member to succeed the member whose term expires on such first day of January, and such new appointee shall hold office for the term of three years from such first day of January. Each member

shall hold office until his successor is appointed and has qualified; and any vacancy that may occur in the membership of the Board shall be filled by appointment by the Commissioners for the unexpired portion of the term.

A majority of the members shall constitute a quorum to transact business, and the act or decision of such a majority shall be deemed the act or decision of the Board; and no vacancy shall impair the right of the remaining members to exercise all the powers of the Board. (40 Stat. 961.)

See note to § 3421½a.

§ 3421½c. (Act Sept. 19, 1918, c. 174, § 3.) Same; organization; secretary.

The first members appointed shall, within twenty days after their appointment, meet and organize the Board by electing one of their number as chairman and by choosing a secretary, who shall not be a member of the Board; and on or before the tenth day of January of each year thereafter the Board shall elect a chairman and choose a secretary for the ensuing year. The chairman and the secretary shall each hold office until his successor is elected or chosen; but the Board may at any time remove the secretary. The secretary shall perform such duties as may be prescribed and receive such salary, not in excess of $2,500 per annum, as may be fixed by the Board. None of the members shall receive any salary as such. The Board shall have power to employ agents and such other assistants as may be necessary for the proper performance of its duties: Provided, That until further authorization by Congress, the sum which it may expend, including the salary of the secretary, shall not exceed the sum of $5,000. (40 Stat. 961.)

See note to § 3421½a.

§ 3421½d. (Act Sept. 19, 1918, c. 174, § 4.) Same; testimony before.

At any public hearing held by the Board any person interested in the matter being investigated may appear and testify. Any member of the Board shall have power to administer oaths and the Board may require by subpœna the attendance and testimony of witnesses, the production of all books, registers and other evidence relative to any matters under investigation, at any such public hearing or at any session of any conference held as hereinafter provided. In case of disobedience to a subpœna the Board may invoke the aid of the Supreme Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpœna the court may issue an order requiring appearance before the Board, the production of documentary evidence, and the giving of evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (40 Stat. 961.)

See note to § 3421½a.

§ 3421½e. (Act Sept. 19, 1918, c. 174, § 5.) Same; rules and regulations.

The Board is hereby authorized and empowered to make rules and regulations for the carrying into effect of this Act, including rules and regulations for the selection of members of the conferences hereinafter provided for and the mode of procedure thereof. (40 Stat. 962.)

See note to § 3421½a.

§ 3421½f. (Act Sept. 19, 1918, c. 174, § 6.) Same; report.

The Board shall, on or before the first day of January of the year nineteen hundred and nineteen, and of each year thereafter, make a report to the Commissioners of its work and the proceedings under this Act. (40 Stat. 962.)

See note to § 3421½a.

§ 3421½g. (Act Sept. 19, 1918, c. 174, § 7.) Appropriation.

There is hereby authorized to be appropriated, out of the revenues of the District of Columbia, for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of $5,000, or so much thereof as may be necessary, to carry into effect the provisions of this Act. (40 Stat. 962.)

See note to § 3421½a.

§ 3421½h. (Act Sept. 19, 1918, c. 174, § 8.) Minimum Wage Board; investigation of wages; employers' registers.

The Board shall have full power and authority: (1), To investigate and ascertain the wages of women and minors in the different occupations in which they are employed in the District of Columbia; (2), to examine, through any member or authorized representative, any book, pay roll or other record of any employer of women or minors that in any way appertains to or has a bearing upon the question of wages of any such women or minors; and (3), to require from such employer full and true statements of the wages paid to all women and minors in his employment.

Every employer shall keep a register of the names of the women and minors employed by him in any occupation in the District of Columbia, of the hours worked by each, and of all payments made to each, whether paid by the time or by the piece; and shall, on request, permit any member or authorized representative of the Board to examine such register.

To assist the Board in carrying out this Act the Commissioners shall at all times give it any information or statistics in their possession under the Act of Congress approved February twenty-fourth, nineteen hundred and fourteen, entitled "An Act to regulate the hours of employment and safeguard the health of females employed in the District of Columbia." (Public, numbered sixty, Sixty-third Congress.) (40 Stat. 962.)

See note to § 3421½a.

§ 3421½i. (Act Sept. 19, 1918, c. 174, § 9.) Same; standards of minimum wages.

The Board is hereby authorized and empowered to ascertain and declare, in the manner hereinafter provided, the following things: (a), Standards of minimum wages for women in any occupation within the District of Columbia, and what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals; and (b), standards of minimum wages for minors in any occupation within the District of Columbia, and what wages are unreasonably low for any such minor workers. (40 Stat. 962.)

See note to § 3421½a.

§ 3421½j. (Act Sept. 19, 1918, c. 174, § 10.) Same; conferences to determine minimum wages.

If, after investigation, the Board is of opinion that any substantial number of women workers in any occupation are receiving wages inadequate to supply them with the necessary cost of living and maintain them in health and protect their morals, it may call and convene a conference for the purpose and with the powers of considering and inquiring into and reporting on the subject inves-

tigated by the Board and submitted by it to such conference. The conference shall be composed of not more than three representatives of the employers in such occupation, of an equal number of representatives of the employees in such occupation, of not more than three disinterested persons representing the public, and of one or more members of the Board. The Board shall name and appoint all the members of the conference and designate the chairman thereof. Two-thirds of the members of the conference shall constitute a quorum, and the decision or recommendation or report of the conference on any subject submitted shall require a vote of not less than a majority of all its members.

The Board shall present to the conference all the information and evidence in its possession or control relating to the subject of the inquiry by the conference, and shall cause to be brought before the conference any witnesses whose testimony the Board deems material. (40 Stat. 962.)

See note to § 3421½a.

§ 3421½k. (Act Sept. 19, 1918, c. 174, § 11.) Same; conferences to determine minimum wages; report and recommendations.

After completing its consideration of and inquiry into the subject submitted to it by the Board, the conference shall make and transmit to the Board a report containing its findings and recommendations on such subject, including recommendations as to standards of minimum wages for women workers in the occupation under inquiry and as to what wages are inadequate to supply the necessary cost of living to women workers in such occupation and to maintain them in health and to protect their morals.

In its recommendations on a question of wages the conference (1) shall, where it appears that any substantial number of women workers in the occupation under inquiry are being paid by piece rates as distinguished from time rate, recommend minimum piece rates as well as minimum time rate and recommend such minimum piece rates as will, in its judgment, be adequate to supply the necessary cost of living to women workers in such occupation of average ordinary ability and to maintain them in health and protect their morals; and (2) shall, when it appears proper or necessary, recommend suitable minimum wages for learners and apprentices in such occupation and the maximum length of time any woman worker may be kept at such wages as a learner or apprentice, which wages shall be less than the regular minimum wages recommended for the regular women workers in such occupation. (40 Stat. 963.)

See note to § 3421½a.

§ 3421½*l*. (Act Sept. 19, 1918, c. 174, § 12.) Same; approval, etc., of recommendations; hearings.

Upon receipt of any report from any conference, the Board shall consider and review the recommendations, and may approve or disapprove any or all of such recommendations, and may resubmit to the same conference, or a new conference, any subject covered by any recommendations so disapproved.

If the Board approves any recommendations contained in any report from any conference, it shall publish a notice, once a week, for four successive weeks in a newspaper of general circulation printed in the District of Columbia, that it will, on a date and at a place named in the notice, hold a public hearing at which all persons in favor of or opposed to such recommendations will be heard.

After such hearing the Board may, in its discretion, make and render such an order as may be proper or necessary to adopt such recommendations and carry them into effect, requiring all employers in the occupation affected thereby to observe and comply with

such order. Such order shall become effective sixty days after it is made. After such order becomes effective, and while it is effective, it shall be unlawful for any employer to violate or disregard any of its terms or provisions, or to employ any woman worker in any occupation covered by such order at lower wages than are authorized or permitted therein.

The Board shall, as far as is practicable, mail a copy of such order to every employer affected thereby; and every employer affected by any such order shall keep a copy thereof posted in a conspicuous place in each room in his establishment in which women workers are employed. (40 Stat. 963.)

See note to § 3421½a.

§ 3421½m. (Act Sept. 19, 1918, c. 174, § 13.) License to work at less than minimum wage.

For any occupation in which only a minimum time-rate wage has been established, the Board may issue to a woman whose earning capacity has been impaired by age or otherwise, a special license authorizing her employment at such wage less than such minimum time-rate wage as shall be fixed by the Board and stated in the license. (40 Stat. 963.)

See note to § 3421½a.

§ 3421½n. (Act Sept. 19, 1918, c. 174, § 14.) Minimum Wage Board; determination of wages of minors.

The Board may at any time inquire into wages of minors employed in any occupation in the District of Columbia, and determine suitable wages for them. When the Board has made such determination it may make such an order as may be proper or necessary to carry such determination into effect. Such order shall become effective sixty days after it is made; and after such order becomes effective and while it is effective it shall be unlawful for any employer in such occupation to employ a minor at less wages than are specified or required in or by such order. (40 Stat. 963.)

See note to § 3421½a.

§ 3421½o. (Act Sept. 19, 1918, c. 174, § 15.) Conferences to determine minimum wages; separate inquiries.

Any conference may make a separate inquiry into and report on any branch of any occupation, and the Board may make a separate order affecting any branch of any occupation. (40 Stat. 964.)

See note to § 3421½a.

§ 3421½p. (Act Sept. 19, 1918, c. 174, § 16.) Minimum Wage Board; investigations as to compliance with orders.

The Board shall from time to time investigate and ascertain whether or not employers in the District of Columbia are observing and complying with its orders, and shall report to the corporation counsel of the District of Columbia all violations of this Act. (40 Stat. 964.)

See note to § 3421½a.

§ 3421½q. (Act Sept. 19, 1918, c. 174, § 17.) Same; review of decisions of.

All questions of fact arising under the foregoing provisions of this Act shall, except as otherwise herein provided, be determined by the Board, and there shall be no appeal from the decision of the Board on any such question of fact; but there shall be a right of appeal from the Board to the Supreme Court of the District of Columbia from any ruling or holding on a question of law included or embodied in any decision or order of the Board; and, on the same question of law, from such court to the Court of Appeals of

the District of Columbia. In all such appeals the corporation counsel shall appear for and represent the Board. (40 Stat. 964.)

See note to § 3421½a.

§ 3421½r. (Act Sept. 19, 1918, c. 174, § 18.) Violations of act; punishment.

Whoever violates this Act, whether an employer or his agent, or the director, officer, or agent of any corporation, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than $25 nor more than $100, or by imprisonment not less than ten days nor more than three months, or by both such fine and imprisonment. (40 Stat. 964.)

See note to § 3421½a.

§ 3421½s. (Act Sept. 19, 1918, c. 174, § 19.) Discharge of or discrimination against employés; punishment.

Any employer and his agent, or the director, officer, or agent of any corporation, who discharges or in any other manner discriminates against any employee because such employee has served or is about to serve on any conference, or has testified or is about to testify, or because such employer believes that said employee may serve on any conference or may testify in any investigation or proceedings under or relative to this Act, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than $25 nor more than $100. (40 Stat. 964.)

See note to § 3421½a.

§ 3421½t. (Act Sept. 19, 1918, c. 174, § 20.) Violations of act by officer, agent, etc.

Any act which, if done or omitted to be done by any agent or officer or director acting for such employer, would constitute a violation of this Act, shall also be held to be a violation by the employer and subject such employer to the liability provided for by this Act. (40 Stat. 964.)

See note to § 3421½a.

§ 3421½u. (Act Sept. 19, 1918, c. 174, § 21.) Prosecutions.

Prosecutions for violations of this Act shall be on information filed in the police court of the District of Columbia by the corporation counsel. (40 Stat. 964.)

See note to § 3421½a.

§ 3421½v. (Act Sept. 19, 1918, c. 174, § 22.) Recovery of under payment of wages.

If any woman worker is paid by her employer less than the minimum wage to which she is entitled under or by virtue of an order of the Board, she may recover in a civil action the full amount of such minimum wage, less any amount actually paid to her by the employer, together with such reasonable attorney's fees as may be allowed by the court; and any agreement for her to work for less than such minimum wage shall be no defense to such action. (40 Stat. 964.)

See note to § 3421½a.

§ 3421½w. (Act Sept. 19, 1918, c. 174, § 23.) Citation and purposes of act.

This Act shall be known as the "District of Columbia minimum-wage law." The purposes of the Act are to protect the women and minors of the District from conditions detrimental to their health and morals, resulting from wages which are inadequate to maintain decent standards of living; and the Act in each of its provisions and in its entirety shall be interpreted to effectuate these purposes. (40 Stat. 964.)

See note to § 3421½a.

TITLE XXII—THE STATES

§ 3424. (R. S. § 1838.) Assent of States to purchase of lands.

OKLAHOMA ENABLING ACT

§ 1. The inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described, may adopt a constitution and become the State of Oklahoma, as hereinafter provided: Provided, That nothing contained in the said constitution shall be construed to limit or impair the rights of person or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise, which it would have been competent to make if this Act had never been passed. (June 16, 1906, c. 3335, § 1, 34 Stat. 267.)

§ 2. (Related to an election for selecting delegates to the constitutional convention, and the temporary seat of government. Omitted.)

§ 3. The delegates to the convention thus elected shall meet at the seat of government of said Oklahoma Territory on the second Tuesday after their election, excluding the day of election in case such day shall be Tuesday, but they shall not receive compensation for more than sixty days of service, and, after organization, shall declare, on behalf of the people of said proposed State, that they adopt the Constitution of the United States; whereupon the said convention shall, and is hereby authorized to, form a constitution and State government for said proposed State. The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said convention shall provide in said constitution—

First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship, and that polygamous or plural marriages are forever prohibited.

Second. That the manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within those parts of said State now known as the Indian Territory and the Osage Indian Reservation and within any other parts of said State which existed as Indian reservations on the first day of January, nineteen hundred and six, is prohibited for a period of twenty-one years from the date of the admission of said State into the Union, and thereafter until the people of said State shall otherwise provide by amendment of said constitution and proper State legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine, contrary to the provisions of this section, or who shall, within the above-described portions of said State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from other parts of said State into the portions hereinbefore described, shall be punished, on conviction thereof, by fine not less than fifty dollars and by imprisonment not less than thirty days for each offense: Provided, That the legislature may provide by law for one agency under the supervision of said State in each incorporated town of not less than two thousand population in the portions of said State hereinbefore described; and if there be no incorporated town of two thousand population in any county in said portions of said State, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the parts of said State hereinabove defined shall constitute prima facie evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the

liquor is to be used, and no sale shall be made for medicinal purposes except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a bona fide prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register thereof, together with the affidavits and prescriptions pertaining thereto, shall be open to inspection by any officer or citizen of said State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which after his own personal diagnosis he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of said State into the Union these provisions shall be immediately enforceable in the courts of said State.

Third. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. That land belonging to citizens of the United States residing without the limits of said State shall never be taxed at a higher rate than the land belonging to residents thereof; that no taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use.

Fourth. That the debts and liabilities of said Territory of Oklahoma shall be assumed and paid by said State.

Fifth. That provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of said State and free from sectarian control; and said schools shall always be conducted in English: Provided, That nothing herein shall preclude the teaching of other languages in said public schools: And, provided, further, That this shall not be construed to prevent the establishment and maintenance of separate schools for white and colored children.

Sixth. That said State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude. (June 16, 1906, c. 3335, § 3, 34 Stat. 269.)

§ 4. (Related to the election to adopt the constitution to be submitted thereat, the proclamation of the result thereof, and the proclamation admitting Oklahoma as a state. Omitted.)

§ 5. (Made an appropriation for the expenses of the election to elect delegates to the constitutional convention and the election to determine the adoption of the Constitution. Omitted.)

§ 6. (Related to the representation of Oklahoma in Congress. Omitted.)

§ 7. Upon the admission of the State into the Union sections numbered sixteen and thirty-six, in every township in Oklahoma Territory, and all indemnity lands heretofore selected in lieu thereof, are hereby granted to the State for the use and benefit of the common schools: Provided, That sections sixteen and thirty-six embraced in permanent reservations for national purposes shall not at any time be subject to the grant nor the indemnity provisions of this Act, nor shall any lands embraced in Indian, military, or other reservations of any character, nor shall land owned by Indian tribes or individual members of any tribe be subjected to the grants or to the indemnity provisions of this Act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain: Provided, That there is sufficient untaken public land within said State to cover this grant: And provided, That in case any of the lands herein granted to the State of Oklahoma have heretofore been confirmed to the Territory of Oklahoma for the purposes specified in this Act, the amount so confirmed shall be deducted from the quantity specified in this Act.

There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of five million dollars for the use and benefit of the common schools of said State in lieu of sections sixteen and thirty-six, and other lands of the Indian Territory. Said appropriation shall be paid by the Treasurer of the United States at such time and to such person or persons as may be authorized by said State to receive the same under laws to be enacted by said State, and until said State shall enact such laws said appropriation shall not be paid, but said State shall be allowed interest thereon at the rate of three per centum per annum, which shall be paid to said State for the use and benefit of its public schools. Said appropriation of five million dollars

shall be held and invested by said State, in trust, for the use and benefit of said schools, and the interest thereon shall be used exclusively in the support and maintenance of said schools: Provided, That nothing in this Act contained shall repeal or affect any Act of Congress relating to the Sulphur Springs Reservation as now defined or as may be hereafter defined or extended, or the power of the United States over it or any other lands embraced in the State hereafter set aside by Congress as a national park, game preserve, or for the preservation of objects of archæological or ethnological interest; and nothing contained in this Act shall interfere with the rights and ownership of the United States in any land hereafter set aside by Congress as national park, game preserve, or other reservation, or in the said Sulphur Springs Reservation, as it now is or may be hereafter defined or extended by law; but exclusive legislation, in all cases whatsoever, shall be exercised by the United States, which shall have exclusive control and jurisdiction over the same; but nothing in this proviso contained shall be construed to prevent the service within said Sulphur Springs Reservation or national parks, game preserves, and other reservations hereafter established by law, of civil and criminal processes lawfully issued by the authority of said State, and said State shall not be entitled to select indemnity school lands for the thirteenth, sixteenth, thirty-third, and thirty-sixth sections that may be embraced within the metes and bounds of the national park, game preserve, and other reservation or the said Sulphur Springs Reservation, as now defined or may be hereafter defined. (June 16, 1906, c. 3335, § 7, 34 Stat. 272.)

§ 8. Section thirteen in the Cherokee Outlet, the Tonkawa Indian Reservation, and the Pawnee Indian Reservation, reserved by the President of the United States by proclamation issued August nineteenth, eighteen hundred and ninety-three, opening to settlement the said lands, and by any Act or Acts of Congress since said date, and section thirteen in all other lands which have been or may be opened to settlement in the Territory of Oklahoma, and all lands heretofore selected in lieu thereof, is hereby reserved and granted to said State for the use and benefit of the University of Oklahoma and the University Preparatory School, one-third; of the normal schools now established or hereafter to be established, one-third; and of the Agricultural and Mechanical College and the Colored Agricultural Normal University, one-third. The said lands or the proceeds thereof as above apportioned shall be divided between the institutions as the legislature of said State may prescribe: Provided, That the said lands so reserved or the proceeds of the sale thereof shall be safely kept or invested and held by said State, and the income thereof, interest, rentals, or otherwise, only shall be used exclusively for the benefit of said educational institutions. Such educational institutions shall remain under the exclusive control of said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes, or the income or rentals thereof, shall be used for the support of any religious or sectarian school, college or university.

That section thirty-three, and all lands heretofore selected in lieu thereof, heretofore reserved under said proclamation, and Acts for charitable and penal institutions and public buildings, shall be apportioned and disposed of as the legislature of said State may prescribe.

Where any part of the lands granted by this Act to the State of Oklahoma are valuable for minerals, which terms shall also include gas and oil, such lands shall not be sold by the said State prior to January first, nineteen hundred and fifteen; but the same may be leased for periods not exceeding five years by the State officers duly authorized for that purpose, such leasing to be made by public competition after not less than thirty days' advertisement in the manner to be prescribed by law, and all such leasing shall be done under sealed bids and awarded to the highest responsible bidder. The leasing shall require and the advertisement shall specify in each case a fixed royalty to be paid by the successful bidder, in addition to any bonus offered for the lease, and all proceeds from leases shall be covered into the fund to which they shall properly belong, and no transfer or assignment of any lease shall be valid or confer any right in the assignee without the consent of the proper State authorities in writing: Provided, however, That agricultural lessees in possession of such lands shall be reimbursed by the mining lessees for all damage done to said agricultural lessees' interest therein by reason of such mining operations. The legislature of the State may prescribe additional legislation governing such leases not in conflict herewith. (June 16, 1906, c. 3335, § 8, 34 Stat. 273.)

§ 9. Said sections sixteen and thirty-six, and lands taken in lieu thereof, herein granted for the support of the common schools, if sold, may be appraised and sold at public sale in one hundred and sixty acre tracts or less, under such rules and regulations as the legislature of the said State may prescribe, preference right to purchase at the highest bid being given to the lessee at the time of such sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of such

schools. But said lands may, under such regulations as the legislature may prescribe, be leased for periods not to exceed ten years; and such lands shall not be subject to homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only. (June 16, 1906, c. 3335, § 9, 34 Stat. 274.)

§ 10. Said sections thirteen and thirty-three, aforesaid, if sold, may be appraised and sold at public sale, in one hundred and sixty acre tracts or less, under such rules and regulations as the legislature of said State may prescribe, preference right to purchase at the highest bid being given to the lessee at the time of such sale, but such lands may be leased for periods of not more than five years, under such rules and regulations as the legislature shall prescribe, and until such time as the legislature shall prescribe such rules these and all other lands granted to the State shall be leased under existing rules and regulations, and shall not be subject to homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for designated purposes only, and until such time as the legislature shall prescribe as aforesaid such lands shall be leased under existing rules: Provided, That before any of the said lands shall be sold, as provided in sections nine and ten of this Act, the said lands and the improvements thereon shall be appraised by three disinterested appraisers, who shall be nonresidents of the county wherein the land is situated, to be designated as the legislature of said State shall prescribe, and the said appraisers shall make a true appraisement of said lands at the actual cash value thereof, exclusive of improvements, and shall separately appraise all permanent improvements thereon at their fair and reasonable value, and in case the leaseholder does not become the purchaser, the purchaser at said sale shall, under such rules and regulations as the legislature may prescribe, pay to or for the leaseholder the appraised value of said improvements, and to the State the amount bid for the said lands, exclusive of the appraised value of improvements; and at said sale no bid for any tract at less than the appraisement thereof shall be accepted. (June 16, 1906, c. 3335, § 10, 34 Stat. 274.)

§ 11. An amount equal to five per centum of the proceeds of the sales of public lands lying within said State shall be paid to the said State, to be used as a permanent fund, the interest only of which shall be expended for the support of the common schools within said State. (June 16, 1906, c. 3335, § 11, 34 Stat. 274.)

§ 12. In lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the Act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to said State, and in lieu of any claim or demand of the State of Oklahoma under the Act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands, which grant it is hereby declared is not extended to said State of Oklahoma, the following grant of land is hereby made to said State from public lands of the United States within said State, for the purposes indicated, namely: For the benefit of the Oklahoma University, two hundred and fifty thousand acres; for the benefit of the University Preparatory School, one hundred and fifty thousand acres; for the benefit of the Agricultural and Mechanical College, two hundred and fifty thousand acres; for the benefit of the Colored Agricultural and Normal University, one hundred thousand acres; for the benefit of normal schools, now established or hereafter to be established, three hundred thousand acres. The lands granted by this section shall be selected by the board for leasing school lands of the Territory of Oklahoma immediately upon the approval of this Act. Said selections as soon as made shall be certified to the Secretary of the Interior, and the lands so selected shall be thereupon withdrawn from homestead entry. (June 16, 1906, c. 3335, § 12, 34 Stat. 274.)

§ 13. Said State when admitted as aforesaid shall constitute two judicial districts, to be known as the eastern district of Oklahoma and the western district of Oklahoma; the said Indian Territory shall constitute said eastern district, and the said Oklahoma Territory shall constitute said western district. The circuit and district courts for the eastern district shall be held one term at Muscogee, one term at Vinita, one term at Tulsa, one term at South McAlester, one term at Chickasha, and one term at Ardmore, each year, and the circuit and district courts of the western district shall be held one term at Guthrie, one term at Oklahoma City, and one term at Enid, and one term at Lawton, each year, for the time being. And the said districts shall, for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney, and one United States marshal. There shall be appointed a clerk for each of said districts, who shall keep his office at Muscogee and Guthrie, respectively, for the time being. The regular term of said courts shall be held at the places designated in this Act, at Muscogee on the first Monday in January and at Vinita on the first Monday in March

and at Tulsa on the first Monday in April; at South McAlester on the first Monday in June; at Ardmore on the first Monday in October; at Chickasha on the first Monday of November; at Guthrie on the first Monday in January; at Oklahoma City on the first Monday in March; at Enid on the first Monday in June, and at Lawton on the first Monday in October, in each year, and one grand jury shall be summoned in each year in each of said circuit and district courts. The circuit and district courts for each of said districts, and the judges thereof, respectively, shall possess the same powers and jurisdiction and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and clerk of each of the circuit and district courts of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully required to be performed by similar officers in other districts of the United States, and shall, for the services they may perform, receive the fees and compensation now allowed by law to officers performing similar services for the United States in other districts of the United States; and that the laws in force in the Territory of Oklahoma, as far as applicable, shall extend over and apply to said State until changed by the legislature thereof. (June 16, 1906, c. 3335, § 13, 34 Stat. 275.) See § 1088.

§ 14. All prosecutions for crimes or offenses hereafter committed in either of said judicial districts as hereby constituted shall be cognizable within the district in which committed, and all prosecutions for crimes or offenses committed before the passage of this Act in which indictments have not yet been found or proceedings instituted shall be cognizable within the judicial district as hereby constituted in which such crimes or offenses were committed. (June 16, 1906, c. 3335, § 14, 34 Stat. 275.)

§ 15. (Related to appeals or writs of error from Supreme Court of territory or United States circuit court of appeals to Supreme Court of United States previous to admission of Territory as a State. Omitted.)

§ 16. (Related to the transfer of certain pending civil causes and criminal cases to the United States circuit and district courts. Omitted.)

§ 17. (Related to determination of causes pending in the territorial courts and not transferred to the United States courts. Omitted.)

§ 18. The supreme court or other court of last resort of said State shall be deemed to be the successor of Territorial appellate courts, and shall take and possess any and all jurisdiction as such not herein otherwise specifically provided for, and shall receive and retain the custody of all books, dockets, records, and files not transferred to other courts as herein provided, subject to the duty to furnish transcripts of all book entries in any specific case transferred to complete the record thereof. That all books, dockets, records, and files relating to the organization, management, and control of corporations which at the time of the approval of the Act of which this Act is amendatory were in the custody and possession of the clerk of the United States court of appeals for the Indian Territory shall be transferred to the custody of the secretary of state of the State of Oklahoma, and the then clerk of said court shall certify to the identity of said books, dockets, records, and files, and when the said clerk of the United States court of appeals for the Indian Territory has certified all books, records, documents, and files in his office relating to corporations to the secretary of the State of Oklahoma, it shall be the duty of the secretary of the State of Oklahoma to receive and retain the custody and control of the said records, books, documents, and files certified to him by the clerk of the court of appeals for the Indian Territory, and when received by the secretary of state of Oklahoma the same shall become a part of the records of the office of the secretary of the State, and the secretary of state is hereby empowered to furnish copies and to certify to the same, whose certificate, when made under the great seal of the State of Oklahoma, shall have the same force and effect as if the said books, records, documents, and files had been originally filed in the office of the secretary of the State of Oklahoma. (June 16, 1906, c. 3335, § 18, 34 Stat. 277, amended, March 3, 1909, c. 269, § 2, 35 Stat. 843.)

§ 19. The courts of original jurisdiction of such State shall be deemed to be the successor of all courts of original jurisdiction of said Territories and as such shall take and retain custody of all records, dockets, journals, and files of such courts except in causes transferred therefrom, as herein provided; the files and papers in such transferred cases shall be transferred to the proper United States circuit or district court, together with a transcript of all book entries to complete the record in such particular case so transferred. (June 16, 1906, c. 3335, § 19, 34 Stat. 277.)

§ 20. (Related to the trial of pending causes not transferred to the United States courts. Omitted.)

§ 21. The constitutional convention may by ordinance provide for the election of officers for a full State government, including members of the

legislature and five Representatives to Congress, and shall constitute the Osage Indian Reservation a separate county, and provide that it shall remain a separate county until the lands in the Osage Indian Reservation are allotted in severalty and until changed by the legislature of Oklahoma, and designate the county seat thereof, and shall provide rules and regulations and define the manner of conducting the first election for officers in said county. Such State government shall remain in abeyance until the State shall be admitted into the Union and the election for State officers held, as provided for in this Act. The State legislature when organized shall elect two Senators of the United States, in the manner now prescribed by the laws of the United States, and the governor and secretary of said State shall certify the election of the Senators and Representatives in the manner required by law; and said Senators and Representatives shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States. And the officers of the State government formed in pursuance of said constitution, as provided by said constitutional convention, shall proceed to exercise all the functions of such State officers; and all laws in force in the Territory of Oklahoma at the time of the admission of said State into the Union shall be in force throughout said State, except as modified or changed by this Act or by the constitution of the State, and the laws of the United States not locally inapplicable shall have the same force and effect within said State as elsewhere within the United States. (June 16, 1906, c. 3335, § 21, 34 Stat. 277.)

§ 22. (Required the acceptance of the act by an irrevocable ordinance. Omitted.)

§§ 23–41. (Related to Arizona and New Mexico. Omitted.)

Notes of Decisions

Effect on Indian treaties.—Osage Indians having by Treaty of September 29, 1865, Act July 15, 1870, Treaty with Cherokee Nation of July 19, 1866, and Act June 5, 1872, been removed from Kansas lands and given reservation bounded by Arkansas river in lands previously granted to Cherokee Nation, did not acquire title to bed of that stream if it was navigable; this conclusion being strengthened in view of Organic Act of May 2, 1890, including reservation in Oklahoma territory Enabling Act, § 21. U. S. v. Brewer-Elliott Oil & Gas Co. (D. C.) 249 F. 609.

Supplemental Creek Treaty, § 6, provisos 1 and 2, relating to inheritance of land, was not repealed by Enabling Act or Constitution, and limits inheritance of land in Creek nation to Creek citizens and their descendants. McDonald v. Ralston (Okl.) 166 P. 405, certiorari denied 38 S. Ct. 14, 245 U. S. 657, 62 L. Ed. 534.

Validity of state laws.—St. Okl. 1890, § 4173, continued in Rev. Laws 1910, § 6639, in so far as it attempted to prescribe rights of riparian owners on navigable streams, is invalid, being in excess of power of territorial Legislature as restricted by Organic Act May 2, 1890, § 6. U. S. v. Brewer-Elliott Oil & Gas Co. (D. C.) 249 F. 609.

In view of similar congressional legislation, St. Okl. 1890, § 4173, continued after statehood as Rev. Laws 1910, § 6639, in so far as it declared that bed of nonnavigable streams shall belong to opposite owners in common, is valid, being within power of territorial Legislature, as limited by Organic Act May 2, 1890, § 6. Id.

Laws applicable.—Extension into Indian Territory of certain general laws of Arkansas published in Mansf. Dig. 1884, by Act Cong. May 2, 1890, § 31, put in force provisions of section 6525 of such digest relating to suits to avoid the probate of a will. Gidney v. Chappel, 36 S. Ct. 492, 241 U. S. 99, 60 L. Ed. 910, affirming judgment Same v. Chapple, 142 P. 755, 43 Okl. 267.

Under Oklahoma Enabling Act and Const. Okl. art. 25, § 2, Oklahoma statutes were substituted for Arkansas statutes of descent made applicable by Act June 30, 1902, to Creek allotments under Act March 1, 1901. Jefferson v. Fink, 38 S. Ct. 516, 247 U. S. 288, 62 L. Ed. 1117, affirming judgment Same v. Cook, 155 P. 852, 53 Okl. 272.

Enabling Act Okl. §§ 13, 21, and Const. art. 25, § 2, substituted for the laws of descent and distribution contained in Mansf. Dig. c. 49, the laws contained in Rev. Laws 1910, § 8416 et seq., and left remaining in force as an exception thereto the provisos of Supplemental Agreement of June 30, 1902, with the Creek Nation, § 6, relative to descent and distribution, as provided for by Act Cong. March 1, 1901. Jefferson v. Cook (Okl.) 155 P. 852.

Since statehood, divorce between members of the Osage Tribe of Indians is controlled by the divorce laws of the state, in view of Enabling Act Okl. § 2, and Const. art. 3, § 1. Wah-Tsa-e-o-she v. Webster (Okl.) 172 P. 78.

Jurisdiction of courts.—Under Act Cong. May 27, 1908, § 9, Enabling Act Okl. § 3, and Const. Okl. art. 10, § 6, district courts are without jurisdiction to decree partition of lands inherited by full-blood Indian from a deceased allottee, who was a full-blood Indian of the Five Civilized Tribes. Coleman v. Battiest (Okl.) 162 P. 786.

Intoxicating liquors.—Indictment held to charge offense of carrying liquor into Indian Territory, in violation of act of 1895, as amended by Oklahoma Enabling Act of 1906, and not to be restricted to Comp. St. U. S. § 4137. Collins v. Morgan, 243 F. 495, 156 C. C. A. 193.

Act March 1, 1895, forbidding the introduction of intoxicating liquor into the Indian Territory, as limited to interstate commerce by the Oklahoma Enabling Act, is not unconstitutional, as discriminating between the states in respect of trade and commerce in intoxicating liquors. De Moss v. U. S. (C. C. A.) 250 F. 87; Warren v. U. S. (C. C. A.) 250 F. 89.

TITLE XXIII—THE TERRITORIES AND INSULAR POSSESSIONS

Chap.		Sec.
1.	Provisions Common to All the Territories	3483
3A.	Alaska	3530
3B.	Hawaii	3698
3C.	Porto Rico	3747
3D.	The Philippine Islands	3810
3F.	The Virgin Islands (The Danish West Indies)	39-24¼a

CHAPTER ONE—PROVISIONS COMMON TO ALL THE TERRITORIES

§ 3483. (Act July 30, 1886, c. 818, § 4.) Limitation of indebtedness to be incurred by municipal corporations, counties, etc.

Exceeding limitation.—Where aggregate debt of school district in territory exceeded 4 per cent. of value of taxable property in district, so that its contract for erection of schoolhouse was void and it converted completed schoolhouse, contractor or his assignee had no action for conversion. School Dist. No. 89 of Caddo County v. Van Arsdale (Okl.) 162 P. 741.

§ 3490. (Act March 2, 1897, c. 363, § 1.) Acquisition or ownership of land in Territories by aliens, prohibited.

Acquisition of title from alien.—Under this section, and Act Feb. 23, 1905 (Comp. St. 1916, § 3497), making the former act applicable to the District of Columbia, an alien has the right to devise land in the District of Columbia where no such proceedings have been instituted. Freitag v. Freitag, 47 App. D. C. 1.

Citizens of Russia, who were next of kin of a decedent, on his death, April 6, 1912, are entitled to share in the proceeds of the sale of his real estate in the District of Columbia, by virtue of this section, and article 10 of the treaty of this country with Russia Dec. 6–18, 1832 (8 Stat. 450), notwithstanding the abrogation of such treaty on January 1, 1913. Cohen v. Cohen, 47 App. D. C. 129.

§ 3497. (Act Feb. 23, 1905, c. 733.) Act March 2, 1897, c. 363, amended to extend to aliens in respect of real estate in District of Columbia.

Devise by alien.—Under Act March 2, 1897 (Comp. St. 1916, § 3490), permitting aliens to "convey" their title to land at any time before commencement of escheat proceedings, and this section, an alien has the right to devise land in the District of Columbia, where no such proceedings have been instituted. Freitag v. Freitag, 47 App. D. C. 1.

CHAPTER THREE A—ALASKA

Sec.
3530. Constitution and laws of United States extended.
3533. Convening and sessions of legislature.
3535. Enacting clause; subject of act.
3536. Legislative power; limitations.
3593a. (1) Railroads; President empowered and directed to locate, construct, and operate line or lines.
3593dd. Town sites; sale of lots; disposition of proceeds.
3602a. Roads and trails; estimates for work on.
3607a. Public instruction; schools for white and colored children; appropriations.
3611a. Insane persons; persons admitted to hospitals.
3612a. Wharf at Sitka; repairs.
3613a. Reindeer; sale of males.
3628. License taxes on business of canning, curing, etc., fish or manufacturing fish products.
3631. Laying or setting nets, seines, etc., in certain waters, restricted.
3632. Close season for salmon.
3635. Wanton waste or destruction of salmon or other food fishes unlawful.
3642. Punishment for violations of act; forfeiture of vessels, etc.
3643b. Manufacture or sale of intoxicating liquor prohibited.
3643bb. Transportation of pure alcohol by pharmacists.
3643c. Same; permits; application for.
3643cc. Same; permits; issue; form.
3643d. Same; permits; issue; contents; records of.
3643dd. Same; permits; attaching to packages; cancellation.
3643e. Records of shipments of alcohol.
3643ee. Transportation of wine for sacramental purposes.
3643f. Same; refusal of delivery without certificates.
3643ff. Alcohol for scientific purposes; permits; application for.
3643g. Same; permits; form.
3643gg. Same; permits; cancellation.
3643h. Use of building or vehicle in violation of law.
3643hh. Importation of liquors except as provided by law.
3643i. Drinking liquors in or on passenger coach.
3643ii. Keeping place for sale of liquors.
3643j. Arrest of persons charged with violations of act.
3643jj. Evidence to convict.
3643k. Liquor nuisances; maintenance; abatement.
3643kk. Same; actions for abatement.
3643*l*. Same; violations of law by tenant; forfeiture of lease.
3643*ll*. Same; knowingly permitting.
3643m. Property in alcoholic liquors illegally manufactured; searches and seizures.
3643mm. Punishment for violations of act.
3643n. Revocation of licenses of pharmacists.
3643nn. Evidence of sale of liquors.
3643*o*. Duties of officers to enforce law.
3643*oo*. Informations for violations of law.
3643p. Importing liquors in violation of law.
3643pp. Liquor licenses.
3643q. Additional legislation by legislature.
3643qq. Singular includes plural and masculine feminine.
3643r. Time of taking effect of act; repeal.

§ 3530. (Act Aug. 24, 1912, c. 387, § 3.) Constitution and laws of United States extended.

Amendment of existing laws.—Congress, in Act June 6, 1900, c. 786, § 45, 31 Stat. 339, provided that summons in actions in Alaska "shall be served by the marshal or any deputy, or by a person specially appointed by him or by the court or judge thereof." The Legislature of Alaska (Sess. Laws 1913, p. 29), amended that section by providing that summons might also be served "by any person over the age of twenty-one years who is competent to be a witness in the action." Held, the amendatory act of 1913, so passed by the Legislature of Alaska, is in conflict with the Organic Act, and is void. Ivory v. Nome Consol. Dredging Co., 5 Alaska, 312.

Contra, Currier v. Mihalcik, 5 Alaska, 251.

Additional license or tax.—Under this section and sections 3536, 3528, the territorial Legislature had power to pass Act Alaska April 29, 1915 (Laws 1915, c. 70), imposing tax on fish traps, as license tax on fisheries. Alaska Pacific Fisheries v. Territory of Alaska, 236 F. 52, 149 C. C. A. 262.

§ 3533. (Act Aug. 24, 1912, c. 387, § 6.) Convening and sessions of legislature.

End of session.—Act Alaska April 29, 1915 (Laws 1915, c. 76), passed in last hours of session which began March 1st, adjourned April 30th about 4 a. m., held not passed in violation of this section. Alaska Pacific Fisheries v. Territory of Alaska, 236 F. 52, 149 C. C. A. 262.

§ 3535. (Act Aug. 24, 1912, c. 387, § 8.) Enacting clause; subject of act.

Subject of act.—Act Alaska April 30, 1913 (Laws 1913, c. 79), held not invalid as containing more than one subject, in violation of this section; the whole act relating to liens of mine laborers, etc.—Spalding v. Martin, 241 F. 372, 154 C. C. A. 252.

Title of act.—Although a territorial act may authorize many things of a diverse nature to be done, the title will be sufficient if the things authorized may be fairly regarded as in furtherance of the subject expressed in the title. It is therefore to be liberally construed and treated, so as to uphold the law if possible. Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co., 5 Alaska, 210.

The title, "An act to amend section forty-five of the Code of Civil Procedure for Alaska (Compiled Laws of Alaska, sec. 877)," is sufficient. Currier v. Mihalcik, 5 Alaska, 251.

The title of the eight-hour law passed by the Legislature of Alaska in 1913 (Sess. Laws Alaska 1913, c. 29, p. 35) limits its application to lode mining claims. The act of 1915 (Sess. Laws Alaska 1915, c. 6, p. 6), amending the same, extended its provisions to underground placer mining claims, but without any change or extension of the title of the amending act. Held, the amendatory act of 1915 embraces more than one subject, and, the extension to "underground placer mines" not being expressed in its title, the act, to that extent, is void for conflict with this section. United States v. Howell, 5 Alaska, 578.

§ 3536. (Act Aug. 24, 1912, c. 387, § 9.) Legislative power; limitations.

Construction and application in general.—The powers of the territorial Legislature of Alaska are limited by the act defining those powers. The Organic Act is a grant of specific powers, and not a reservation of specific powers. The legislative power extends to "all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States," not forbidden by the limitations of the grant in the Organic Act. Territory v. Alaska Pac. Fisheries, 5 Alaska, 325.

Special privilege or franchise.—Workmen's Compensation Act of Alaska, applying to persons and corporations engaged in mining, held not violative of this section.—Johnston v. Kennecott Copper Corporation, 248 F. 407, 160 C. C. A. 417, affirming Johnson v. Kennecott Copper Corporation, 5 Alaska, 571.

Taxation.—This section held to prohibit municipal corporations in Alaska from levying any tax upon railways or railway property. Alaska Northern Ry. Co. v. Municipality of Seward, 229 F. 667, 144 C. C. A. 77.

Act Alaska April 29, 1915 (Laws 1915, c. 76), imposing license taxes on fish traps, held valid under this section, though the traps were of varying value. Alaska Pacific Fisheries v. Territory of Alaska, 236 F. 52, 149 C. C. A. 262.

Act Alaska April 29, 1915 (Laws 1915, c. 76), relating to license taxes and imposing such a tax on fish traps, held not invalid under this section, as imposing a property tax on dummy traps, and not a license. Id.

Alaska acts of May 1, 1913 (Laws 1913, c. 52), and April 29, 1915 (Laws 1915, c. 76), imposing license taxes on fisheries as well as imposing taxes on fish traps, etc., held valid. Alaska Salmon Co. v. Territory of Alaska, 236 F. 62, 149 C. C. A. 272.

The license taxes imposed by Laws Alaska 1913, c. 52, on business of mining, are not revenue measures pure and simple, and so are not invalid under this section. Alaska Mexican Gold Mining Co. v. Territory of Alaska, 236 F. 64, 149 C. C. A. 274.

The Legislature of Alaska had power to supplement those provisions of the act of Congress (section 627, Comp. Laws Alaska 1913) authorizing towns in Alaska to levy and collect taxes and special assessments for local improvements on abutting property, by providing a summary proceeding for the assessment, levy and collection of such taxes and assessments. In re Street Assessments in Town of Seward, 5 Alaska, 726.

§ 3593a. (Act March 12, 1914, c. 37, § 1.) (1) Railroads; President empowered and directed to locate, construct, and operate line or lines.

Limit of expenditure.—The President is authorized, under this section, to obligate the United States to expend, for the purchase of a line of railroads in Alaska necessary to complete the line designated by him, a sum in excess of the existing appropriation by Congress, but within the maximum of the cost as prescribed by the act. 30 Op. Atty. Gen. 332.

§ 3593dd. (Act April 17, 1917, c. 3, § 1.) Town sites; sale of lots; disposition of proceeds.

Until June thirtieth, nineteen hundred and eighteen, not to exceed fifty per centum of the moneys received from the sale of lots or tracts within any town site or town sites heretofore or hereafter sold pursuant to the provisions of the Act of March twelfth, nineteen hundred and fourteen, entitled "An Act to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes," may, in the discretion of the Secretary of the Interior, be set apart and expended within the respective town sites in which such lots or tracts are sold, for the purpose of preparing the land for occupancy, the construction, installation, and maintenance of public utilities and improvements, and the construction of public school buildings, under such terms and conditions as the Secretary of the Interior may prescribe, and the moneys so set apart and designated are appropriated for the purpose of carrying these provisions into effect: Provided, That such moneys as may have been heretofore or may hereafter be expended for such purposes under and by authority of the Alaskan Engineering Commission from the funds at its disposal shall be reimbursed from the amount designated for the purposes herein provided: Provided further, That a report of the expenditures hereunder shall be made to Congress at the beginning of each regular session. (40 Stat. 19.)

These were provisions of the deficiency appropriation act for the fiscal year 1917, cited above.

§ 3602a. (Act July 9, 1918, c. 143.) Roads and trails; estimates for work on.

That hereafter, so long as the construction and maintenance of "Military and Post" Roads in Alaska, and of other roads, bridges, and trails in that Territory shall remain under the direction of the Secretary of War, he be authorized to submit such estimates for the consideration of Congress as are in his judgment necessary for a proper prosecution of the work. (40 Stat. 863.)

This section was a provision of the Army appropriation act for the fiscal year 1919, cited above.

§ 3607a. (Act March 3, 1917, c. 167.) Public instruction; schools for white and colored children; appropriations.

The Legislature of Alaska is hereby empowered to establish and maintain schools for white and colored children and children of mixed blood who lead a civilized life in said Territory and to make appropriations of Territorial funds for that purpose; and all laws or parts of laws in conflict with this Act are to that extent repealed. (39 Stat. 1131.)

This was an act entitled "An act to authorize the legislature of Alaska to establish and maintain schools, and for other purposes," cited above.

§ 3611a. (Act July 1, 1918, c. 113, § 1.) Insane persons; persons admitted to hospitals.

Patients who are not indigent may be admitted to the hospitals for care and treatment on the payment of such reasonable charges

therefor as the Secretary of the Interior shall prescribe. (40 Stat. 677.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of Act June 12, 1917, c. 27, § 1, 40 Stat. 151.

§ 3612a. (Act Aug. 1, 1914, c. 223, § 1.) Wharf at Sitka; repairs.

The provisions of this section were repeated in the sundry civil appropriation act for the fiscal year 1919, Act July 1, 1918, c. 113, § 1, 40 Stat. 634 except that part which provided for the disposition of the wharf.

§ 3613a. (Act July 1, 1918, c. 113, § 1.) Reindeer; sale of males.

The Commissioner of Education is authorized to sell such of the male reindeer belonging to the Government as he may deem advisable and to use the proceeds in the purchase of female reindeer belonging to missions and in the distribution of reindeer to natives in those portions of Alaska in which reindeer have not yet been placed and which are adapted to the reindeer industry. (40 Stat. 677.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 3628. (Act June 26, 1906, c. 3547, § 1.) License taxes on business of canning, curing, etc., fish or manufacturing fish products.

Additional license or tax.—Act Alaska April 29, 1915 (Laws 1915, c. 76), imposing as a license tax on the business of fisheries a tax on fish traps, does not impose a tax on appliances used in the business, and so is enforceable though license taxes imposed by this section had been paid. Alaska Pacific Fisheries v. Territory of Alaska, 236 F. 52, 149 C. C. A. 262, affirming Territory v. Alaska Pac. Fisheries, 5 Alaska, 325.

§ 3631. (Act June 26, 1906, c. 3547, § 4.) Laying or setting nets, seines, etc., in certain waters, restricted.

Restraining construction of unlawful trap.—The plaintiff sought to secure an injunction against the defendants constructing a fish trap on a site previously chosen by the plaintiff, upon the ground that plaintiff had a prior territorial license to operate a fish trap at that place. Held, one does not need a territorial license to authorize him to construct a fish trap, but only for the purpose of engaging in the business of catching fish by means of a trap. There is no provision of law whereby the officers of the territory have authority to segregate the site from the public domain or confer any title thereto on plaintiff. Thlinket Packing Co. v. Harris & Co., 5 Alaska, 471.

Where plaintiff first lawfully located and constructed a fish trap in the waters of Alaska, and the defendant thereafter attempted to locate and construct another within a distance prohibited by law, the construction of the second trap will be enjoined at the suit of the plaintiff whose lawful trap is injured in its operation thereby. Harris & Co. v. Thlinket Packing Co., 5 Alaska, 493.

§ 3632. (Act June 26, 1906, c. 3547, § 5.) Close season for salmon.

Offenses.—One violating this section, in failing to raise or lower the netting of the heart of fish traps, so as to give salmon and other fish free passage, cannot escape conviction because his fishing was done in the manner excepted, or because he was not engaged in fishing. Thlinket Packing Co. v. U. S., 236 F. 109, 149 C. C. A. 319.

Under this section it is not a sufficient compliance for the owner of fish trap to raise or lower 25 feet of the web or netting of the heart of the trap in a V-shape, but the whole 25 feet must be raised or lowered. Id.

Indictment.—In a prosecution under this section for failure to comply with the regulations, an indictment which gave the location of defendant's trap is sufficient where such location showed that it was not within the excepted waters. Thlinket Packing Co. v. United States, 236 F. 109, 149 C. C. A. 319.

§ 3635. (Act June 26, 1906, c. 3547, § 8.) Wanton waste or destruction of salmon or other food fishes unlawful.

Prosecution.—Under indictment under Comp. Laws Alaska 1913, § 266, for wantonly wasting and destroying salmon taken in waters of Alaska, alleging an offense on July 30, 1913, a conviction for offense on July 28th, the day on which the government elected to prove the offense, would not be reversed because of a variance. Alaska Packers' Ass'n v. United States, 244 F. 710, 157 C. C. A. 158.

§ 3642. (Act June 26, 1906, c. 3547, § 13.) Punishment for violations of act; forfeiture of vessels, etc.

Elements of offense.—Under Act June 26, 1906, §§ 5, 13 (Comp. St. 1916, §§ 3632, 3642), failure of one fishing for salmon to lift or lower 25 feet of the webbing or net of the heart of its trap from Saturday evening to Monday morning held an offense, though no fish were caught. Thlinket Packing Co. v. U. S., 236 F. 109, 149 C. C. A. 319.

§ 3643b. (Act Feb. 14, 1917, c. 53, § 1.) Manufacture or sale of intoxicating liquor prohibited.

On and after the first day of January, anno Domini nineteen hundred and eighteen, it shall be unlawful for any person, house, association, firm, company, club, or corporation, his, its, or their agents, officers, clerks, or servants, to manufacture, sell, give, or otherwise dispose of any intoxicating liquor or alcohol of any kind in the Territory of Alaska, or to have in his or its possession or to transport any intoxicating liquor or alcohol in the Territory of Alaska unless the same was procured and is so possessed and transported as hereinafter provided.

Whenever the term "liquor," "intoxicating liquor," or "intoxicating liquors" is used in this Act it shall be deemed to include whisky, brandy, rum, gin, wine, ale, porter, beer, cordials, hard or fermented cider, alcoholic bitters, ethyl alcohol, and all malt liquors, including all alcoholic compounds classed by the United States Internal Revenue Bureau as "compound liquors": Provided, That this Act shall not apply to methyl or wood alcohol.

That any person or persons, or any house, company, association, club, or corporation, his, its, or their agents, officers, clerks, or servants, who shall, directly or indirectly, violate the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $1,000 or shall be imprisoned for a period of not more than one year, or by both such fine and imprisonment. (39 Stat. 903.)

This section and the thirty-two sections next following were an act entitled "An act to prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes," cited above.

§ 3643bb. (Act Feb. 14, 1917, c. 53, § 2.) Transportation of pure alcohol by pharmacists.

Before a pharmacist shall be authorized to transport pure alcohol for scientific, artistic, or mechanical purposes or for compounding or preparing medicines, as provided by this Act, he shall procure a permit for that purpose from the judge of the district court in the division where the applicant resides. (39 Stat. 903.)

See note to § 3643b, ante.

§ 3643c. (Act Feb. 14, 1917, c. 53, § 3.) Same; permits; application for.

To procure such permit a pharmacist shall make and file with the clerk of the said district court a statement in writing, under oath, stating that he desires to transport pure alcohol for scientific, artistic, or mechanical purposes or for compounding, preparing, or preserving medicines only, as provided by this Act, and giving his name, the location of his place of business, a statement that he is a licensed pharmacist, that he is regularly engaged in the practice of his profession at the location named, and that he will not violate the provisions of this Act. (39 Stat. 904.)

See note to § 3643b, ante.

§ 3643cc. (Act Feb. 14, 1917, c. 53, § 4.) Same; permits; issue; form.

If the judge of the district court of any division in Alaska is satisfied of the good faith of the applicant he shall issue to such phar-

macist a permit to transport pure alcohol for compounding, preparing, or preserving medicines or for scientific, artistic, or mechanical purposes. Such permit shall be substantially in the following form:

"Permit to pharmacists to transport pure alcohol for compounding, preparing, and preserving medicines only or for scientific, artistic, or mechanical purposes.

"District court, ——— division, Territory of Alaska, ss.

"——— ———, a pharmacist, residing at ———, is hereby permitted to transport pure alcohol for compounding, preparing, and preserving medicines only or for scientific, artistic, or mechanical purposes. This permit can only be used for one shipment and will be void after six months from the date of issue.

"By order of the district court aforesaid.

"Dated this ——— day of ———, nineteen hundred and ———.

"———,

"Judge of the district court." (39 Stat. 904.)

See note to § 3643b, ante.

§ 3643d. (Act Feb. 14, 1917, c. 53, § 5.) Same; permits; issue; contents; records of.

Said permit mentioned in section four hereof shall be issued upon forms supplied by the clerk of the district court and shall contain the permit, a copy of the application for permit, and a copy of the provisions of section six of this Act, and shall be issued under the seal of the said court and shall be void for transportation purposes after six months from the date of issuance. The clerk of said district court shall keep in a separate book provided for that purpose a record of permits issued under this Act, wherein shall be entered the date and the number thereof, the person to whom issued, and the purpose for which issued. (39 Stat. 904.)

See note to § 3643b, ante.

§ 3643dd. (Act Feb. 14, 1917, c. 53, § 6.) Same; permits; attaching to packages; cancellation.

Said permit shall be attached to and remain affixed in a conspicuous place upon any package or parcel containing pure alcohol imported into or shipped in the Territory of Alaska, and when so affixed shall authorize any common carrier or any person operating a boat or vehicle for the transportation of goods, wares, or merchandise within the Territory of Alaska to transport, ship, or carry such pure alcohol. Any person so transporting such alcohol shall, before the delivery of such package or parcel, cancel said permit and so deface the same that it can not be used again. (39 Stat. 904.)

See note to § 3643b, ante.

§ 3643e. (Act Feb. 14, 1917, c. 53, § 7.) Records of shipments of alcohol.

All express companies, railroad companies, public or private carriers are hereby required to keep a separate book in which shall be entered, immediately upon receipt thereof, the name of the person to whom pure alcohol is shipped, from what city or town and State the same was shipped, and the name of the shipper, the amount and kind received, the date when received, the date when delivered, and to whom delivered, after which record there shall be a blank space in which the consignee shall be required to sign his own name, in ink, before such pure alcohol is delivered to such consignee, which book shall be open to the inspection of the public at any time during business hours of the company and shall not be removed from the place where the same is required to be kept. A copy of entries upon any such record herein provided to be kept, when certified to by the agent of any express or railroad company or any public or

private carrier in charge of the same, shall constitute prima facie evidence of the facts therein stated in any court of the Territory.

It shall be unlawful for any person, house, association, firm, company, club, or corporation, his, its, or their agents, officers, clerks, or servants, to ship alcohol or intoxicating liquor to a false or fictitious name or person, or any person to receive or receipt for alcohol or intoxicating liquor in a false or fictitious name. (39 Stat. 904.)

See note to § 3643b, ante.

§ 3643ee. (Act Feb. 14, 1917, c. 53, § 8.) Transportation of wine for sacramental purposes.

Any common carrier or any person operating a boat or vehicle for the transportation of goods, wares, or merchandise may accept for transportation and may transport to any place within the Territory of Alaska shipments of wine for sacramental purposes when there is attached to such shipment a certificate in substantially the following form:

"I (or we) certify that this package contains only ——— (amount) of ——— (wine), which has been ordered by ——— ——— who represents himself to be a duly authorized and officiating priest or minister of the ——— church at ———, and that said wine is desired for sacramental purposes only.

"——— ———."

(39 Stat. 905.) (Signature of shipper.)

See note to § 3643b, ante.

§ 3643f. (Act Feb. 14, 1917, c. 53, § 9.) Same; refusal of delivery without certificates.

Whenever a shipment of wines for sacramental purposes shall have been transported for delivery within the Territory of Alaska the delivering agent of the transportation company must refuse to deliver the same unless it is accompanied by the certificate prescribed in section eight of this Act, and then only to the person to whom the same is addressed or upon his written order. The transportation company must keep a record of all shipments and deliveries of wines for sacramental purposes and must preserve for a period of one year after their receipt all certificates accompanying such shipments and all written orders upon which deliveries may be made. Such records must be open to the inspection of the public at any time during office hours. (39 Stat. 905.)

See note to § 3643b, ante.

§ 3643ff. (Act Feb. 14, 1917, c. 53, § 10.) Alcohol for scientific purposes; application for.

Any person who shall desire to purchase pure alcohol for scientific, artistic, or mechanical purposes shall apply to the district court aforesaid for a permit for that purpose. To procure such permit he shall make and file with the clerk of the district court a statement in writing, under oath, stating that he desires to purchase pure alcohol for scientific, artistic, or mechanical purposes as provided by this Act, and giving his name and residence and the place at which such pure alcohol is to be used. (39 Stat. 905.)

See note to § 3643b, ante.

§ 3643g. (Act Feb. 14, 1917, c. 53, § 11.) Same; permits; form.

If the judge of said district court is satisfied of the good faith of the applicant, he shall issue to said applicant a permit to purchase a reasonable amount of pure alcohol for scientific, artistic, or mechanical purposes. The original of said permit shall have attached thereto a duplicate copy, and each shall be numbered with the same number and be in substantially the following form:

"District Court, ——— Division, Territory of Alaska, ss.

"——— ———, residing at ———, is hereby permitted to purchase pure alcohol in the amount of ——— (here insert quantity), to be used for scientific, artistic, or mechanical purposes. This permit can only be used for one purchase, and the copy thereof attached hereto shall be conspicuously pasted upon the package containing said alcohol, and this permit to purchase shall be void after ninety days from the date hereof.

"By order of the district court aforesaid.

"Dated this ——— day of ———, nineteen hundred and ———.

"——— ———,

(39 Stat. 905.) "Judge of the District Court."

See note to § 3643b, ante.

§ 3643gg. (Act Feb. 14, 1917, c. 53, § 12.) Same; permits; cancellation.

The permit mentioned in section eleven shall authorize the applicant to purchase and any pharmacist to sell and deliver to him the quantity named in the said permit. The permit shall be canceled, kept, and retained on file for at least one year by the pharmacist so selling said pure alcohol, and the copy of said permit shall be, by the pharmacist, conspicuously pasted upon the receptacle containing said alcohol, and shall so remain upon said receptacle so long as the same shall contain alcohol. Said permit and copy shall only authorize one purchase and sale. It shall be unlawful for any pharmacist to sell pure alcohol without the permit herein specified, or for any person to keep or have in his possession any pure alcohol unless the receptacle containing the same shall be distinctly labeled with the copy of the permit authorizing the purchase of the same. (39 Stat. 906.)

See note to § 3643b, ante.

§ 3643h. (Act Feb. 14, 1917, c. 53, § 13.) Use of building or vehicle in violation of law.

It shall be unlawful for any person owning, leasing, or occupying or in possession or control of any premises, building, vehicle, car, or boat to knowingly permit thereon or therein the manufacture, transportation, disposal, or the keeping of intoxicating liquor with intent to manufacture, transport, or dispose of the same in violation of the provisions of this Act. (39 Stat. 906.)

See note to § 3643b, ante.

§ 3643hh. (Act Feb. 14, 1917, c. 53, § 14.) Importation of liquors except as provided by law.

It shall be unlawful for any person to import, ship, sell, transport, deliver, receive, or have in his possession any intoxicating liquors, except as in this Act provided. (39 Stat. 906.)

See note to § 3643b, ante.

§ 3643i. (Act Feb. 14, 1917, c. 53, § 15.) Drinking liquors in or on passenger coach.

Any person who shall in or upon any passenger coach, street car, boat, or in or upon any other vehicle commonly used for the transportation of passengers, or in or about any depot, platform, or waiting room drink any intoxicating liquor of any kind, or any person who shall be drunk or intoxicated in any public or private road or street, or in any passenger coach, street car, or any public place or building, or at any public gathering, or any person who shall be drunk or intoxicated and shall disturb the peace of any person, shall be guilty of a misdemeanor. (39 Stat. 906.)

See note to § 3643b, ante.

§ 3643ii. (Act Feb. 14, 1917, c. 53, § 16.) Keeping place for sale of liquors.

Every person who shall directly or indirectly keep or maintain by himself or by associating with others, or who shall in any manner aid, assist, or abet in keeping or maintaining any club house, or other place in which alcoholic liquor is received or kept for the purpose of use, gift, barter, or sale, or for distribution or division among the members of any club or association by any means whatsoever, or who shall maintain what is commonly known as the "locker system" or other device for evading the provisions of this Act, and every person who shall use, barter, sell, give away, or assist or abet in bartering, selling, or giving away any liquors so received or kept, shall be deemed guilty of a misdemeanor and upon conviction thereof be subject to the penalties prescribed in section one of this Act; and in all cases the members, shareholders, associates, or employees in any club or association mentioned in this section shall be competent witnesses to prove any violations of the provisions of this section of this Act, or of any fact tending thereto; and no person shall be excused from testifying as to any offense committed by another against any of the provisions of this Act by reason of his testimony tending to criminate himself, but the testimony given by such person shall in no case be used against him.

The keeping or giving away of alcoholic liquors, or any schemes or devices whatever, to evade the provisions of this Act shall be deemed unlawful within the provisions of this Act. (39 Stat. 906.)

See note to § 3643b, ante.

§ 3643j. (Act Feb. 14, 1917, c. 53, § 17.) Arrest of persons charged with violations of act.

If one or more persons who are competent witnesses shall charge, on oath or affirmation, before the district attorney or any of his deputies duly authorized to act for him, presenting that any person, company, copartnership, association, club, or corporation has or have violated or is violating the provisions of this Act by manufacturing, storing, or depositing, offering for sale, keeping for sale or use, trafficking in, bartering, exchanging for goods, giving away, or otherwise furnishing alcoholic liquor, shall request said district attorney or any of his assistants duly authorized to act for him to cause to be issued a warrant, said attorney or any of his assistants shall cause to be issued such warrant, in which warrant the room, house, building, or other place in which the violation is alleged to have occurred or is occurring shall be specifically described; and said warrant shall be placed in the hands of the marshal, his deputy, or any town marshal or policeman in any town in which the room, house, building, or other place above referred to is located, commanding him to at once thoroughly search said described room, house, building, or other place, and the appurtenances thereof; and if any such be found, to take into his possession and safely keep, to be produced as evidence when required, all alcoholic liquors and all the means of dispensing the same, also all the paraphernalia or part of the paraphernalia of a barroom or other alcoholic liquor establishment, and any United States internal-revenue tax receipt or certificate for the manufacture or sale of alcoholic liquor, effective for the period of time covering the alleged offense, and forthwith report all the facts to the district attorney or his deputy, and such alcoholic liquor or the means for dispensing same, or the paraphernalia of a barroom or other alcoholic liquor establishment, or any United States internal-revenue tax receipt or certificate for the sale

of alcoholic liquor, effective as aforesaid, shall be prima facie evidence of the violation of the provisions of this Act. (39 Stat. 906.)

See note to § 3643b, ante.

§ 3643jj. (Act Feb. 14, 1917, c. 53, § 18.) Evidence to convict.

It shall not be necessary, in order to convict any person, company, house, association, copartnership, club, or corporation, his, its, or their agents, officers, clerks, or servants of manufacturing, importing, or selling alcoholic liquors, to prove the actual manufacture, importing, sale, delivery of, or payment for any alcoholic liquors, but the evidence of having or keeping them in hand, stored or deposited, taking orders for, or offering to sell or barter, or exchanging them for goods or merchandise, or giving them away, shall be sufficient to convict; nor shall it be necessary in a warrant, information, or indictment to specify the particular kind of alcoholic liquor which is made the subject of a charge of violation of this Act. (39 Stat. 907.)

See note to § 3643b, ante.

§ 3643k. (Act Feb. 14, 1917, c. 53, § 19.) Liquor nuisances; maintenance; abatement.

All houses, boats, boathouses, buildings, clubrooms, and places of every description, including drug stores, where alcoholic liquors are manufactured, stored, sold, or vended, given away, or furnished contrary to law, including those in which clubs, orders, or associations sell, barter, give away, distribute, or dispense intoxicating liquors to their members by any means or device whatever, as provided in this Act, shall be held, taken, and deemed common and public nuisances. And any person who shall maintain, or shall aid or abet, or knowingly be associated with others, in maintaining such common and public nuisance, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to the penalties prescribed in section one of this Act, and judgment shall be given that such house, boat, building, or other place, or any room therein, be abated or closed up as a place for the sale or keeping of such liquor contrary to law, as the court may determine. (39 Stat. 907.)

See note to § 3643b, ante.

§ 3643kk. (Act Feb. 14, 1917, c. 53, § 20.) Same; actions for abatement.

Any United States district attorney for the Territory of Alaska may maintain an action in equity in the name of the United States to abate and perpetually enjoin such a nuisance as defined in the preceding section. No bond shall be required. Any person violating the terms of any injunction granted in such proceedings shall be punished for contempt by a fine of not more than $500 or by imprisonment in the Federal jail for not more than six months, or both such fine and imprisonment, in the discretion of the court. (39 Stat. 907.)

See note to § 3643b, ante.

§ 3643*l*. (Act Feb. 14, 1917, c. 53, § 21.) Same; violations of law by tenant; forfeiture of lease.

If a tenant of a building or tenement is convicted of using such premises or any part thereof or maintaining a common nuisance, as hereinbefore defined, or of knowingly permitting such use by another, the conviction of such use shall render void the lease under which he holds and shall cause the right of possession to revert to the owner or lessor, who may, without process of law, make immediate entry upon the premises, or may avail himself of the remedy provided for the forcible detention thereof. (39 Stat. 907.)

See note to § 3643b, ante.

§ 3643*ll*. (Act Feb. 14, 1917, c. 53, § 22.) Same; knowingly permitting.

Anyone who knowingly permits any building owned or leased by him or under his control, or any part thereof, to be used in maintaining a common nuisance hereinbefore described in section nineteen of this Act, neglects to take all reasonable measures to eject therefrom the person so using the same, shall be deemed guilty of assisting in maintaining such nuisance. (39 Stat. 908.)

See note to § 3643b, ante.

§ 3643m. (Act Feb. 14, 1917, c. 53, § 23.) Property in alcoholic liquors illegally manufactured; searches and seizures.

No property right of any kind shall exist in alcoholic liquors or beverages illegally manufactured, received, possessed, or stored under this Act, and in all such cases the liquors are forfeited to the United States and may be searched for and seized and ordered to be destroyed by the court after a conviction, when such liquors have been seized for use as evidence, or upon satisfactory evidence to the court presented by the district attorney that such liquors are contraband. (39 Stat. 908.)

See note to § 3643b, ante.

§ 3643mm. (Act Feb. 14, 1917, c. 53, § 24.) Punishment for violations of act.

Any person convicted of a violation of any of the provisions of this Act where the punishment therefor is not herein specifically provided shall be punished as provided by section one of this Act. (39 Stat. 908.)

See note to § 3643b, ante.

§ 3643n. (Act Feb. 14, 1917, c. 53, § 25.) Revocation of licenses of pharmacists.

In case a pharmacist is convicted under the provisions of this Act the judge of the district court, in addition to the penalty provided in this Act, may, in his discretion, revoke his license to practice pharmacy, and thereafter he shall not receive a license for one year. (39 Stat. 908.)

See note to § 3643b, ante.

§ 3643nn. (Act Feb. 14, 1917, c. 53, § 26.) Evidence of sale of liquors.

The issuance by the United States of any internal revenue special tax stamp or receipt to any person as a dealer in intoxicating liquors shall be prima facie evidence of the sale of intoxicating liquors by such person during the time the stamp or receipt is in force and effect.

A copy of such stamp or receipt or of the record of the issuance thereof, certified to by a United States internal-revenue officer having charge of such record, is admissible as evidence in like case and with like effect as the original stamp or receipt. (39 Stat. 908.)

See note to § 3643b, ante.

§ 3643*o*. (Act Feb. 14, 1917, c. 53, § 27.) Duties of officers to enforce law.

It shall be the duty of the governor of Alaska, the United States marshals and their deputies, mayors, and members of town councils, town marshals, and police officers of all incorporated towns in Alaska, all Federal game wardens, agents of the Bureau of Fisheries and Forestry Service, customs collectors and their deputies, employees of the Bureau of Education, prosecuting attorneys and their deputies, and all other Federal and Territorial executive officers to enforce the provisions of this Act. (39 Stat. 908.)

See note to § 3643b, ante.

§ 3643oo. (Act Feb. 14, 1917, c. 53, § 28.) Informations for violations of law.

Prosecutions for violations of the provisions of this Act shall be on information filed by any such officer before any justice of the peace or district judge, or upon indictment by any grand jury of the Territory of Alaska, and said United States district attorney or his deputy shall file such information upon the presentation to him or his assistants of sworn information that the law has been violated; and in such prosecutions anyone making a false oath to any material fact shall be deemed guilty of perjury. (39 Stat. 908.)

See note to § 3643b, ante.

§ 3643p. (Act Feb. 14, 1917, c. 53, § 29.) Importing liquors in violation of law.

Any person, company, or corporation who shall import or carry liquors into or upon the Territorial waters of Alaska in or upon any steamship, steamboat, vessel, boat, or other water craft, or shall permit the same to be so imported or carried into or upon said waters, except under the provisions of this Act, shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in section one of this Act. (39 Stat. 908.)

See note to § 3643b, ante.

§ 3643pp. (Act Feb. 14, 1917, c. 53, § 30.) Liquor licenses.

In addition to the power now exercised the judges of the district courts of Alaska may grant liquor licenses for any period of time less than one year upon a pro rata of the license fee for one year, but not to extend beyond the first day of January, nineteen hundred and eighteen, under the provisions of law now in force there so far as the same are applicable. (39 Stat. 909.)

See note to § 3643b, ante.

§ 3643q. (Act Feb. 14, 1917, c. 53, § 31.) Additional legislation by Legislature.

The Legislature of the Territory of Alaska may pass additional legislation in aid of the enforcement of this Act not inconsistent with its provisions. (39 Stat. 909.)

See note to § 3643b, ante.

§ 3643qq. (Act Feb. 14, 1917, c. 53, § 32.) Singular includes plural and masculine feminine.

In the interpretation of this Act words of the singular number shall be deemed to include their plurals, and words of the masculine gender shall be deemed to include the feminine, as the case may be. (39 Stat. 909.)

See note to § 3643b, ante.

§ 3643r. (Act Feb. 14, 1917, c. 53, § 33.) Time of taking effect of act; repeal.

This Act shall be in full force and effect on and after the first day of January, nineteen hundred and eighteen, and all laws and parts of laws inconsistent herewith be, and they are hereby, repealed as of that date. (39 Stat. 909.)

See note to § 3643b, ante.

CHAPTER THREE B—HAWAII

Sec. LEGISLATION

TOWN, CITY AND COUNTY GOVERNMENT

3698. Counties, and town and city municipalities and officials thereof.

ELECTIONS

QUALIFICATIONS OF VOTERS FOR SENATORS AND IN ALL OTHER ELECTIONS

3704a. Qualifications of females.
3704b. Submission to voters of right of females to vote.
3704c. Repeal of laws restricting right to vote to males.
3704d. Effect of Act.

THE EXECUTIVE

COMMISSIONER OF PUBLIC LANDS

3714. Public lands.

Sec. THE JUDICIARY

DISQUALIFICATION BY RELATIONSHIP, PECUNIARY INTEREST, OR PREVIOUS JUDGMENT

3725. Disqualification by relationship, pecuniary interest, or previous judgment.

UNITED STATES OFFICERS

FEDERAL COURT

3727. District court.

MISCELLANEOUS

INTOXICATING LIQUORS

3746a. Prohibition; repeal of act; petition.
3746b. Contents of petition for repeal.

LEGISLATION

TOWN, CITY, AND COUNTY GOVERNMENT

§ 3698. (Act April 30, 1900, c. 339, § 56, as amended, Act March 3, 1905, c. 1465, § 1.) Counties, and town and city municipalities and officials thereof.

Liability for torts.—A Hawaiian county is liable for damages caused by fire started by its employés on a highway and negligently permitted to spread to adjoining premises. Hawaii County v. Halawa Plantation, 239 F. 836, 152 C. C. A. 622.

ELECTIONS

QUALIFICATIONS OF VOTERS FOR SENATORS AND IN ALL OTHER ELECTIONS

§ 3704a. (Act June 13, 1918, c. 97, § 1.) Qualifications of females.

That the Legislature of the Territory of Hawaii be, and it is hereby, vested with the power to provide that, in all elections authorized to be held by the organic act of the Territory of Hawaii, female citizens possessing the same qualifications as male citizens shall be entitled to vote. (40 Stat. 604.)

§ 3704b. (Act June 13, 1918, c. 97, § 2.) Submission to voters of right of females to vote.

The said legislature is further hereby vested with the power to have submitted to the voters of the Territory of Hawaii the question of whether or not the female citizens of the Territory shall be empowered to vote at elections held under the laws of the territory of Hawaii. (40 Stat. 604.)

§ 3704c. (Act June 13, 1918, c. 97, § 3.) Repeal of laws restricting right to vote to males.

All provisions of the organic act of the Territory of Hawaii restricting the right to vote to male citizens which are in conflict with the provisions hereof are hereby repealed. (40 Stat. 604.)

§ 3704d. (Act June 13, 1918, c. 97, § 4.) Effect of Act.

This Act shall take effect, and be enforced from and after its approval, and shall be held to apply to both Territorial and municipal elections. (40 Stat. 604.)

THE EXECUTIVE

COMMISSIONER OF PUBLIC LANDS

§ 3714. (Act April 30, 1900, c. 339, § 73, as amended, Act April 2, 1908, c. 124, and Act May 27, 1910, c. 258, § 5.) Public lands.

Proclamation of the President, dated June 24, 1918, as follows:

"Whereas, by reason of the existence of a state of war it is essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to secure an adequate supply of sugar and other food products in the United States, including the Territory of Hawaii;

"Now therefore, I, Woodrow Wilson, President of the United States, by virtue of the powers conferred upon me by law, do hereby find and determine, and by this proclamation do announce that it is essential in order to secure such adequate food supply to continue to the fullest extent possible the cultivation of all public lands in the Territory of Hawaii now under cultivation in sugar or other food products; and for the purpose of continuing such cultivation and of maintaining the production of all such food products the Commissioner of Public Lands of the Territory of Hawaii, with the approval of the Governor, is hereby authorized and empowered to enter into all necessary contracts with the lessees of any of said Government lands, the leases of which have expired or which, while this proclamation is in force, will expire, or with any other person, firm, or corporation for the continued cultivation of said lands, until such time as the same shall be occupied and cultivated by homesteaders.

"And to further effectuate the purpose of this proclamation, the said Commissioner, with the approval of the Governor, may require of all such homesteaders at the time of entering into their special homestead agreements, a contract which may be incorporated into such special homestead agreement to continue the cultivation of their homesteads, and to reimburse any person or corporation who or which shall have done any cultivation or other work on said land, with the approval of the Commissioner and Governor, for the conservation of the crop thereon, to the amount of the actual cost of such work."

THE JUDICIARY

DISQUALIFICATION BY RELATIONSHIP, PECUNIARY INTEREST, OR PREVIOUS JUDGMENT

§ 3725. (Act April 30, 1900, c. 339, § 84, as amended, Act May 27, 1910, c. 258, § 6.) Disqualification by relationship, pecuniary interest, or previous judgment.

Disqualification of judges.—That the justices of the Supreme Court of Hawaii, as individuals, appointed a trustee under a power conferred by will, held not to disqualify them, sitting as a court, to entertain an appeal in a suit involving the validity of the appointment. In re Bishop's Estate (C. C. A.) 250 F. 145.

UNITED STATES OFFICERS

FEDERAL COURT

§ 3727. (Act April 30, 1900, c. 339, § 86, as amended, Act March 3, 1909, c. 269, § 1.) District court.

Judgment of court.—Where circuit court of Hawaii, after setting aside decree in divorce suit against defendant, who had consented to hearing, rendered second decree against him without notice, such action was mere irregularity, which did not render decree void and open it to collateral attack. Kalehua v. Clark (C. C. A.) 250 F. 612.

MISCELLANEOUS

INTOXICATING LIQUORS

§ 3746a. (Act May 23, 1918, c. 84, § 1.) Prohibition; repeal of act; petition.

Ninety days after the passage of this Act, during the period of the war and thereafter, except as herein provided, it shall be unlawful in the Territory of Hawaii to sell, give away, manufacture,

transport, import, or export intoxicating liquors, except for mechanical, scientific, sacramental, or medicinal purposes, for which purposes the sale, gift, transport, import, and export of the same shall be under such rules and regulations as the Governor of the Territory may prescribe, and any person violating the provisions hereof shall be fined in a sum not exceeding $500 or imprisoned for a period of not longer than one year, or both: Provided, That at any general election of the Territory of Hawaii, held within two years after the conclusion of peace, the repeal of this Act may, upon petition of not less than twenty per centum of the qualified electors of said Territory at the last preceding general election, be submitted to a vote of the qualified electors of said territory, and if a majority of all the qualified electors thereof voting upon such question shall vote to repeal this Act, it shall thereafter not be in force and effect, otherwise it shall be in full force and effect. (40 Stat. 560.)

This section, and the section next following, were an act entitled "An act to prohibit the sale, manufacture, and importation of intoxicating liquors in the territory of Hawaii during the period of the war, except as hereinafter provided," cited above.

§ 3746b. (Act May 23, 1918, c. 84, § 2.) Contents of petition for repeal.

The said petition shall be addressed to and filed with the Secretary of the Territory at least two months before the election at which the question is to be voted upon, and the person obtaining any signature to such petition shall make affidavit that he witnessed the signing of the same and believes the address of each petitioner affixed to his name is the true address of such petitioner. Such election shall be conducted under the laws of the Territory provided for general elections. (40 Stat. 561.)

See note to § 3746a, ante.

CHAPTER THREE C—PORTO RICO

Sec.
3747. [Superseded.]

GENERAL PROVISIONS

3753. [Superseded.]
3754. Citizens of Porto Rico; citizens of Porto Rico and of United States residing therein to constitute body politic under name of the People of Porto Rico.
3755. Laws of Porto Rico continued in force.
3759, 3760. [Superseded.]
3762–3764. [Superseded.]

THE GOVERNOR

3765. [Superseded.]

THE EXECUTIVE COUNCIL

3766–3775. [Superseded.]

HOUSE OF DELEGATES

3776–3782. [Superseded.]
3783. Special provisions in franchises; real estate holdings of corporations restricted.

THE JUDICIARY

3784–3786. [Superseded.]
3788–3797. [Superseded.]

Sec.
3799–3803. [Repealed.]
3803a. Territory included under name Porto Rico.

BILL OF RIGHTS

3803aa. Bill of Rights and restrictions.
3803aaa. Export duties; taxes, etc., for insular government; bonds, etc.
3803b. Capital.
3803bb. United States citizenship.
3803bbb. Government expenses payable out of insular revenues.
3803c. Public property transferred.
3803cc. Harbors and navigable waters transferred.
3803ccc. United States Laws extended to Porto Rico; internal revenue receipts covered into treasury.
3803d. Judicial process; officials to be citizens of United States; oath.
3803dd. Official reports.

EXECUTIVE DEPARTMENT

3803ddd. Governor.
3803e. Executive departments.
3803ee. Attorney general.

Sec.
3803eee. Treasurer; bond.
3803f. Commissioner of interior.
3803ff. Commissioner of education.
3803fff. Commissioner of agriculture and labor.
3803g. Commissioner of health.
3803gg. Auditor; powers and duties.
3803h. Same; appeals from decisions.
3803hh. Executive secretary; powers and duties.
3803i. Transmission of copies of laws to executive department of United States.
3803ii. Governor ad interim.

LEGISLATIVE DEPARTMENT

3803j. Legislature; designation of.
3803jj. Senate; members; election; powers.
3803jjj. House of representatives; members; election.
3803k. Representative and senatorial districts.
3803kk. Elections; time of holding; officers elected at; boundaries, districts and municipalities.
3803l. Term of office of senators and representatives.
3803ll. Per diem and mileage.
3803m. Powers; determination of election and qualifications of members.
3803mm. Sessions of legislature.
3803n. Enacting clause of laws; financial budget; passage of bills.
3803nn. Qualifications of electors.
3803o. Resident commissioner; election.
3803oo. Legislative power; new executive departments.
3803p. Grants of franchises; public service commission, etc.
Sec.
3803pp. Special provisions in franchises; corporate real estate holdings.

JUDICIAL DEPARTMENT

3803q. Existing courts continued; chief justice and associate justices of Supreme Court.
3803qq. District of Porto Rico; officers.
3803r. Appeals; removal of causes; writs of error; certiorari; terms of district court; use of English language.
3803rr. Writs of error and appeals.
3803s. Juries in district court.
3803ss. Fees part of United States revenues.
3803t. Salaries of district court officials.
3803tt. Fees and mileage of jurors and witnesses.
3803u. Habeas corpus.
3803uu. Appointment of judges, marshals and secretaries.

MISCELLANEOUS PROVISIONS

3803v. Salaries of officials.
3803vv. Municipal expenses payable from municipal revenues.
3803w. Present incumbents of offices continued; offices abolished.
3803ww. Transfer of bureaus or offices.
3803x. Acknowledgment of deeds.
3803xx. Jurisdiction of existing courts continued.
3803y. Time of taking effect of act; temporary appointments to office.
3803yy. Existing laws continued in force.
3803z. Same.

§ 3747. [Superseded.]

This section was superseded by the new Organic Act for Porto Rico, Act March 2, 1917, c. 145, § 1, post, § 3803a.

GENERAL PROVISIONS

§ 3753. [Superseded.]

This section was superseded by the new Organic Act for Porto Rico, Act March 2, 1917, c. 145, § 4, post, § 3803b.

§ 3754. Citizens of Porto Rico; citizens of Porto Rico and of United States residing therein to constitute body politic under name of the People of Porto Rico.

Suits against government.—Any right of Porto Rico to claim immunity from suit in a federal court without its consent is lost, where defendant's treasurer appears by its Attorney General and participates in the suit, by answering and stipulating for trial and not moving to dismiss until eight months after the action is begun. Richardson v. Fajardo Sugar Co., 36 S. Ct. 476, 241 U. S. 44, 60 L. Ed. 879.

The government of Porto Rico, by voluntarily becoming a party to a suit involving its interest, waives its right to immunity from being sued without its consent. Veitia v. Fortuna Estates, 240 F. 256, 153 C. C. A. 182.

§ 3755. (Act April 12, 1900, c. 191, § 8.) Laws of Porto Rico continued in force.

Cited without definite application, People of Porto Rico v. American R. Co. of Porto Rico (C. C. A.) 254 F. 369.

§§ 3759, 3760. [Superseded.]

These sections were superseded by the new Organic Act for Porto Rico, Act March 2, 1917, c. 145, §§ 6, 7, post, §§ 3803bbb, 3803c.

§§ 3762–3764. [Superseded.]

These sections were superseded by the new Organic Act for Porto Rico, Act March 2, 1917, c. 145, post, §§ 3803a–3803z.

The provisions of the new act corresponding to these sections were contained in the following sections: § 3762, post, § 3803ccc; § 3763, post, § 3803yy; § 3764, post, § 3803d; § 3765, post, § 3803ddd; § 3766, post, §§ 3803e, 3803gg, 3803hh, 3803w; § 3767, post, §§ 3803hh, 3803w; § 3768, post, §§ 3803ii, 3803w; § 3769, post, § 3803ee; § 3770, post, § 3803eee; § 3771, post, § 3803gg; § 3772, post, § 3803f; § 3773, post, § 3803ff; § 3774, post, § 3803e; § 3775, post, § 3803dd; § 3776, post, §§ 3803j, 3803jjj; § 3777, post, §§ 3803jjj, 3803k; § 3778, post, §§ 3803kk, 3803n; § 3779, post, §§ 3803jjj, 3803m; § 3780, post, § 3803n; § 3781, post, §§ 3803*oo*, 3803p; § 3782, post, § 3803p.

THE GOVERNOR

§ 3765. [Superseded.]

See note under §§ 3762–3764, ante.

THE EXECUTIVE COUNCIL

§§ 3766–3775. [Superseded.]

See note under §§ 3762–3764, ante.

HOUSE OF DELEGATES

§§ 3776–3782. [Superseded.]

See note under §§ 3762–3764, ante.

§ 3783. (Res. May 1, 1900, No. 23, § 3.) Special provisions in franchises; real estate holdings of corporations restricted.

The new Organic Act for Porto Rico, Act March 2, 1917, c. 145, is not to be construed to abrogate or impair this section, by a provision of section 39 thereof, post, § 3803pp.

Notes of Decisions

Parties entitled to raise question of excessive holding.—In a suit to forfeit a lease for violation of the restrictions concerning the use of water rights, the lessor cannot raise the question that the corporation lessee is holding an excessive quantity of land. Semidey v. Central Aguirre Co., 239 F. 610, 152 C. C. A. 444.

THE JUDICIARY

§§ 3784–3786. [Superseded.]

These sections were superseded by the new Organic Act for Porto Rico, Act March 2, 1917, c. 145, §§ 41, 42, post, §§ 3803q, 3803qq.

§§ 3788–3797. [Superseded.]

These sections were superseded by the new Organic Act for Porto Rico, Act March 2, 1917, c. 145, post, §§ 3803a–3803z.

The provisions of the new act corresponding to these sections were contained in the following sections: § 3788, post, § 3803s; § 3789, post, § 3803ss; § 3790, post, § 3803tt; § 3791, post, §§ 3803r, 3803rr, 3803u; § 3792, post, § 3803v; § 3793, post, §§ 3803t, 3803v; § 3794, post, § 3803vv; § 3795, post, § 3803aaa; § 3796, post, § 3803*o*; § 3797, post, § 3803*o*.

§§ 3799–3803. [Repealed.]

These sections were expressly repealed by the new Organic Act for Porto Rico, Act March 2, 1917, c. 145, § 8, post, § 3803cc.

§ 3803a. (Act March 2, 1917, c. 145, § 1.) Territory included under name Porto Rico.

The provisions of this Act shall apply to the island of Porto Rico and to the adjacent islands belonging to the United States, and waters of those islands; and the name Porto Rico as used in

this Act shall be held to include not only the island of that name but all the adjacent islands as aforesaid. (39 Stat. 951.)

This section and the fifty-seven sections next following were an act entitled "An act to provide a civil government for Porto Rico, and for other purposes," cited above.

For corresponding provision of Act April 12, 1900, c. 191, § 1, see U. S. Comp. St. 1916, § 3747.

Notes of Decisions

See notes to U. S. Comp. St. 1916, § 3747.

BILL OF RIGHTS

§ 3803aa. (Act March 2, 1917, c. 145, § 2.) Bill of Rights and restrictions.

No law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

That in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself.

That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.

That no law impairing the obligation of contracts shall be enacted.

That no person shall be imprisoned for debt.

That the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the governor, whenever during such period the necessity for such suspension shall exist.

That no ex post facto law or bill of attainder shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law.

Nothing contained in this Act shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees.

That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust under the government of Porto Rico shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign State, or any officer thereof.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

That the right to be secure against unreasonable searches and seizures shall not be violated.

That no warrant for arrest or search shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

That slavery shall not exist in Porto Rico.

That involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall not exist in Porto Rico.

That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed, and that no political or religious test other than an oath to support the Constitution of the United States and the laws of Porto Rico shall be required as a qualification to any office or public trust under the government of Porto Rico.

That no public money or property shall ever be appropriated, applied, donated, used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, or for charitable, industrial, educational, or benevolent purposes to any person, corporation, or community not under the absolute control of Porto Rico. Contracting of polygamous or plural marriages hereafter is prohibited.

That one year after the approval of this Act and thereafter it shall be unlawful to import, manufacture, sell, or give away, or to expose for sale or gift any intoxicating drink or drug: Provided, That the legislature may authorize and regulate importation, manufacture, and sale of said liquors and drugs for medicinal, sacramental, industrial, and scientific uses only. The penalty for violations of this provision with reference to intoxicants shall be a fine of not less than $25 for the first offense, and for second and subsequent offenses a fine of not less than $50 and imprisonment for not less than one month or more than one year: And provided further, That at any general election within five years after the approval of this Act this provision may, upon petition of not less than ten per centum of the qualified electors of Porto Rico, be submitted to a vote of the qualified electors of Porto Rico, and if a majority of all the qualified electors of Porto Rico voting upon such question shall vote to repeal this provision, it shall thereafter not be in force and effect; otherwise it shall be in full force and effect.

That no money shall be paid out of the treasury except in pursuance of an appropriation by law, and on warrant drawn by the proper officer in pursuance thereof.

That the rule of taxation in Porto Rico shall be uniform.

That all money derived from any tax levied or assessed for a special purpose shall be treated as a special fund in the Treasury and paid out for such purpose only except upon the approval of the President of the United States.

That eight hours shall constitute a day's work in all cases of employment of laborers and mechanics by and on behalf of the government of the island on public works, except in cases of emergency.

That the employment of children under the age of fourteen years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited. (39 Stat. 951.)

See note to § 3803a, ante.

§ 3803aaa. (Act March 2, 1917, c. 145, § 3.) Export duties; taxes, etc., for insular government; bonds, etc.

No export duties shall be levied or collected on exports from Porto Rico, but taxes and assessments on property, internal revenue, and license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Porto Rico; and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Porto Rico or any municipal government therein as may be provided by law, and to protect the public credit: Provided, however, That no public indebtedness of Porto Rico or of any subdivision or municipality thereof shall be authorized or allowed in excess of seven per centum of the aggregate tax valuation of its property, and all bonds issued by the government of Porto Rico, or by its authority, shall be exempt from taxation by the Government of the United States, or by the government of Porto Rico or of any political or municipal subdivision thereof, or by any State, or by any county, municipality, or other municipal subdivision of any State or Territory of the United States, or by the District of Columbia. In computing the indebtedness of the people of Porto Rico, bonds issued by the people of Porto Rico secured by an equivalent amount of bonds of municipal corporations or school boards of Porto Rico shall not be counted. (39 Stat. 953.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 38, see U. S. Comp. St. 1916, § 3795.

Notes of Decisions

See notes to U. S. Comp. St. 1916, § 3795.

§ 3803b. (Act March 2, 1917, c. 145, § 4.) Capital.

The capital of Porto Rico shall be at the city of San Juan, and the seat of government shall be maintained there. (39 Stat. 953.)

See note to § 3803a, ante.

For corresponding provision of Act April 12, 1900, c. 191, § 6, see U. S. Comp. St. 1916, § 3753.

§ 3803bb. (Act March 2, 1917, c. 145, § 5.) United States citizenship.

All citizens of Porto Rico, as defined by section seven of the Act of April twelfth, nineteen hundred, "temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," and all natives of Porto Rico who were temporarily absent from that island on April eleventh, eighteen hundred and ninety-nine, and have since returned and are permanently residing in that island, and are not citizens of any foreign country, are hereby declared, and shall be deemed and held to be, citizens of the United States: Provided, That any person hereinbefore described may retain his present political status by making a declaration, under oath, of his decision to do so within six months of the taking effect of this Act before the district court in the district in which he resides, the declaration to be in form as follows:

"I, , being duly sworn, hereby declare my intention not to become a citizen of the United States as provided in the Act of Congress conferring United States citizenship upon citizens of Porto Rico and certain natives permanently residing in said island."

In the case of any such person who may be absent from the island during said six months the term of this proviso may be availed of

by transmitting a declaration, under oath, in the form herein provided within six months of the taking effect of this Act to the executive secretary of Porto Rico: And provided further, That any person who is born in Porto Rico of an alien parent and is permanently residing in that island may, if of full age, within six months of the taking effect of this Act, or if a minor, upon reaching his majority or within one year thereafter, make a sworn declaration of allegiance to the United States before the United States District Court for Porto Rico, setting forth therein all the facts connected with his or her birth and residence in Porto Rico and accompanying due proof thereof, and from and after the making of such declaration shall be considered to be a citizen of the United States. (39 Stat. 953.)

See note to § 3803a, ante.

For Act April 12, 1900, c. 191, § 7, referred to in this section, see U. S. Comp. St. 1916, § 3754.

Notes of Decisions

See notes to U. S. Comp. St. 1916, § 3759.

§ 3803bbb. (Act March 2, 1917, c. 145, § 6.) Government expenses payable out of insular revenues.

All expenses that may be incurred on account of the government of Porto Rico for salaries of officials and the conduct of their offices and departments, and all expenses and obligations contracted for the internal improvement or development of the island, not, however, including defenses, barracks, harbors, lighthouses, buoys, and other works undertaken by the United States, shall, except as otherwise specifically provided by the Congress, be paid by the treasurer of Porto Rico out of the revenue in his custody. (39 Stat. 953.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 12, see U. S. Comp. St. 1916, § 3759.

§ 3803c. (Act March 2, 1917, c. 145, § 7.) Public property transferred.

All property which may have been acquired in Porto Rico by the United States under the cession of Spain in the treaty of peace entered into on the tenth day of December, eighteen hundred and ninety-eight, in any public bridges, road houses, water powers, highways, unnavigable streams and the beds thereof, subterranean waters, mines or minerals under the surface of private lands, all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor works boards of Porto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not heretofore reserved by the United States for public purposes, is hereby placed under the control of the government of Porto Rico, to be administered for the benefit of the people of Porto Rico; and the Legislature of Porto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable: Provided, That the President may from time to time, in his discretion, convey to the people of Porto Rico such lands, buildings, or interests in lands or other property now owned by the United States and within the territorial limits of Porto Rico as in his opinion are no longer needed for purposes of the United States. And he may from time to time accept by legislative grant from Porto Rico any lands, buildings, or other interests or property which

may be needed for public purposes by the United States. (39 Stat. 954.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 13, see U. S. Comp. St. 1916, § 3760.

Notes of Decisions

See, also, notes to U. S. Comp. St. 1916, § 3760.

Water rights.—The people of Porto Rico held an indispensable party to a suit to enjoin taking by defendant of water from river under contract between defendant and said people of Porto Rico. Veitia v. Fortuna Estates, 240 F. 256, 153 C. C. A. 182.

§ 3803cc. (Act March 2, 1917, c. 145, § 8.) Harbors and navigable waters transferred.

The harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Porto Rico and the adjacent islands and waters, now owned by the United States and not reserved by the United States for public purposes, be, and the same are hereby, placed under the control of the government of Porto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in the preceding section: Provided, That all laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters: Provided further, That nothing in this Act contained shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers heretofore lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by the Secretary of War or other authorized officer or agent of the United States: And provided further, That the Act of Congress approved June eleventh, nineteen hundred and six, entitled "An Act to empower the Secretary of War, under certain restrictions, to authorize the construction, extension, and maintenance of wharves, piers, and other structures on lands underlying harbor areas in navigable streams and bodies of water in or surrounding Porto Rico and the islands adjacent thereto," and all other laws and parts of laws in conflict with this section be, and the same are hereby, repealed. (39 Stat. 954.)

See note to § 3803a, ante.

For Act June 11, 1906, c. 3075, repealed by this section, see U. S. Comp. St. 1916, §§ 3799–3803.

§ 3803ccc. (Act March 2, 1917, c. 145, § 9.) United States laws extended to Porto Rico; internal revenue receipts covered into treasury.

The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws: Provided, however, That hereafter all taxes collected under the internal-revenue laws of the United States on articles produced in Porto Rico and transported to the United States, or consumed in the island shall be covered into the treasury of Porto Rico. (39 Stat. 954.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12 1900, c. 191, § 14, see U. S. Comp. St. 1916, § 3762.

Notes of Decisions

See, also, notes to U. S. Comp. St. 1916, § 3762.

Constitution and laws applicable.—Civ. Code Porto Rico, § 1825(4)a, in

view of Organic Act April 12, 1900 (Comp. St. 1916, § 3762), making federal laws applicable to Porto Rico, does not apply to the distribution of an insolvent's estate; Bankr. Act, § 64b(5) being Comp. St. 1916, § 9648, alone governing. In re Vidal, 233 F. 733, 147 C. C. A. 499.

Cited without definite application, People of Porto Rico v. American R. Co. of Porto Rico (C. C. A.) 254 F. 369.

§ 3803d. (Act March 2, 1917, c. 145, § 10.) Judicial process; officials to be citizens of United States; oath.

All judicial process shall run in the name of "United States of America, ss, the President of the United States," and all penal or criminal prosecutions in the local courts shall be conducted in the name and by the authority of "The People of Porto Rico"; and all officials shall be citizens of the United States, and, before entering upon the duties of their respective offices, shall take an oath to support the Constitution of the United States and the laws of Porto Rico. (39 Stat. 954.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 16, see U. S. Comp. St. 1916, § 3764.

§ 3803dd. (Act March 2, 1917, c. 145, § 11.) Official reports.

All reports required by law to be made by the governor or heads of departments to any official of the United States shall hereafter be made to an executive department of the Government of the United States to be designated by the President, and the President is hereby authorized to place all matters pertaining to the government of Porto Rico in the jurisdiction of such department. (39 Stat. 955.)

See note to § 3803a, ante.

For corresponding provisions of Act July 15, 1909, c. 4, § 2, see U. S. Comp. St. 1916, § 3775.

EXECUTIVE DEPARTMENT

§ 3803ddd. (Act March 2, 1917, c. 145, § 12.) Governor.

The supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor of Porto Rico." He shall be appointed by the President, by and with the advice and consent of the Senate, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The governor shall reside in Porto Rico during his official incumbency and maintain his office at the seat of government. He shall have general supervision and control of all the departments and bureaus of the government in Porto Rico, so far as is not inconsistent with the provisions of this Act, and shall be commander in chief of the militia. He may grant pardons and reprieves and remit fines and forfeitures for offenses against the laws of Porto Rico, and respites for all offenses against the laws of the United States until the decision of the President can be ascertained, and may veto any legislation enacted as hereinafter provided. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of Porto Rico and of the United States applicable in Porto Rico, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the island, or summon the posse comitatus, or call out the militia to prevent or suppress lawless violence, invasion, insurrection, or rebellion, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the island, or any part thereof, under martial law until communication can be had with the President and the President's decision therein made known. He shall annually, and at such other times as he may be required, make official report of the

transactions of the government of Porto Rico to the executive department of the Government of the United States to be designated by the President as herein provided, and his said annual report shall be transmitted to Congress, and he shall perform such additional duties and functions as may in pursuance of law be delegated to him by the President. (39 Stat. 955.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 17, see U. S. Comp. St. 1916, § 3765.

§ 3803e. (Act March 2, 1917, c. 145, § 13.) Executive departments.

The following executive departments are hereby created: A department of justice, the head of which shall be designated as the attorney general; a department of finance, the head of which shall be designated as the treasurer; a department of interior, the head of which shall be designated as the commissioner of the interior; a department of education, the head of which shall be designated as the commissioner of education; a department of agriculture and labor, the head of which shall be designated as the commissioner of agriculture and labor; and a department of health, the head of which shall be designated as the commissioner of health. The attorney general and commissioner of education shall be appointed by the President, by and with the advice and consent of the Senate of the United States, to hold office for four years and until their successors are appointed and qualified, unless sooner removed by the President. The heads of the four remaining departments shall be appointed by the governor, by and with the advice and consent of the Senate of Porto Rico. The heads of departments appointed by the governor shall hold office for the term of four years and until their successors are appointed and qualified, unless sooner removed by the governor.

Heads of departments shall reside in Porto Rico during their official incumbency, and those appointed by the governor shall have resided in Porto Rico for at least one year prior to their appointment.

The heads of departments shall collectively form a council to the governor, known as the executive council. They shall perform under the general supervision of the governor the duties hereinafter prescribed, or which may hereafter be prescribed by law and such other duties, not inconsistent with law, as the governor, with the approval of the President, may assign to them; and they shall make annual and such other reports to the governor as he may require, which shall be transmitted to the executive department of the Government of the United States to be designated by the President as herein provided: Provided, That the duties herein imposed upon the heads of departments shall not carry with them any additional compensation. (39 Stat. 955.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, §§ 18, 26, see U. S. Comp. St. 1916, §§ 3766, 3774.

§ 3803ee. (Act March 2, 1917, c. 145, § 14.) Attorney-general.

The attorney general shall have charge of the administration of justice in Porto Rico; he shall be the legal adviser of the governor and the heads of departments and shall be responsible for the proper representation of the people of Porto Rico or its duly constituted officers in all actions and proceedings, civil or criminal, in the Supreme Court of Porto Rico in which the people of Porto Rico shall be interested or a party, and he may, if directed by the governor or if in his judgment the public interest requires it, represent the people of Porto Rico or its duly constituted officers in any other court or before any other officer or board in any action or

proceeding, civil or criminal, in which the people of Porto Rico may be a party or be interested. He shall also perform such other duties not inconsistent herewith as may be prescribed by law. (39 Stat. 956.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 21, see U. S. Comp. St. 1916, § 7369.

§ 3803eee. (Act March 2, 1917, c. 145, § 15.) Treasurer; bond.

The treasurer shall give bond, approved as to form by the attorney general of Porto Rico, in such sum as the legislature may require, not less, however, than the sum of $125,000, with surety or sureties approved by the governor, and he shall collect and be the custodian of public funds, and shall disburse the same in accordance with law, on warrants signed by the auditor and countersigned by the governor, and perform such other duties as may be provided by law. He may designate banking institutions in Porto Rico and the United States as depositaries of the government of Porto Rico, subject to such conditions as may be prescribed by the governor, after they have filed with him satisfactory evidence of their sound financial condition and have deposited bonds of the United States or of the government of Porto Rico or other security satisfactory to the governor in such amounts as may be indicated by him; and no banking institution shall be designated a depositary of the government of Porto Rico until the foregoing conditions have been complied with. Interest on deposits shall be required and paid into the treasury. (39 Stat. 956.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 22, see U. S. Comp. St. 1916, § 3770.

§ 3803f. (Act March 2, 1917, c. 145, § 16.) Commissioner of interior.

The commissioner of the interior shall superintend all works of a public nature, have charge of all public buildings, grounds, and lands, except those belonging to the United States, and shall execute such requirements as may be imposed by law with respect thereto, and perform such other duties as may be prescribed by law. (39 Stat. 956.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 24, see U. S. Comp. St. 1916, § 3772.

§ 3803ff. (Act March 2, 1917, c. 145, § 17.) Commissioner of education.

The commissioner of education shall superintend public instruction throughout Porto Rico; all proposed disbursements on account thereof must be approved by him, and all courses of study shall be prepared by him, subject to disapproval by the governor if he desires to act. He shall prepare rules governing the selection of teachers, and appointments of teachers by local school boards shall be subject to his approval, and he shall perform such other duties, not inconsistent with this Act, as may be prescribed by law. (39 Stat. 956.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 25, see U. S. Comp. St. 1916, § 3773.

§ 3803fff. (Act March 2, 1917, c. 145, § 18.) Commissioner of agriculture and labor.

The commissioner of agriculture and labor shall have general charge of such bureaus and branches of government as have been or shall be legally constituted for the study, advancement, and benefit of agricultural and other industries, the chief purpose of this de-

partment being to foster, promote, and develop the agricultural interests and the welfare of the wage earners of Porto Rico, to improve their working conditions, and to advance their opportunities for profitable employment, and shall perform such other duties as may be prescribed by law. (39 Stat. 957.)

See note to § 3803a, ante.

§ 3803g. (Act March 2, 1917, c. 145, § 19.) Commissioner of health.

The commissioner of health shall have general charge of all matters relating to public health, sanitation, and charities, except such as relate to the conduct of maritime quarantine, and shall perform such other duties as may be prescribed by law. (39 Stat. 957.)

See note to § 3803a, ante.

§ 3803gg. (Act March 2, 1917, c. 145, § 20.) Auditor; powers and duties.

There shall be appointed by the President an auditor, at an annual salary of $5,000, for a term of four years and until his successor is appointed and qualified, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts, from whatever source, of the government of Porto Rico and of the municipal governments of Porto Rico, including public trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government of Porto Rico or the municipalities or dependencies thereof. He shall perform a like duty with respect to all government branches.

He shall keep the general accounts of the government and preserve the vouchers pertaining thereto.

It shall be the duty of the auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

In case of vacancy or of the absence from duty, from any cause, of the auditor, the Governor of Porto Rico may designate an assistant, who shall have charge of the office.

The jurisdiction of the auditor over accounts, whether of funds or property, and all vouchers and records pertaining thereto, shall be exclusive. With the approval of the governor, he shall from time to time make and promulgate general or special rules and regulations not inconsistent with law covering the methods of accounting for public funds and property, and funds and property held in trust by the government or any of its branches: Provided, That any officer accountable for public funds or property may require such additional reports or returns from his subordinates or others as he may deem necessary for his own information and protection.

The decisions of the auditor shall be final, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed. The auditor shall, except as hereinafter provided, have like authority as that conferred by the law upon the several auditors of the United States and the Comptroller of the United States Treasury, and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office.

As soon after the close of each fiscal year as the accounts of said year may be examined and adjusted, the auditors shall submit to the governor an annual report of the fiscal concerns of the government, showing the receipts and disbursements of the various departments and bureaus of the government and of the various municipalities,

and make such other reports as may be required of him by the governor or the head of the executive department of the Government of the United States, to be designated by the President as herein provided.

In the execution of his duties the auditor is authorized to summon witnesses, administer oaths, and to take evidence, and, in the pursuance of these provisions, may issue subpœnas and enforce the attendance of witnesses.

The office of the auditor shall be under the general supervision of the governor and shall consist of the auditor and such necessary assistants as may be prescribed by law. (39 Stat. 957.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, §§ 18, 23, see U. S. Comp. St. 1916, §§ 3766, 3771.

§ 3803h. (Act March 2, 1917, c. 145, § 21.) Same; appeals from decisions.

Any person aggrieved by the action or decision of the auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the governor, which appeal shall specifically set forth the particular action of the auditor to which exception is taken, with the reason and authorities relied on for reversing such decision. The decision of the governor in such case shall be final, subject to such right of action as may be otherwise provided by law. (39 Stat. 958.)

See note to § 3803a, ante.

§ 3803hh. (Act March 2, 1917, c. 145, § 22.) Executive secretary; powers and duties.

There shall be appointed by the governor, by and with the advice and consent of the Senate of Porto Rico, an executive secretary at an annual salary of $4,000, who shall record and preserve the minutes and proceedings of the public service commission hereinafter provided for and the laws enacted by the legislature and all acts and proceedings of the governor, and promulgate all proclamations and orders of the governor and all laws enacted by the legislature, and until otherwise provided by the legislature of Porto Rico perform all the duties of secretary of Porto Rico as now provided by law, except as otherwise specified in this Act, and perform such other duties as may be assigned to him by the Governor of Porto Rico. In the event of a vacancy in the office, or the absence, illness, or temporary disqualification of such officer, the governor shall designate some officer or employee of the government to discharge the functions of said office during such vacancy, absence, illness, or temporary disqualification. (39 Stat. 958.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, §§ 18, 19, see U. S. Comp. St. 1916, §§ 3766, 3767.

§ 3803i. (Act March 2, 1917, c. 145, § 23.) Transmission of copies of laws to executive department of United States.

The Governor of Porto Rico, within sixty days after the end of each session of the legislature, shall transmit to the executive department of the Government of the United States, to be designated as herein provided for, which shall in turn transmit the same to the Congress of the United States, copies of all laws enacted during the session. (39 Stat. 958.)

See note to § 3803a, ante.

§ 3803ii. (Act March 2, 1917, c. 145, § 24.) Governor ad interim.

The President may from time to time designate the head of an executive department of Porto Rico to act as governor in the case of a vacancy, the temporary removal, resignation, or disability of

the governor, or his temporary absence, and the head of the department thus designated shall exercise all the powers and perform all the duties of the governor during such vacancy, disability, or absence. (39 Stat. 958.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 20, see U. S. Comp. St. 1916, § 3768.

LEGISLATIVE DEPARTMENT

§ 3803j. (Act March 2, 1917, c. 145, § 25.) Legislature; designation of.

All local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "the Legislature of Porto Rico." (39 Stat. 958.)

See note to § 3803a, ante.

For corresponding provision of Act April 12, 1900, c. 191, § 27, see U. S. Comp. St. 1916, § 3776.

§ 3803jj. (Act March 2, 1917, c. 145, § 26.) Senate; members; election; powers.

The Senate of Porto Rico shall consist of nineteen members elected for terms of four years by the qualified electors of Porto Rico. Each of the seven senatorial districts defined as hereinafter provided shall have the right to elect two senators, and in addition thereto there shall be elected five senators at large. No person shall be a member of the Senate of Porto Rico who is not over thirty years of age, and who is not able to read and write either the Spanish or English language, and who has not been a resident of Porto Rico for at least two consecutive years, and, except in the case of senators at large, an actual resident of the senatorial district from which chosen for a period of at least one year prior to his election. Except as herein otherwise provided, the Senate of Porto Rico shall exercise all of the purely legislative powers and functions heretofore exercised by the Executive Council, including confirmation of appointments; but appointments made while the senate is not in session shall be effective either until disapproved or until the next adjournment of the senate for the session. In electing the five senators at large each elector shall be permitted to vote for but one candidate, and the five candidates receiving the largest number of votes shall be declared elected. (39 Stat. 958.)

See note to § 3803, ante.

For provisions of Act April 12, 1900, c. 191, §§ 18, 27, 31, 32, relating to the Executive Council and its legislative powers, see U. S. Comp. St. 1916, §§ 3766, 3776, 3780, 3781.

§ 3803jjj. (Act March 2, 1917, c. 145, § 27.) House of representatives; members; election.

The House of Representatives of Porto Rico shall consist of thirty-nine members elected quadrennially by the qualified electors of Porto Rico, as hereinafter provided. Each of the representative districts hereinafter provided for shall have the right to elect one representative, and in addition thereto there shall be elected four representatives at large. No person shall be a member of the house of representatives who is not over twenty-five years of age, and who is not able to read and write either the Spanish or English language, except in the case of representative at large, who has not been a bona fide resident of the district from which elected for at least one year prior to his election. In electing the four representatives at large, each elector shall be permitted to vote for but

one candidate and the four candidates receiving the largest number of votes shall be elected. (39 Stat. 959.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, §§ 27, 28, 30, see U. S. Comp. St. 1916, §§ 3776, 3777, 3779.

§ 3803k. (Act March 2, 1917, c. 145, § 28.) Representative and senatorial districts.

For the purpose of elections hereafter to the legislature the island of Porto Rico shall be divided into thirty-five representative districts, composed of contiguous and compact territory and established, so far as practicable, upon the basis of equal population. The division into and the demarcation of such districts shall be made by the Executive Council of Porto Rico. Division of districts shall be made as nearly as practicable to conform to the topographical nature of the land, with regard to roads and other means of communication and to natural barriers. Said Executive Council shall also divide the island of Porto Rico into seven senatorial districts, each composed of five contiguous and compact representative districts. They shall make their report within thirty days after the approval of this Act, which report, when approved by the governor, shall be final. (39 Stat. 959.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 28, see U. S. Comp. St. 1916, § 3777.

§ 3803kk. (Act March 2, 1917, c. 145, § 29.) Elections; time of holding; officers elected at; boundaries, districts and municipalities.

The next election in Porto Rico shall be held in the year nineteen hundred and seventeen upon the sixteenth day of July. At such election there shall be chosen senators, representatives, a Resident Commissioner to the United States, and two public-service commissioners, as herein provided. Thereafter the elections shall be held on the first Tuesday after the first Monday in November, beginning with the year nineteen hundred and twenty, and every four years thereafter, and the terms of office of all municipal officials who have heretofore been elected and whose terms would otherwise expire at the beginning of the year nineteen hundred and nineteen are hereby extended until the officials who may be elected to fill such offices in nineteen hundred and twenty shall have been duly qualified: Provided, however, That nothing herein contained shall be construed to limit the right of the Legislature of Porto Rico at any time to revise the boundaries of senatorial and representative districts and of any municipality, or to abolish any municipality and the officers provided therefor. (39 Stat. 959.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 29, see U. S. Comp. St. 1916, § 3778.

§ 3803*l*. (Act March 2, 1917, c. 145, § 30.) Term of office of senators and representatives.

The term of office of senators and representatives chosen by the first general election shall be until January first, nineteen hundred and twenty-one, and the terms of office of senators and representatives chosen at subsequent elections shall be four years from the second of January following their election. In case of vacancy among the members of the senate or in the house of representatives, special elections may be held in the districts wherein such vacancy occurred, under such regulations as may be prescribed by law, but senators or representatives elected in such cases shall hold office only for the unexpired portion of the term wherein the vacancy occurred, and no senator or representative shall, during the

time for which he shall have been elected, be appointed to any civil office under the government of Porto Rico, nor be appointed to any office created by Act of the legislature during the time for which he shall have been elected until two years after his term of office shall have expired. (39 Stat. 959.)

See note to § 3803a, ante.

§ 3803*ll*. (Act March 2, 1917, c. 145, § 31.) Per diem and mileage.

Members of the Senate and House of Representatives of Porto Rico shall receive compensation at the rate of $7 per day for the first ninety days of each regular session and $1 per day for each additional day of such session while in session, and mileage for each session at the rate of 10 cents per kilometer for each kilometer actually and necessarily traveled in going from their legislative districts to the capital and therefrom to their place of residence in their districts by the usual routes of travel. (39 Stat. 960.)

See note to § 3803a, ante.

§ 3803m. (Act March 2, 1917, c. 145, § 32.) Powers; determination of election and qualifications of members.

The senate and house of representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their members, and they shall have and exercise all the powers with respect to the conduct of their proceedings that usually pertain to parliamentary legislative bodies. Both houses shall convene at the capital on the second Monday in February following the next election, and organize by the election of a speaker or a presiding officer, a clerk, and a sergeant at arms for each house, and such other officers and assistants as may be required. (39 Stat. 960.)

See note to § 3803a, ante.

For corresponding provision of Act April 12, 1900, c. 191, § 30, see U. S. Comp. St. 1916, § 3779.

§ 3803mm. (Act March 2, 1917, c. 145, § 33.) Sessions of legislature.

The first regular session of the Legislature of Porto Rico, provided for by this Act, shall convene on the twenty-eighth day after the first election provided for herein, and regular sessions of the legislature shall be held biennially thereafter, convening on the second Monday in February of the year nineteen hundred and nineteen, and on the second Monday in February of each second year thereafter. The governor may call special sessions of the legislature or of the senate at any time when in his opinion the public interest may require it, but no special session shall continue longer than ten days, not including Sundays and holidays, and no legislation shall be considered at such session other than that specified in the call, and he shall call the senate in special session at least once each year on the second Monday in February of those years in which a regular session of the legislature is not provided for. (39 Stat. 960.)

See note to § 3803a, ante.

§ 3803n. (Act March 2, 1917, c. 145, § 34.) Enacting clause of laws; financial budget; passage of bills.

The enacting clause of the laws shall be as to acts, "Be it enacted by the Legislature of Porto Rico," and as to joint resolutions, "Be it resolved by the Legislature of Porto Rico." Except as hereinafter provided, bills and joint resolutions may originate in either house. The governor shall submit at the opening of each regular session of the legislature a budget of receipts and expenditures, which shall be the basis of the ensuing biennial appropriation bill. No bill shall become a law until it be passed in each

house by a majority yea-and-nay vote of all of the members belonging to such house and entered upon the journal and be approved by the governor within ten days thereafter. If when a bill that has been passed is presented to the governor for his signature he approves the same, he shall sign it; or if not, he shall return it, with his objections, to the house in which it originated, which house shall enter his objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the members of that house shall agree to pass the same it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members of that house it shall be sent to the governor, who, in case he shall then not approve, shall transmit the same to the President of the United States. The vote of each house shall be by yeas and nays, and the names of the members voting for and against shall be entered on the journal. If the President of the United States approve the same he shall sign it and it shall become a law. If he shall not approve same he shall return it to the governor so stating, and it shall not become a law: Provided, That the President of the United States shall approve or disapprove an Act submitted to him under the provisions of this section within ninety days from and after its submission for his approval; and if not approved within such time it shall become a law the same as if it had been specifically approved. If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items, parts or portions thereof to which he objects, and the appropriation so objected to shall not take effect. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the governor within thirty days after receipt by him; otherwise it shall not be a law. All laws enacted by the Legislature of Porto Rico shall be reported to the Congress of the United States, as provided in section twenty-three of this Act, which hereby reserves the power and authority to annul the same. If at the termination of any fiscal year the appropriations necessary for the support of the government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be applicable, shall be deemed to be reappropriated item by item; and until the legislature shall act in such behalf the treasurer may, with the advice of the governor, make the payments necessary for the purposes aforesaid.

Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time publish the same, and the yeas and nays on any question shall, on the demand of one-fifth of the members present, be entered on the journal.

The sessions of each house and of the committees of the whole shall be open.

Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

No act of the legislature except the general appropriation bills for the expenses of the government shall take effect until ninety days after its passage, unless in case of emergency (which shall be expressed in the preamble or body of the act) the legislature shall by a vote of two-thirds of all the members elected to each house otherwise direct. No bill, except the general appropriation bill for the expenses of the government only, introduced in either house of the legislature after the first forty days of the session, shall become a law.

No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members; Provided, That either house may by a majority vote discharge a committee from the consideration of a measure and bring it before the body for consideration.

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length.

The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature, after their titles shall have been publicly read, immediately before signing; and the fact of signing shall be entered on the journal.

The legislature shall prescribe by law the number, duties, and compensation of the officers and employees of each house; and no payment shall be made for services to the legislature from the treasury, or be in any way authorized to any person, except to an acting officer or employee elected or appointed in pursuance of law.

No bill shall be passed giving any extra compensation to any public officer, servant or employee, agent or contractor, after services shall have been rendered or contract made.

Except as otherwise provided in this Act, no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment, nor permit any officer or employee to draw compensation for more than one office or position.

All bills for raising revenue shall originate in the house of representatives, but the senate may propose or concur with amendments, as in case of other bills.

The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

Every order, resolution, or vote to which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of business of the two houses, shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved, shall be repassed by two-thirds of both houses, according to the rules and limitations prescribed in case of a bill.

Any person who shall, directly or indirectly, offer, give, or promise any money or thing of value, testimonial, privilege, or personal advantage to any executive or judicial officer or member of the legislature to influence him in the performance of any of his pub-

lic or official duties, shall be deemed guilty of bribery, and be punished by a fine not exceeding $5,000, or imprisonment not exceeding five years, or both.

The offense of corrupt solicitation of members of the legislature, or of public officers of Porto Rico, or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

In case the available revenues of Porto Rico for any fiscal year, including available surplus in the insular treasury, are insufficient to meet all the appropriations made by the legislature for such year, such appropriations shall be paid in the following order, unless otherwise directed by the governor:

First class. The ordinary expenses of the legislative, executive, and judicial departments of the State government, and interest on any public debt, shall first be paid in full.

Second class. Appropriations for all institutions, such as the penitentiary, insane asylum, industrial school, and the like, where the inmates are confined involuntarily, shall next be paid in full.

Third class. Appropriations for education and educational and charitable institutions shall next be paid in full.

Fourth class. Appropriations for any other officer or officers, bureaus or boards, shall next be paid in full.

Fifth class. Appropriations for all other purposes shall next be paid.

That in case there are not sufficient revenues for any fiscal year, including available surplus in the insular treasury, to meet in full the appropriations of said year for all of the said classes of appropriations, then said revenues shall be applied to the classes in the order above named, and if, after the payment of the prior classes in full, there are not sufficient revenues for any fiscal year to pay in full the appropriations for that year for the next class, then, in that event, whatever there may be to apply on account of appropriations for said class shall be distributed among said appropriations pro rata according as the amount of each appropriation of that class shall bear to the total amount of all of said appropriations for that class for such fiscal year.

No appropriation shall be made, nor any expenditure authorized by the legislature, whereby the expenditure of the Government of Porto Rico during any fiscal year shall exceed the total revenue then provided for by law and applicable for such appropriation or expenditure, including any available surplus in the treasury, unless the legislature making such appropriation shall provide for levying a sufficient tax to pay such appropriation or expenditure within such fiscal year. (39 Stat. 960.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, §§ 29, 31, as amended, see U. S. Comp. St. 1916, §§ 3778, 3780.

Notes of Decisions

Presumptions.—Under Organic Act of Porto Rico (Act April 12, 1900), § 31 (Comp. St. 1916, § 3780), it is to be presumed, in the absence of proof to the contrary, that a law was reported to Congress and that it was acquiesced in by that body. People of Porto Rico v. American R. Co. of Porto Rico (C. C. A.) 254 F. 369.

§ 3803nn. (Act March 2, 1917, c. 145, § 35.) Qualifications of electors.

At the first election held pursuant to this Act the qualified electors shall be those having the qualifications of voters under the present law. Thereafter voters shall be citizens of the United States twenty-one years of age or over and have such additional

qualifications as may be prescribed by the legislature of Porto Rico: Provided, That no property qualification shall ever be imposed upon or required of any voter. (39 Stat. 963.)

See note to § 3803a, ante.

§ 3803*o*. (Act March 2, 1917, c. 145, § 36.) Resident commissioner; election.

The qualified electors of Porto Rico shall at the next general election choose a Resident Commissioner to the United States, whose term of office shall begin on the date of the issuance of his certificate of election and shall continue until the fourth of March, nineteen hundred and twenty-one. At each subsequent election, beginning with the year nineteen hundred and twenty, the qualified electors of Porto Rico shall choose a Resident Commissioner to the United States, whose term of office shall be four years from the fourth of March following such general election, and who shall be entitled to receive official recognition as such Commissioner by all of the departments of the Government of the United States, upon presentation, through the Department of State, of a certificate of election of the Governor of Porto Rico. The Resident Commissioner shall receive a salary, payable monthly by the United States, of $7,500 per annum. Such Commissioner shall be allowed the same sum for stationery and for the pay of necessary clerk hire as is now allowed to Members of the House of Representatives of the United States; and he shall be allowed the sum of $500 as mileage for each session of the House of Representatives and the franking privilege granted Members of Congress. No person shall be eligible to election as Resident Commissioner who is not a bona fide citizen of the United States and who is not more than twenty-five years of age, and who does not read and write the English language. In case of a vacancy in the office of Resident Commissioner by death, resignation, or otherwise, the governor, by and with the advice and consent of the senate, shall appoint a Resident Commissioner to fill the vacancy, who shall serve until the next general election and until his successor is elected and qualified. (39 Stat. 963.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 39, and Act July 1, 1902, c. 1383, § 3, see U. S. Comp. St. 1916, §§ 3796, 3797.

§ 3803*oo*. (Act March 2, 1917, c. 145, § 37.) Legislative power; new executive departments.

The legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character now in force in Porto Rico or municipality or district thereof in so far as such alteration, amendment, modification, or repeal may be consistent with the provisions of this Act.

No executive department not provided for in this Act shall be created by the legislature, but the legislature may consolidate departments, or abolish any department, with the consent of the President of the United States. (39 Stat. 964.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 32, see U. S. Comp. St. 1916, § 3781.

Notes of Decisions

See notes to U. S. Comp. St. 1916, § 3781.

Cited without definite application, People of Porto Rico v. American R. Co. of Porto Rico (C. C. A.) 254 F. 369.

§ 3803p. (Act March 2, 1917, c. 145, § 38.) Grants of franchises; public service commission, etc.

All grants of franchises, rights, and privileges of a public or quasi public nature shall be made by a public-service commission, consisting of the heads of executive departments, the auditor, and two commissioners to be elected by the qualified voters at the first general election to be held under this Act, and at each subsequent general election thereafter. The terms of said elective commissioners elected at the first general election shall commence on the twenty-eighth day following the said general election, and the terms of the said elective commissioners elected at each subsequent general election shall commence on the second day of January following their election; they shall serve for four years and until their successors are elected and qualified. Their compensation shall be $8 for each day's attendance on the sessions of the commission, but in no case shall they receive more than $400 each during any one year. The said commission is also empowered and directed to discharge all the executive functions relating to public-service corporations heretofore conferred by law upon the executive council. Franchises, rights, and privileges granted by the said commission shall not be effective until approved by the governor, and shall be reported to Congress, which hereby reserves the power to annul or modify the same.

The interstate-commerce Act and the several amendments made or to be made thereto, the safety-appliance Acts and the several amendments made or to be made thereto, and the Act of Congress entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, by providing for a valuation of the several classes of property of carriers subject thereto and securing information concerning their stocks, bonds, and other securities," approved March first, nineteen hundred and thirteen, shall not apply to Porto Rico.

The Legislative Assembly of Porto Rico is hereby authorized to enact laws relating to the regulation of the rates, tariffs, and service of public carriers by rail in Porto Rico, and the Public-Service Commission hereby created shall have power to enforce such laws under appropriate regulation. (39 Stat. 964.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 32, and Res. May 1, 1900, No. 23, § 2, see U. S. Comp. St. 1916, §§ 3781, 3782.

Notes of Decisions

See, also, notes to U. S. Comp. St. 1916, § 3782.

Regulation of rates.—Under Organic Act Porto Rico (Act April 12, 1900) § 32 (Comp. St. 1916, § 3781), the exclusive control of the Interstate Commerce Commission over railroad rates did not extend to local tariffs of the intra-island railroads of Porto Rico, but such control was vested in the legislative assembly. People of Porto Rico v. American R. Co. of Porto Rico (C. C. A.) 254 F. 369.

Cited without definite application, People of Porto Rico v. American R. Co. of Porto Rico (C. C. A.) 254 F. 369.

§ 3803pp. (Act March 2, 1917, c. 145, § 39.) Special provisions in franchises; corporate real estate holdings.

All grants of franchises and privileges under the section last preceding shall provide that the same shall be subject to amendment, alteration, or repeal, and shall forbid the issue of stocks or bonds except in exchange for actual cash or property at a fair valuation to be determined by the public-service commission equal in amount to the par value of the stocks or bonds issued, and shall forbid the declaring of stock or bond dividends, and in the case of public-service corporations shall provide for the effective regulation of

charges thereof and for the purchase or taking of their property by the authorities at a fair and reasonable valuation.

That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Porto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres. (39 Stat. 964.)

See note to § 3803a, ante.

For Res. May 1, 1900, No. 23, § 3, mentioned in this section, see U. S. Comp. St. 1916, § 3783.

Cited without definite application,
People of Porto Rico v. American R. Co. of Porto Rico (C. C. A.) 254 F. 369.

JUDICIAL DEPARTMENT

§ 3803q. (Act March 2, 1917, c. 145, § 40.) Existing courts continued; chief justice and associate justices of Supreme Court.

The judicial power shall be vested in the courts and tribunals of Porto Rico now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attachés thereof, shall also continue to be as now provided until otherwise provided by law: Provided, however, That the chief justice and associate justices of the supreme court shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and the Legislature of Porto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Porto Rico. (39 Stat. 965.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 33, see U. S. Comp. St. 1916, § 3784.

Notes of Decisions

See notes to U. S. Comp. St. 1916, § 3784.

§ 3803qq. (Act March 2, 1917, c. 145, § 41.) District of Porto Rico; officers.

Porto Rico shall constitute a judicial district to be called "the district of Porto Rico." The President, by and with the advice and consent of the Senate, shall appoint one district judge, who shall serve for a term of four years and until his successor is appointed and qualified and whose salary shall be $5,000 per annum. There shall be appointed in like manner a district attorney, whose salary shall be $4,000 per annum, and a marshal for said district, whose salary shall be $3,500 per annum, each for a term of four years unless sooner removed by the President. The district court for said district shall be called "the District Court of the United States for Porto Rico," and shall have power to appoint all necessary officials and assistants, including the clerk, interpreter, and such commissioners as may be necessary, who shall be entitled to the same fees and have like powers and duties as are exercised and performed by United States commissioners. Such district court shall have jurisdiction of all cases cognizable in the district courts of the

United States, and shall proceed in the same manner. In addition said district court shall have jurisdiction for the naturalization of aliens and Porto Ricans, and for this purpose residence in Porto Rico shall be counted in the same manner as residence elsewhere in the United States. Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico, wherein the matter in dispute exceeds, exclusive of interest or cost, the sum or value of $3,000, and of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid: Provided, That nothing in this Act shall be deemed to impair the jurisdiction of the District Court of the United States for Porto Rico to hear and determine all controversies pending in said court at the date of the approval of this Act. Upon the taking effect of this Act the salaries of the judge and officials of the District Court of the United States for Porto Rico, together with the court expenses, shall be paid from the United States revenues in the same manner as in other United States district courts. In case of vacancy or of the death, absence, or other legal disability on the part of the judge of the said District Court of the United States for Porto Rico, the President of the United States is authorized to designate one of the judges of the Supreme Court of Porto Rico to discharge the duties of judge of said court until such absence or disability shall be removed, and thereupon such judge so designated for said service shall be fully authorized and empowered to perform the duties of said office during such absence or disability of such regular judge, and to sign all necessary papers and records as the acting judge of said court without extra compensation. (39 Stat. 965.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 34, and Act March 2, 1901, c. 812, § 3, see U. S. Comp. St. 1916, §§ 3785, 3786.

The salary of the district judge is now fixed by § 969, ante.

Notes of Decisions

See, also, notes to U. S. Comp. St. 1916, §§ 3785, 3786.

Jurisdiction.—Under Act March 2, 1901, § 3 (Comp. St. 1916, § 3786), the District Court for Porto Rico has jurisdiction of a suit by members of a firm located in Porto Rico against subjects of Spain, though the citizenship of the members of the plaintiff firm is not given.. Sucesores de L. Villamil & Co., S. en C., v. Merced, 239 F. 86, 152 C. C. A. 136.

§ 3803r. (Act March 2, 1917, c. 145, § 42.) Appeals; removal of causes; writs of error; certiorari; terms of district court; use of English language.

The laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico. Regular terms of said United States district court shall be held at San Juan, commencing on the first Monday in May and November of each year, and also at Ponce on the second Monday in February of each year, and special terms may be held at Mayaguez at such stated times as said judge may deem expedient. All pleadings and proceedings in said court shall be conducted in the English language. The said district court shall be attached to and included in the first circuit of the United States, with the right of appeal and review by said circuit court of appeals in all cases

where the same would lie from any district court to a circuit court of appeals of the United States, and with the right of appeal and review directly by the Supreme Court of the United States in all cases where a direct appeal would be from such district courts. (39 Stat. 966.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 35, see U. S. Comp. St. 1916, § 3791.

§ 3803rr. (Act March 2, 1917, c. 145, § 43.) Writs of error and appeals.

Writs of error and appeals from the final judgments and decrees of the Supreme Court of Porto Rico may be taken and prosecuted to the Circuit Court of Appeals for the First Circuit and to the Supreme Court of the United States, as now provided by law. (39 Stat. 966.)

See note to § 3803a, ante.

For corresponding provision of Act April 12, 1900, c. 191, § 35, see U. S. Comp. St. 1916, § 3791.

Notes of Decisions

Appeals and writs of error.—See Ana Maria Sugar Co. v. Quinones (C. C. A.) 251 F. 499.

§ 3803s. (Act March 2, 1917, c. 145, § 44.) Juries in district court.

The qualifications of jurors as fixed by the local laws of Porto Rico shall not apply to jurors selected to serve in the District Court of the United States for Porto Rico; but the qualifications required of jurors in said court shall be that each shall be of the age of not less than twenty-one years and not over sixty-five years, a resident of Porto Rico for not less than one year, and have a sufficient knowledge of the English language to enable him to serve as a juror; they shall also be citizens of the United States. Juries for the said court shall be selected, drawn and subject to exemption in accordance with the laws of Congress regulating the same in the United States courts in so far as locally applicable. (39 Stat. 966.)

See note to § 3803a, ante.

For corresponding provision of Act June 25, 1906, c. 3542, see U. S. Comp. St. 1916, § 3788.

§ 3803ss. (Act March 2, 1917, c. 145, § 45.) Fees part of United States revenues.

All such fees, fines, costs, and forfeitures as would be deposited to the credit of the United States if collected and paid into a district court of the United States shall become revenues of the United States when collected and paid into the District Court of the United States for Porto Rico: Provided, That $500 a year from such fees, fines, costs, and forfeitures shall be retained by the clerk and expended for law library purposes under the direction of the judge. (39 Stat. 966.)

See note to § 3803a, ante.

For corresponding provisions of Act March 2, 1901, c. 812, § 2, see U. S. Comp. St. 1916, § 3789.

§ 3803t. (Act March 2, 1917, c. 145, § 46.) Salaries of district court officials.

The Attorney General of the United States shall from time to time determine the salaries of all officials and assistants appointed by the United States district court, including the clerk, his deputies, interpreter, stenographer, and other officials and employees, the same to be paid by the United States as other salaries and expenses of like character in United States courts. (39 Stat. 966.)

See note to § 3803a, ante.

For corresponding provisions of Act March 2, 1901, c. 812, § 1, see U. S. Comp. St. 1916, § 3793.

§ 3803tt. (Act March 2, 1917, c. 145, § 47.) Fees and mileage of jurors and witnesses.

Jurors and witnesses in the District Court of the United States for Porto Rico shall be entitled to and receive 15 cents for each mile necessarily traveled over any stage line or by private conveyance and 10 cents for each mile over any railway in going to and returning from said courts. But no constructive or double mileage fees shall be allowed by reason of any person being summoned both as witness and juror or as witness in two or more cases pending in the same court and triable at the same term thereof. Such jurors shall be paid $3 per day and such witnesses $1.50 per day while in attendance upon the court. (39 Stat. 967.)

See note to § 3803a, ante.

For corresponding provisions of Act March 2, 1901, c. 812, § 4, see U. S. Comp. St. 1916, § 3790.

§ 3803u. (Act March 2, 1917, c. 145, § 48.) Habeas corpus.

The supreme and district courts of Porto Rico and the respective judges thereof may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the district courts of the United States, and the district courts may grant writs of mandamus in all proper cases. (39 Stat. 967.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 35, see U. S. Comp. St. 1916, § 3791.

§ 3803uu. (Act March 2, 1917, c. 145, § 49.) Appointment of judges, marshals, and secretaries.

Hereafter all judges, marshals, and secretaries of courts now established or that may hereafter be established in Porto Rico, and whose appointment by the President is not provided for by law, shall be appointed by the governor, by and with the advice and consent of the Senate of Porto Rico. (39 Stat. 967.)

See note to § 3803a, ante.

MISCELLANEOUS PROVISIONS

§ 3803v. (Act March 2, 1917, c. 145, § 50.) Salaries of officials.

Except as in this Act otherwise provided, the salaries of all the officials of Porto Rico not appointed by the President, including deputies, assistants, and other help, shall be such and be so paid out of the revenues of Porto Rico as shall from time to time be determined by the Legislature of Porto Rico and approved by the governor; and if the legislature shall fail to make an appropriation for such salaries, the salaries theretofore fixed shall be paid without the necessity of further appropriations therefor. The salaries of all officers and all expenses of the offices of the various officials of Porto Rico appointed as herein provided by the President shall also be paid out of the revenues of Porto Rico on warrant of the auditor, countersigned by the governor. The annual salaries of the following-named officials appointed by the President and so to be paid shall be: The governor, $10,000; in addition thereto he shall be entitled to the occupancy of the buildings heretofore used by the chief executive of Porto Rico, with the furniture and effects therein, free of rental; heads of executive departments, $5,000; chief justice of the supreme court, $6,500; associate justices of the supreme court, $5,500 each.

Where any officer whose salary is fixed by this act is required to give a bond, the premium thereof shall be paid from the insular treasury. (39 Stat. 967.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 36, and Act March 2, 1901, c. 812, § 1, see U. S. Comp. St. 1916, §§ 3792, 3793.

§ 3803vv. (Act March 2, 1917, c. 145, § 51.) Municipal expenses payable from municipal revenues.

The provisions of the foregoing section shall not apply to municipal officials; their salaries and the compensation of their deputies, assistants, and other help, as well as all other expenses incurred by the municipalities, shall be paid out of the municipal revenues, in such manner as the legislature shall provide. (39 Stat. 967.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 37, see U. S. Comp. St. 1916, § 3794.

§ 3803w. (Act March 2, 1917, c. 145, § 52.) Present incumbents of offices continued; offices abolished.

Wherever in this act offices of the insular government of Porto Rico are provided for under the same names as in the heretofore existing Acts of Congress affecting Porto Rico, the present incumbents of those offices shall continue in office in accordance with the terms and at the salaries prescribed by this Act, excepting the heads of those departments who are to be appointed by the governor and who shall continue in office only until their successors are appointed and have qualified. The offices of secretary of Porto Rico and director of labor, charities, and correction are hereby abolished. Authority is given to the respective appointing authorities to appoint and commission persons to fill the new offices created by this Act. (39 Stat. 967.)

See note to § 3803a, ante.

For provisions of Act April 12, 1900, c. 191, §§ 18–20, concerning the secretary, whose office was abolished by this section, see U. S. Comp. St. 1916, §§ 3766–3768.

§ 3803ww. (Act March 2, 1917, c. 145, § 53.) Transfer of bureaus or offices.

Any bureau or office belonging to any of the regular departments of the government, or hereafter created, or not assigned, may be transferred or assigned to any department by the governor with the approval of the Senate of Porto Rico. (39 Stat. 968.)

See note to § 3803a, ante.

§ 3803x. (Act March 2, 1917, c. 145, § 54.) Acknowledgment of deeds.

Deeds and other instruments affecting land situate in the District of Columbia, or any other territory or possession of the United States, may be acknowledged in Porto Rico before any notary public appointed therein by proper authority, or any officer therein who has ex officio the powers of a notary public: Provided, That the certificate by such notary shall be accompanied by the certificate of the executive secretary of Porto Rico to the effect that the notary taking such acknowledgment is in fact such notarial officer. (39 Stat. 968.)

See note to § 3803a, ante.

§ 3803xx. (Act March 2, 1917, c. 145, § 55.) Jurisdiction of existing courts continued.

Nothing in this Act shall be deemed to impair or interrupt the jurisdiction of existing courts over matters pending therein upon the approval of this Act, which jurisdiction is in all respects hereby continued, the purpose of this Act being to preserve the integrity of all of said courts and their jurisdiction until otherwise provided by law, except as in this Act otherwise specifically provided. (39 Stat. 968.)

See note to § 3803a, ante.

§ 3803y. (Act March 2, 1917, c. 145, § 56.) Time of taking effect of act; temporary appointments to office.

This Act shall take effect upon approval, but until its provisions shall severally become operative, as hereinbefore provided, the corresponding legislative and executive functions of the government in Porto Rico shall continue to be exercised and in full force and operation as now provided by law; and the Executive Council shall, until the assembly and organization of the Legislature of Porto Rico as herein provided, consist of the attorney general, the treasurer, the commissioner of the interior, the commissioner of education, the commissioner of health, and the commissioner of agriculture and labor, and the five additional members as now provided by law. And any functions assigned to the Senate of Porto Rico by the provisions of this Act shall, until this said senate has assembled and organized as herein provided, be exercised by the Executive Council as thus constituted: Provided, however, That all appointments made by the governor, by and with the advice and consent of the Executive Council as thus constituted, in the Executive Council as authorized by section thirteen of this Act or in the office of Executive Secretary of Porto Rico, shall be regarded as temporary and shall expire not later than twenty days from and after the assembly and organization of the legislature hereinbefore provided, unless said appointments shall be ratified and made permanent by the said Senate of Porto Rico. (39 Stat. 968.)

See note to § 3803a, ante.

§ 3803yy. (Act March 2, 1917, c. 145, § 57.) Existing laws continued in force.

The laws and ordinances of Porto Rico now in force shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided for Porto Rico or by Act of Congress of the United States; and such legislative authority shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law or ordinance, civil or criminal, continued in force by this Act as it may from time to time see fit. (39 Stat. 968.)

See note to § 3803a, ante.

For corresponding provisions of Act April 12, 1900, c. 191, § 57, see U. S. Comp. St. 1916, § 3763.

Notes of Decisions

See notes to U. S. Comp. St. 1916, § 3763.

§ 3803z. (Act March 2, 1917, c. 145, § 58.) Same.

All laws or parts of laws applicable to Porto Rico not in conflict with any of the provisions of this Act, including the laws relating to tariffs, customs, and duties on importations into Porto Rico prescribed by the Act of Congress entitled "An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April twelfth, nineteen hundred, are hereby continued in effect, and all laws and parts of laws inconsistent with the provisions of this Act are hereby repealed. (39 Stat. 968.)

See note to § 3803a, ante.

CHAPTER THREE D—THE PHILIPPINE ISLANDS

§ 3810. (Act Aug. 29, 1916, c. 416, § 3.) Bill of Rights and restrictions for Philippine Islands.

6. Confrontation of witnesses.—Inspection of scene of homicide by trial judge in presence of counsel for accused, but in absence of accused, held not to infringe right to meet witnesses face to face, secured by Act July 1, 1902, § 5, superseded by this section. Valdez v. U. S., 37 S. Ct. 725, 244 U. S. 432, 61 L. Ed. 1242.

§ 3814ff. (Act July 1, 1902, c. 1369, § 8.) Resident commissioners; allowances for expenses.

At the same time with the first meeting of the Philippine legislature, and biennially thereafter, there shall be chosen by said legislature each house voting separately, two resident commissioners to the United States, who shall be entitled to an official recognition as such by all departments upon presentation to the President of a certificate of election by the civil governor of said islands, and each of whom shall be entitled to a salary payable monthly by the United States at the rate of five thousand dollars per annum, and two thousand dollars additional to cover all expenses: Provided, That no person shall be eligible to such election who is not a qualified elector of said islands, owing allegiance to the United States, and who is not thirty years of age. (32 Stat. 694.)

This section was § 8 of an act entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," cited above. It has been superseded, except as to the provision for the payment to the commissioners of $2,000 each additional to cover all expenses, by subsequent provisions of Act May 22, 1908, c. 186, § 1 (U. S. Comp. St. Annot. 1916, § 3817), and of Act Aug. 29, 1916, c. 416, § 20 (U. S. Comp. St. Annot. 1916, § 3815).

CHAPTER THREE F—THE VIRGIN ISLANDS (THE DANISH WEST INDIES)

Sec.
3924¼a. Jurisdiction; governor.
3924¼b. Local laws continued; courts; appeals and writs of error.
3924¼c. Customs duties and internal revenue taxes.
3924¼d. Tax laws continued; tax on sugar.
3924¼e. Use and disposition of duties and taxes collected.
3924¼f. Appropriation; expense of taking over Islands.
3924¼g. Same; payment for Islands.
3924¼h. Time of taking effect of act.

§ 3924¼a. (Act March 3, 1917, c. 171, § 1.) Jurisdiction; governor.

Except as hereinafter provided, all military, civil, and judicial powers necessary to govern the West Indian Islands acquired from Denmark shall be vested in a governor and in such person or persons as the President may appoint, and shall be exercised in such manner as the President shall direct until Congress shall provide for the government of said islands: Provided, That the President may assign an officer of the Army or Navy to serve as such governor and perform the duties appertaining to said office: And provided further, That the governor of the said islands shall be appointed by and with the advice and consent of the Senate: And

provided further, That the compensation of all persons appointed under this Act shall be fixed by the President. (39 Stat. 1132.)

This section and the seven sections next following were an act entitled "An act to provide a temporary government for the West Indian Islands acquired by the United States from Denmark by the convention entered into between said countries on the fourth day of August, nineteen hundred and sixteen, and ratified by the Senate of the United States on the seventh day of September, nineteen hundred and sixteen, and for other purposes," cited above.

§ 3924¼b. (Act March 3, 1917, c. 171, § 2.) Local laws continued; courts; appeals and writs of error.

Until Congress shall otherwise provide, in so far as compatible with the changed sovereignty and not in conflict with the provisions of this Act, the laws regulating elections and the electoral franchise as set forth in the code of laws published at Amalienborg the sixth day of April, nineteen hundred and six, and the other local laws, in force and effect in said islands on the seventeenth day of January, nineteen hundred and seventeen, shall remain in force and effect in said islands, and the same shall be administered by the civil officials and through the local judicial tribunals established in said islands, respectively; and the orders, judgments, and decrees of said judicial tribunals shall be duly enforced. With the approval of the President, or under such rules and regulations as the President may prescribe, any of said laws may be repealed, altered, or amended by the colonial council having jurisdiction. The jurisdiction of the judicial tribunals of said islands shall extend to all judicial proceedings and controversies in said islands to which the United States or any citizen thereof may be a party. In all cases arising in the said West Indian Islands and now reviewable by the courts of Denmark, writs of error and appeals shall be to the Circuit Court of Appeals for the Third Circuit, and, except as provided in sections two hundred and thirty-nine and two hundred and forty of the Judicial Code, the judgments, orders, and decrees of such court shall be final in all such cases. (39 Stat. 1132.)

See note to § 3924¼a, ante.

§ 3924¼c. (Act March 3, 1917, c. 171, § 3.) Customs duties and internal-revenue taxes.

On and after the passage of this Act there shall be levied, collected, and paid upon all articles coming into the United States or its possessions, from the West Indian Islands ceded to the United States by Denmark, the rates of duty and internal-revenue taxes which are required to be levied, collected, and paid upon like articles imported from foreign countries: Provided, That all articles, the growth or product of, or manufactured in such islands from materials the growth or product of such islands or of the United States, or of both, or which do not contain foreign materials to the value of more than twenty per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from such islands shall hereafter be admitted free of duty. (39 Stat. 1133.)

See note to § 3924¼a, ante.

§ 3924¼d. (Act March 3, 1917, c. 171, § 4.) Tax laws continued; tax on sugar.

Until Congress shall otherwise provide all laws now imposing taxes in the said West Indian Islands, including the customs laws and regulations, shall, in so far as compatible with the changed sovereignty and not otherwise herein provided, continue in force and effect, except that articles the growth, product, or manufacture of the United States shall be admitted there free of duty: Provided, That upon exportation of sugar to any foreign country, or the ship-

ment thereof to the United States or any of its possessions, there shall be levied, collected, and paid thereon an export duty of $8 per ton of two thousand pounds irrespective of polariscope test, in lieu of any export tax now required by law. (39 Stat. 1133.)

See note to § 3924¼a, ante.

§ 3924¼e. (Act March 3, 1917, c. 171, § 5.) Use and disposition of duties and taxes collected.

The duties and taxes collected in pursuance of this Act shall not be covered into the general fund of the Treasury of the United States, but shall be used and expended for the government and benefit of said islands under such rules and regulations as the President may prescribe. (39 Stat. 1133.)

See note to § 3924¼a, ante.

§ 3924¼f. (Act March 3, 1917, c. 171, § 6.) Appropriation; expense of taking over Islands.

For the purpose of taking over and occupying said islands and of carrying this Act into effect and to meet any deficit in the revenues of the said islands resulting from the provisions of this Act the sum of $100,000 is hereby appropriated, to be paid out of any moneys in the Treasury not otherwise appropriated, and to be applied under the direction of the President of the United States. (39 Stat. 1133.)

See note to § 3924¼a, ante.

§ 3924¼g. (Act March 3, 1917, c. 171, § 7.) Same; payment for Islands.

The sum of $25,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be paid in the city of Washington to the diplomatic representative or other agent of His Majesty the King of Denmark duly authorized to receive said money, in full consideration of the cession of the Danish West Indian Islands to the United States made by the convention between the United States of America and His Majesty the King of Denmark entered into August fourth, nineteen hundred and sixteen, and ratified by the Senate of the United States on the seventh day of September, nineteen hundred and sixteen. (39 Stat. 1133.)

See note to § 3924¼a, ante.

§ 3924¼h. (Act March 3, 1917, c. 171, § 8.) Time of taking effect of act.

This Act, with the exception of section seven, shall be in force and effect and become operative immediately upon the payment by the United States of said sum of $25,000,000. The fact and date of such payment shall thereupon be made public by a proclamation issued by the President and published in the said Danish West Indian Islands and in the United States. Section seven shall become immediately effective and the appropriation thereby provided for shall be immediately available. (39 Stat. 1133.)

See note to § 3924¼a, ante.

Proclamation issued under this section, dated March 31, 1917, as follows:

"Whereas, by Article 5 of the Convention between the United States and Denmark for the cession of the Danish West Indian Islands to the United States, the United States agrees to pay, in full consideration of the cession made by the said Convention, within ninety (90) days from the exchange of the ratifications of the said Convention, in the City of Washington, to the diplomatic representative or other agent of His Majesty, the King of Denmark, duly authorized to receive the money, the sum of twenty-five million dollars ($25,000,000) in gold coin of the United States;

"And whereas, the ratifications of the said Convention were exchanged at the City of Washington on January 17, 1917;

"And whereas, by section 7 of the Act of Congress, approved March 3, 1917, entitled 'An Act to provide a temporary government for the West Indian

Islands acquired by the United States from Denmark by the Convention entered into between the said countries on the fourth day of August, nineteen hundred and sixteen, and ratified by the Senate of the United States on the seventh day of September, nineteen hundred and sixteen, and for other purposes' the sum of twenty-five million dollars ($25,000,000) was appropriated to be paid in the City of Washington to the diplomatic representative or other agent of His Majesty the King of Denmark duly authorized to receive said money, in full consideration of the cession of the Danish West Indian Islands to the United States made by the said Convention;

"And whereas, in conformity with said Convention and said Act of Congress, the sum of twenty-five million dollars ($25,000,000) was on this day paid to Mr. Constantin Brun, Envoy Extraordinary and Minister Plenipotentiary of Denmark at Washington as the Agent duly authorized by the Government of Denmark to receive the money;

"And whereas, by Section 8 of the said Act of Congress approved March 3, 1917, the fact and date of such payment shall be made public by a proclamation issued by the President and published in the said Danish West Indian Islands and in the United States.

"Now, therefore, be it known that I, Woodrow Wilson, President of the United States of America, do hereby proclaim and publish that the sum of twenty-five million dollars ($25,000,000) has this day been paid to the authorized Agent of His Majesty the King of Denmark in full consideration of the cession of the Danish West Indian Islands to the United States made by the Convention between the United States of America, and His Majesty the King of Denmark, concluded August 4, 1916."

TITLE XXIV—CIVIL RIGHTS

§ 3925. (R. S. § 1977.) Equal rights under the law.

Cited without definite application, Buchanan v. Warley, 38 S. Ct. 16, 62 L. Ed. 149, L. R. A. 1918C, 210, Ann. Cas. 1918A, 1201.

§ 3931. (R. S. § 1978.) Rights of citizens in respect to real and personal property.

Cited without definite application, Buchanan v. Warley, 38 S. Ct. 16, 62 L. Ed. 149, L. R. A. 1918C, 210, Ann. Cas. 1918A, 1201.

§ 3944. (R. S. § 1990.) Peonage abolished.

2. Construction.—Under Const. U. S. Amend. 13, § 1, and this section a crime to be punished by imprisonment cannot lawfully be predicated on the breach of a promise to perform labor or services. Goode v. Nelson (Fla.) 74 So. 17.

TITLE XXV—CITIZENSHIP

Sec.
3946. Who are citizens.
3947. Citizenship of children of citizens born abroad.
3951. Citizenship of certain Indians born within the United States.
3955. Right of expatriation declared.
3959. Expatriation of citizens; presumption as to naturalized citizens residing in foreign state.
3959a. [Repealed.]
3960. Citizenship of American women marrying foreigners.
3961. Citizenship of foreign women marrying citizens.

§ 3946. (R. S. § 1992.) Who are citizens.

1. In general.—Mere residence in a foreign country, even by a naturalized American, has no effect upon such person's citizenship. U. S. v. Howe (D. C.) 231 F. 546.

Citizenship implies membership in a political society, the relation of allegiance and protection, identification with the state, and a participation in its functions, and while a temporary absence may suspend the relation between a state and its citizen, his identification with the state remains where he intends to return. Pannill v. Roanoke Times Co. (D. C.) 252 F. 910.

Ordinarily, persons residing in the United States are subject to its jurisdiction, and if born therein are citizens. Anderson v. Mathews (Cal.) 163 P. 902.

2. Citizens of states and of United States.—One may be a citizen of the United States, and yet not a citizen of any state. Hough v. Société Electrique Westinghouse de Russie (D. C.) 231 F. 341.

7. Chinese.—A child born in the United States of Chinese parents domiciled here becomes at birth a citizen of the United States, under the first clause of the Fourteenth Amendment to the Constitution. Louie Lit v. U. S., 238 F. 75, 151 C. C. A. 151; Young Ti v. U. S., 246 F. 110, 158 C. C. A. 336.

11. Evidence.—Uncontradicted evidence held to establish the citizenship of a person of Chinese descent arrested for deportation. U. S. v. Charlie Dart (D. C.) 251 F. 394.

When an indictment is attacked because of noncitizenship of a grand juror, the grand juror may testify to the place of his birth and the facts surrounding his father's naturalization. State v. Chamberlin (Iowa) 163 N. W. 428.

The evidence relied upon to overcome the presumption of citizenship arising from the party having voted, held office, or otherwise performed the functions or exercised the rights of citizenship must be clear and satisfactory. Id.

§ 3947. (R. S. § 1993.) Citizenship of children of citizens born abroad.

Chinese.—This section makes no distinction as to race or place of birth. Quan Hing Sun v. White (C. C. A.) 254 F. 402.

The son of an American citizen, though of Chinese descent, is a citizen of the United States, and entitled to enter the country as such. Ex parte Wong Foo (D. C.) 230 F. 534.

Where right to enter the country as the son of a native-born citizen under this section is examined in a spirit hostile to the law, held, that applicant is denied a fair hearing. Ex parte Lee Dung Moo (D. C.) 230 F. 746.

Foreign-born son of native-born citizen of Chinese descent held entitled to admission to the country, under this section, though he remained abroad until 27 years old. Ex parte Ng Doo Wong (D. C.) 230 F. 751.

§ 3951. (Act Feb. 8, 1887, c. 119, § 6, as amended, Act March 3, 1901, c. 868, and Act May 8, 1906, c. 2348.) Citizenship of certain Indians born within the United States.

In general.—See Winton's Estate v. Amos, 51 Ct. Cl. 284.

In view of this section, securing personal rights of citizenship and protection of laws to members of tribes of Indians to whom allotments are made under Comp. St. 1916, § 4203, United States, as trustee and guardian of Indian allottee and trust patentee of certain Indian reservation lands, cannot maintain action for damages caused to fish wheel owned and operated by Indian on Columbia river; wheel having been constructed, maintained, and repaired by Indian with funds derived from sale of 40 acres of his allotment of lands. U. S. v. Seufert Bros. Co. (C. C. A.) 252 F. 51.

The citizenship conferred on Indian allottees by this section did not operate to withdraw them from the supervision, control, and protection of the

government, both as respects themselves and their property. U. S. v. Pearson (D. C.) 231 F. 270.

An Indian who has become a citizen under this section held to have ceased to be a ward of the government in such sense that the United States could maintain a suit to protect rights claimed under a treaty. U. S. v. Seufert Bros. Co. (D. C.) 233 F. 579.

Indians of the Red Lake band of Chippewas, inhabiting the Red Lake Indian Reservation as wards of the government, are residents of the state within the meaning of Const. art. 7, defining qualifications for voters. In re Liquor Election in Beltrami County (Minn.) 163 N. W. 988.

Right to sue and be sued.—An Indian, who became a citizen by this section can, after attaining his majority, sue to recover land conveyed by him while a minor. McDaniel v. Holland, 230 F. 945, 145 C. C. A. 139.

A full-blood Indian, being a citizen of the United States and of the state, has a right to sue in the state courts, and may have his rights growing out of treaties, and acts of Congress relating to his land adjusted, and such rights as may be protected at suit of the executive department of the federal government may also be enforced in state courts by an action by the Indian. Brown v. Anderson (Okl.) 160 P. 724.

§ 3955. (R. S. § 1999.) Right of expatriation declared.

Right of expatriation.—A citizen may throw off his allegiance to this country if he desires, especially in view of this section, declaring that the right of expatriation is a natural and inherent right of all people. U. S. v. Howe (D. C.) 231 F. 546; Ex parte Griffin (D. C.) 237 F. 445.

Acts constituting expatriation.—Expatriation is the voluntary renunciation of citizenship, the renouncing allegiance to one's own government, usually accompanied by forsaking one's own country. Ex parte Griffin (D. C.) 237 F. 445.

§ 3959. (Act March 2, 1907, c. 2534, § 2.) Expatriation of citizens; presumption as to naturalized citizens residing in foreign state.

Validity.—This section held valid, even as against naturalized citizen returning to land of his birth before it was passed. U. S. v. Howe (D. C.) 231 F. 546.

Construction and application in general.—Under this section, naturalized citizen returning after residence of two years in the land of his birth held presumptively an alien, especially in view of Naturalization Convention of 1869 with Sweden; but this presumption is rebuttable. U. S. v. Howe (D. C.) 231 F. 546.

Under this section, and article 4 of the treaty with Austria (17 Stat. 836), a naturalized Austrian, who has resided in Austria for two years, but is shown not to have renounced his American citizenship, cannot sue as an alien in the federal courts, though he has not shown his American citizenship before a diplomatic or consular officer. Stein v. Fleischmann Co. (D. C.) 237 F. 679.

In view of this section, aliens in service of army or navy, whose intention it is, upon discharge from service, to return to their native countries and remain there permanently, are not entitled to naturalization, either under general statutes or Act May 9, 1918, for such a temporary naturalization would be a fraud on the nation, and clearly in conflict with oath of allegiance. In re Naturalization of Aliens in Service of Army or Navy of United States (D. C.) 250 F. 316.

Oath of allegiance to foreign state.—A citizen, who with his family goes to Canada and enlists in the army, taking oath of allegiance, expatriates himself under this section, and expatriation is complete, though after a few days' service he deserts and surreptitiously returns to the United States. Ex parte Griffin (D. C.) 237 F. 445.

§ 3959a. (Act Oct. 5, 1917, c. 68.) [Repealed.]

This section, relating to the repatriation of citizens expatriated by reason of service in the armies of Great Britain, France, etc., was repealed by Act May 9, 1918, c. 69, § 1. Other provisions for the repatriation of such expatriated citizens are contained in said Act May 9, 1918, c. 69, § 1, post § 4352.

§ 3960. (Act March 2, 1907, c. 2534, § 3.) Citizenship of American women marrying foreigners.

Application.—See Ex parte Griffin (D. C.) 237 F. 445.

§ 3961. (Act March 2, 1907, c. 2534, § 4.) Citizenship of foreign women marrying citizens.

Application.—Evidence that an alien was married in Pennsylvania, without showing whether the man she married was a citizen or an alien, did not show that she had lost her status as an alien. Lehigh Valley Coal Co. v. Washko, 231 F. 42, 145 C. C. A. 230.

TITLE XXVIII—INDIANS

Chap.		Sec.
1.	Officers of Indian affairs, their duties and compensation	3979½
2.	Performance of engagements between the United States and Indians	4034
3.	Government and protection of Indians	4106
4.	Government of Indian country	4129
4A.	Education of Indians	4161
4B.	Rights of way through Indian lands	4181
4C.	Allotment of Indian lands	4195

CHAPTER ONE—OFFICERS OF INDIAN AFFAIRS; THEIR DUTIES AND COMPENSATION

Sec.
3979½. Creation of Indian reservations.
4000. Indian agents; duties.
4025. Heat and light for employé's quarters.
4028a. Qualifications of farmers.
4032a. Limitation of previous section not to include certain expenditures for salaries.

§ 3979½. (Act May 25, 1918, c. 86, § 2.) Creation of Indian reservations.

Hereafter no Indian reservation shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of New Mexico and Arizona, except by Act of Congress. (40 Stat. 570.)

Construction of laws in favor of Indians.—Provisions of doubtful meaning in congressional enactments relating to Indians must be construed so far as possible in favor of the Indians, and not against them. Chase v. U. S., 238 F. 887, 152 C. C. A. 21.

§ 4000. (R. S. § 2058.) Indian agents; duties.

Cited without definite application, Northern Pac. Ry. Co. v. Wismer, 38 S. Ct. 240, 246 U. S. 283, 62 L. Ed. 716.

§ 4025. (Act May 25, 1918, c. 86, § 1.) Heat and light for employé's quarters.

The Secretary of the Interior is authorized to allow employees in the Indian Service who are furnished quarters necessary heat and light for such quarters without charge, such heat and light to be paid for out of the fund chargeable with the cost of heating and lighting other buildings at the same place: And provided further, That the amount so expended for agency purposes shall not be included in the maximum amounts for compensation of employees prescribed by section one, Act of August Twenty-fourth, nineteen hundred and twelve. (40 Stat. 564.)

This was part of the Indian appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

§ 4028a. (Act May 25, 1918, c. 86, § 1.) Qualifications of farmers.

Hereafter no money shall be expended for the employment of any farmer or expert farmer at a salary of or in excess of $50 per month, unless he shall first have procured and filed with the Commissioner of Indian Affairs a certificate of competency showing that he is a farmer of actual experience and qualified to instruct others in the art of practical agriculture, such certificate to be cer-

tified and issued to him by the president or dean of the State agricultural college of the State in which his services are to be rendered, or by the president or dean of the State agricultural college of an adjoining State: Provided, That this provision shall not apply to persons employed in the Indian Service as farmer or expert farmer prior to January first, nineteen hundred and seventeen: And provided further, That this shall not apply to Indians employed or to be employed as assistant farmer. (40 Stat. 565.)

§ 4032a. (Act May 25, 1918, c. 86, § 1.) Limitation of previous section not to include certain expenditures for salaries.

The amounts paid to matrons, foresters, farmers, physicians, and stockmen provided for in this Act shall not be included within the limitation on salaries and compensation of employees contained in the Act of August twenty-fourth, nineteen hundred and twelve. (40 Stat. 566.)

CHAPTER TWO—PERFORMANCE OF ENGAGEMENTS BETWEEN THE UNITED STATES AND INDIANS

§ 4034. (R. S. § 2079.) Future treaties with Indian tribes.

Power of Congress.—Congress may govern Indian tribes by direct legislation, regardless of previous treaties; the power being first asserted by this section, and subsequently asserted by Act March 3, 1885, now Criminal Code, § 328, relating to offenses by Indians.—U. S. v. Hamilton (D. C.) 233 F. 685.

§ 4077aa. (Act May 25, 1918, c. 86, § 27.) Expenditures from tribal funds authorized.

That the Secretary of the Interior be, and he is hereby, authorized in his discretion to expend for the benefit of Indians, from their tribal funds held in trust or otherwise, not exceeding $2,500,000 during the fiscal year ending June thirtieth, nineteen hundred and nineteen, as provided by section twenty-seven of the Act of May eighteenth, nineteen hundred and sixteen (Thirty-ninth Statutes at Large, page one hundred and fifty-eight), in addition to such sums as may be required for equalization of allotments, education of Indian children, per capita and other payments to Indians and expenditures for the Five Civilized Tribes in accordance with existing law: Provided, That expenditures shall not be made from any one fund for purposes other than those above specified in excess of the estimates submitted by the Secretary of the Interior and appearing in House of Representatives Document Numbered Four hundred and ninety-nine, Sixty-fifth Congress, second session: And provided further, That no expenditures shall be made from tribal or treaty funds which are not authorized by existing laws governing their disposition and use. (40 Stat. 591.)

§ 4078a. (Act May 25, 1918, c. 86, § 28.) Segregation, deposit, and investment of tribal funds.

The Secretary of the Interior be, and he is hereby authorized, under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and segregate the common, or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States, and which are susceptible of segregation, so as to credit an equal share to each and every recognized member of the tribe except those whose pro rata shares have already been withdrawn under existing law, and to deposit the funds so segregated in banks to be selected by him, in the State or States in which the tribe is located, subject to withdrawal for pay-

ment to the individual owners or expenditure for their benefit under the regulations governing the use of other individual Indian moneys. The said Secretary is also authorized, under such rules and regulations as he may prescribe, to withdraw from the Treasury and deposit in banks in the State or States in which the tribe is located to the credit of the respective tribes, such common, or community, trust funds as are not susceptible of segregation as aforesaid, and on which the United States is not obligated by law to pay interest at higher rates than can be procured from the banks: Provided, That no tribal or individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate and shall have furnished an acceptable bond or collateral security therefor, and United States bonds may be furnished as collateral security for either tribal or individual funds so deposited, in lieu of surety bonds: Provided further, That the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in United States Government bonds: And provided further, That any part of tribal funds required for support of schools or pay of tribal officers shall be excepted from segregation or deposit as herein authorized and the same shall be expended for the purposes aforesaid: Provided, however, That the funds of any tribe shall not be segregated until the final rolls of said tribe are complete: And provided further, That the foregoing shall not apply to the funds of the Five Civilized Tribes, or the Osage Tribe of Indians, in the State of Oklahoma, but the funds of such tribes and individual members thereof shall be deposited in the banks of Oklahoma or in the United States Treasury and may be secured by the deposit of Unitel States bonds. (40 Stat. 591.)

§ 4087. (R. S. § 2103.) Contracts with Indian tribes or Indians.

Validity and enforcement of contracts.—Where the laws of the Creek Nation authorized citizens of the nation to make contracts securing them certain special rights in communal pastures, the right could not be secured by or in conjunction with persons who were not citizens of the nation. Turner v. U. S., 51 Ct. Cl. 125.

Where contracts secured by plaintiffs from individual Indians were invalidated by act of Congress, they cannot be made the basis of a suit wherein a judgment rendered could become enforceable against the Indian property, but the contracts are admissible in evidence to establish knowledge upon the part of the defendants and as evidence of what might constitute a reasonable award for the work performed. Winton v. Amos, 51 Ct. Cl. 284.

Jurisdiction of courts.—Congress having authority to charge the Indian lands involved with the payment for services rendered or expenses incurred in securing their rights, the court can render a judgment upon the principle quantum meruit if from the record there is found the existence of a legal relationship warranting it. Winton v. Amos, 51 Ct. Cl. 284.

Where a claim is made for the value of services in securing legislation beneficial to Indians, the court cannot segregate the services performed by attorneys and the influence exerted by the department in moving Congress to a recognition of the Indians' rights in the absence of some specific showing of the value thereof. Id.

CHAPTER THREE—GOVERNMENT AND PROTECTION OF INDIANS

§ 4106. (Act June 7, 1897, c. 3, § 1.) Marriage of white men to Indian women; rights of children.

Construction in general.—Under this section, child of white man and Indian woman, recognized as a member of a band of Indians, held entitled to be treated as a member of such band, though not remaining on the reservation. Vezina v. U. S., 245 F. 411, 157 C. C. A. 573.

§ 4107. (R. S. § 2117.) Driving stock to feed on lands.

"Cattle" within statute.—This section applies to sheep; such animals being within intent of statute and included in general term "cattle." U. S. v. Ash Sheep Co. (C. C. A.) 250 F. 592; U. S. v. Ash Sheep Co. (C. C. A.) 254 F. 59.

Conclusiveness of decree denying damages in suit to enjoin trespass.—In suit to enjoin trespass on lands ceded by Indians to United States, decree denying damages claimed under this section, on ground of want of jurisdiction, is in no way conclusive against right of United States to recover such damages, though court in that proceeding expressed its opinion that they were not recoverable. U. S. v. Ash Sheep Co. (C. C. A.) 250 F. 592.

§ 4126. (Act March 1, 1907, c. 2285.) Access to records of Five Civilized Tribes.

Purpose of preparing rolls.—See Wadsworth v. Crump (Okl.) 157 P. 713, reversing judgment on rehearing 154 P. 60.

Citizenship as part of enrollment record.—See Henley v. Davis (Okl.) 156 P. 337.

Final rolls of five civilized tribes as evidence of Indian blood.—See Cowokochee v. Chapman (Okl.) 171 P. 50.

—— Evidence of age.—See McDaniel v. Holland, 230 F. 945, 145 C. C. A. 139; Davenport v. Mitchell (Okl.) 155 P. 869; Scott v. Cover (Okl.) 155 P 889; McIntosh v. Lincoln (Okl.) 156 P. 1170; Hart v. West (Okl.) 161 P. 534; Gilcrease v. McCullough (Okl.) 162 P. 178; Jordan v. Jordan (Okl.) 162 P. 758; Miller v. Thompson (Okl.) 163 P. 528; Culver v. Diamond (Okl.) 167 P. 223; Hutchison v. Brown (Okl.) 167 P. 624; Johnson v. Alexander (Okl.) 167 P. 989.

—— Creek rolls as evidence before Dawes Commission.—See Folk v. U. S., 233 F. 177, 147 C. C. A. 183.

CHAPTER FOUR—GOVERNMENT OF INDIAN COUNTRY

Sec.
4129. Prohibition of trade by the President.
4136b. Intoxicating liquors; sale in or carrying into Indian Territory.
4137. Same; sale to Indians or introducing into Indian country.
4137a. Same; Osage County, Oklahoma, Indian country.
4137aa. Same; possession in Indian country.
4140. Same; complaints; arrests and examinations.
4141. Same; searches and seizures.
4141a. Same; seizure of vehicles used.
4144a. Same; §§ 4141, 4144, applicable to liquors mentioned in § 4137; possession prima facie evidence.
4148. General laws as to punishment of crimes extended to country.
4149. Same; exceptions.
4150. Removal from Indian country.
4151. Same; return.
4152. Removal from reservations.
4159. Injuries to property by Indians.

§ 4129. (R. S. § 2132.) Prohibition of trade by the President.

Cited without definite application, Collins v. Morgan (C. C. A.) 243 F. 495.

§ 4136b. (Act March 1, 1895, c. 145, § 8.) Intoxicating liquors; sale in or carrying into Indian Territory.

Any person, whether an Indian or otherwise, who shall, in said Territory, manufacture, sell, give away, or in any manner, or by any means furnish to anyone, either for himself or another, any vinous, malt, or fermented liquors, or any other intoxicating drinks of any kind whatsoever, whether medicated or not, or who shall carry, or in any manner have carried, into said Territory any such liquors or drinks, or who shall be interested in such manufacture, sale, giving away, furnishing to anyone, or carrying into said Territory any of such liquors or drinks, shall, upon conviction thereof, be punished by fine not exceeding five hundred dollars and by imprisonment for not less than one month nor more than five years. (28 Stat. 697.)

This was section 8 of an act entitled "An act to provide for the appointment of additional judges of the United States Courts in the Indian Territory, and for other purposes," cited above. The remainder of this act may be regarded as superseded by the admission of Oklahoma as a State. This section has however been held to be still operative. See Ex parte Webb (1912) 32 Sup. Ct. 769, 225 U. S. 663; U. S. v. Wright (1913) 33 Sup. Ct. 630, 229 U. S. 226; Joplin Mercantile Co. v. U. S. (1915) 35 Sup. Ct. 291, 236 U. S. 531; Joplin Mercantile Co. v. U. S. (1914) 213 Fed. 926, 131 C. C. A. 160; Segna v. U. S. (1914) 218 Fed. 791, 134 C. C. A. 527; Collins v. Morgan (1917) 243 Fed. 495, 156 C. C. A. 193; U. S. v. One Buick Roadster Automobile (D. C. 1917) 244 Fed. 961; U. S. v. Buckles (Ind. T. 1906) 97 S. W. 1022; Burch v. U. S. (Ind. T. 1907) 104 S. W. 619; State v. Eighty-Nine Casks of Beer, 128 Pac. 267, 36 Okl. 151. See, also, U. S. Comp. St. Ann. 1916, § 4137, and notes thereunder.

Cited without definite application, Collins v. Morgan (C. C. A.) 243 F. 495.

See, also, post, § 4137, and notes thereunder.

§ 4137. (Act Jan. 30, 1897, c. 109, § 1.) Same; sale to Indians or introducing into Indian country.

2. Regulation of commerce.—Under Act Cong. June 16, 1906, § 3, Const. Okl. art. 1, § 2, Rev. Laws Okl. 1910, § 3605, and Webb-Kenyon Act March 1, 1913, post, § 8739, interstate shipment of intoxicating liquors into Oklahoma is unlawful, and carrier cannot be enjoined from refusing to accept such shipments for delivery in that state. Missouri, K. & T. Ry. Co. v. Danciger, 248 F. 36, 160 C. C. A. 176.

As Oklahoma laws forbid manufacture and sale of intoxicating liquors therein, interstate shipments of intoxicating liquors into portion of Oklahoma which formerly was an Indian reservation are not authorized, because Indian titles have been extinguished; Webb-Kenyon Act, post, § 8739, having deprived such shipments of protection arising out of their interstate character. Id.

Act March 1, 1895, c. 145, 28 Stat. 693, forbidding the introduction of intoxicating liquor into Indian Territory, as limited to interstate commerce by the Oklahoma Enabling Act, is not unconstitutional, as discriminating between the states in respect of trade and commerce in intoxicating liquors. De Moss v. U. S., 250 F. 87, 162 C. C. A. 259; Warren v. U. S., 250 F. 89, 162 C. C. A. 261.

9. Construction and operation of statute—Effect of statute on other legislation.—Act March 1, 1895, 28 Stat. 693, 697, held still in force, so far as it prohibits introduction of liquor from points outside of Oklahoma into portions thereof formerly constituting Indian Territory. U. S. v. One Buick Roadster Automobile (D. C.) 244 F. 961.

15. Indians within protection of statute—Indian allottees.—During the 25 years under which Indian allottees under Acts Feb. 8, 1887 (Comp. St. 1916, § 4195), and March 2, 1889, remain tribal Indians under guardianship, the allotted lands are inalienable, Congress may, as is done by this section, regulate or prohibit sale of intoxicating liquors to such Indians within a state. U. S. v. Nice, 36 S. Ct. 696, 241 U. S. 591, 60 L. Ed. 1192, overruling In re Heff, 25 S. Ct. 506, 197 U. S. 488, 49 L. Ed. 848.

18. "Indian country" within statute in general.—Kelliher, in county of Beltrami, state of Minnesota, which is within exterior boundaries of territory ceded to United States by Chippewa Treaty of February 22, 1855, is Indian territory. Harris v. U. S., 249 F. 41, 161 C. C. A. 101, certiorari denied 38

S. Ct. 425, 246 U. S. 675, 62 L. Ed. 933.

19. — **Reservations as Indian country.**—Where the Indian title to land occupied by the station platform of a railroad having a right of way through an Indian reservation was extinguished by the grant of the right of way, the station platform was not Indian country. U. S. v. Soldana, 38 S. Ct. 357, 246 U. S. 530, 62 L. Ed. 870.

Under Act May 1, 1888, creating Crow Reservation, and Act Feb. 12, 1889, §§ 3, 5, granting railroad company right of way thereon, held that station platform on railroad right of way over Indian reservation is Indian country. Id.

24. **Selling liquor to Indians or introducing liquor into Indian country as offenses.**—The government held not entitled to maintain an indictment against a defendant for selling liquor to an Indian, in violation of Rev. St. § 2139 (Comp. St. 1916, § 4136a), and this section, when by its own conduct, through its agents, it misled him into believing that the act was lawful. Voves v. U. S., 249 F. 191, 161 C. C. A. 227.

27. **Intent and knowledge as element of offense.**—In prosecution, under this section, for selling intoxicants to Indian, it is no defense that seller did not believe purchaser to be an Indian ward of the United States government under charge of an Indian agent. Feeley v. U. S., 236 F. 903, 150 C. C. A. 165.

31. **Indictment.**—Indictment held sufficient to charge offense of carrying from without liquor into Indian territory, in violation of act of 1895, as amended by the Oklahoma Enabling Act of 1906, and not to be restricted to this section. Collins v. Morgan, 243 F. 495, 156 C. C. A. 193.

In view of Rev. St. § 1025 (Comp. St. 1916, § 1691), an indictment held sufficient to charge offense of introducing, from without into that part of state of Oklahoma, which was Indian Territory, intoxicating liquor. Dosset v. U. S., 248 F. 902, 161 C. C. A. 20.

32. **Evidence—Admissibility.**—In a prosecution under Act March 1, 1895, for introducing from outside intoxicating liquors into that part of the state of Oklahoma which was formerly the Indian Territory, testimony as to what was defendant's business at the time of his arrest is admissible. Blackwell v. U. S., 236 F. 912, 150 C. C. A. 174.

In a prosecution for introducing, in violation of Act March 1, 1895, intoxicating liquors into that part of Oklahoma which was the Indian Territory, testimony that a witness helped pull out of the mud in Texas a wagon bound towards Oklahoma held properly received, in view of other testimony as to liquor brought from Texas in a wagon. Chancellor v. U. S., 237 F. 193, 150 C. C. A. 339; Id., 237 F. 194, 150 C. C. A. 340.

On trial for introducing liquor into Indian reservation, testimony as to labels on bottles as part of witness' description of bottles and pieces found by him held properly admitted. Pablo v. U. S., 242 F. 905, 155 C. C. A. 493.

34. — **Sufficiency to sustain conviction.**—In a prosecution under Act March 1, 1895, for introducing from outside intoxicating liquor into that part of the state of Oklahoma which was the Indian Territory, evidence held to warrant a conviction. Blackwell v. U. S., 236 F. 912, 150 C. C. A. 174; Chancellor v. U. S., 237 F. 193, 150 C. C. A. 239; Id., 237 F. 194, 150 C. C. A. 340.

In a prosecution for introducing intoxicating liquor into an Oklahoma county, evidence held sufficient to sustain the conviction. Bradley v. U. S. (C. C. A.) 254 F. 289.

35. — **Insufficiency to sustain conviction.**—In a prosecution for violating Act March 1, 1895, § 8, by introducing into territory which formerly was the Indian Territory intoxicating liquor, a conviction cannot be supported on mere suspicious circumstances indicating that defendant was cognizant of the introduction of the liquor by his codefendant. Tucker v. U. S., 236 F. 542, 149 C. C. A. 594.

36½. **Questions for jury.**—In prosecution for introducing or causing to be introduced, into Indian territory intoxicating liquors in violation of Rev. St. § 2139, as amended by Act Feb. 27, 1877, and by Act July 23, 1892 (Comp. St. 1916, § 4136a), where offense was committed after passage of Act May 18, 1916 (Comp. St. 1916, § 4144a), question of defendant's guilt held under evidence properly submitted to jury. Harris v. U. S., 249 F. 41, 161 C. C. A. 101, certiorari denied 38 S. Ct. 425, 246 U. S. 675, 62 L. Ed. 933.

In a prosecution for introducing liquor from without the state into an Oklahoma county, which was formerly in Indian Territory, evidence held sufficient to warrant submission of the case to the jury. Hodson v. U. S. (C. C. A.) 250 F. 421.

37. **Instructions.**—In prosecution for introducing liquors into part of Oklahoma formerly Indian Territory, where defendant, who, with companions, motored into state, claimed liquor which he placed in car was consumed before state line was reached, and that liquor found was placed in machine by others, charge that only that found in state of Oklahoma should be considered could not, read in connection with other portions of charges, be deemed to have excluded defendant's theory or evidence. Dosset v. U. S., 248 F. 902, 161 C. C. A. 20.

39. Review.—In a prosecution under Act March 1, 1895, for introducing intoxicating liquor from outside into that part of Oklahoma which was the Indian Territory, held that, in view of his admission, testimony that accused was engaged in hauling whisky was not prejudicial. Blackwell v. U. S., 236 F. 912, 150 C. C. A. 174.

In view of defendant's testimony and his denial, held that, in a prosecution for violation of Act March 1, 1895, by carrying into what was formerly Indian Territory intoxicating liquors, defendant was not prejudiced by questions impliedly charging him with selling whisky therein. Greer v. U. S., 240 F. 320, 153 C. C. A. 246.

40. Punishment.—Modification of excessive fine by court on error, see Salazar v. U. S., 236 F. 541, 149 C. C. A. 593.

Cited without definite application, Collins v. Morgan (C. C. A.) 243 F. 495; Durrant v. U. S., 50 Ct. Cl. 1.

§ 4137a. (Act March 2, 1917, c. 146, § 17.) Same; Osage county, Oklahoma, Indian country.

All of Osage County, Oklahoma, shall hereafter be deemed to be Indian country within the meaning of the Acts of Congress making it unlawful to introduce intoxicating liquors into the Indian country. (39 Stat. 983.)

This was a part of section 17 of the Indian appropriation act for the fiscal year 1918, cited above.

§ 4137aa. (Act May 25, 1918, c. 86, § 1.) Same; possession in Indian country.

On and after September first, nineteen hundred and eighteen, possession by a person of intoxicating liquors in the Indian country where the introduction is or was prohibited by treaty or Federal statute shall be an offense and punished in accordance with the provisions of the Acts of July twenty-third, eighteen hundred and ninety-two (Twenty-seventh Statutes at Large, page two hundred and sixty), and January thirtieth, eighteen hundred and ninety-seven (Twenty-ninth Statutes at Large, page five hundred and six). (40 Stat. 563.)

§ 4140. (Act July 23, 1892, c. 234.) Same; complaints; arrests and examinations.

Modification of excessive fine.—See Salazar v. U. S., 236 F. 541, 149 C. C. A. 593.

§ 4141. (R. S. § 2140.) Same; searches and seizures.

3. Procedure for violations of liquor laws.—A proceeding to forfeit an automobile, under this section, seized on land, on ground that it was used as means for introduction of intoxicating liquor into Indian country, is one at law, and parties are entitled to usual rights and remedies incident to such action, including right to trial by jury. Shawnee Nat. Bank v. U. S., 249 F. 583, 161 C. C. A. 509.

Where, in proceeding under this section, to forfeit automobile on ground that it was used as means for introduction of intoxicants into Indian country, court found that chattel mortgagee had valid lien, but that it was inferior to rights of United States under forfeiture proceeding, it must be presumed, in absence of evidence, that mortgagee had nothing to do with introduction of liquor into Indian country. Id.

Where trial court found that chattel mortgagee had valid lien on automobile sought to be forfeited under this section, because used by mortgagor to carry liquors into Indian country, but declared lien of mortgagee inferior to claim of United States, mortgagee was entitled to raise on record question whether automobile was subject to forfeiture, as well as whether its interest could be forfeited. Id.

4. —— Search warrants, necessity of.—See note to § 4141a, post.

6. —— Property subject to search and seizure.—In view of Act March 2, 1917, this section does not warrant forfeiture of automobiles or of lien of chattel mortgagee on automobile used by mortgagor in possession to convey intoxicants into Indian country. Shawnee Nat. Bank v. U. S., 249 F. 583, 161 C. C. A. 509.

Under this section, only the interest of one in possession of a motorcar, who used it for the introduction of intoxicating liquor into Indian country, can be forfeited because of such introduction. U. S. v. One Automobile (D. C.) 237 F. 891.

The term "wagon" did not include an automobile. Id.

Under this section and Indian Ap-

propriation Act March 2, 1917, mortgaged automobile, used by mortgagor in introducing intoxicants into Indian country, held subject to forfeiture, notwithstanding mortgagee's interest. U. S. v. One Buick Roadster Automobile (D. C.) 244 F. 961.

Congress held presumed to have enacted proviso of Indian Appropriation Act March 2, 1917, post, § 4141a, as to forfeiture of vehicles used in introducing intoxicants into Indian country, with knowledge of construction placed on this section. Id.

§ 4141a. (Act March 2, 1917, c. 146, § 1.) Same; seizure of vehicles used.

Automobiles or any other vehicles or conveyances used in introducing, or attempting to introduce, intoxicants into the Indian country, or where the introduction is prohibited by treaty or Federal statute, whether used by the owner thereof or other person, shall be subject to the seizure, libel, and forfeiture provided in section twenty-one hundred and forty of the Revised Statutes of the United States. (39 Stat. 970.)

This was a provision of the Indian appropriation act for the fiscal year 1918, cited above.

Notes of Decisions

Validity of statute.—This section held valid. U. S. v. One Buick Roadster Automobile (D. C.) 244 F. 961.

Effect of preceding section.—Rev. St. § 2140 (Comp. St. 1916, § 4141), providing for forfeiture of boats, teams, wagons, and sleds used in conveying intoxicants into Indian country, does not warrant forfeiture of automobile, particularly as this section extended the forfeiture to automobiles. Shawnee Nat. Bank v. U. S., 249 F. 583, 161 C. C. A. 509.

Search warrants, necessity of.—This act does not enlarge right of officers to search for intoxicating liquors without warrant in other than Indian country. U. S. v. One Buick Roadster Automobile (D. C.) 244 F. 961.

Forfeiture of mortgaged car.—In view of this section Rev. St. § 2140 (Comp. St. 1916, § 4141), does not warrant forfeiture of lien of chattel mortgagee on automobile used by mortgagor in possession to convey intoxicants into Indian country. Shawnee Nat. Bank v. U. S., 249 F. 583, 161 C. C. A. 509.

Under this section and Comp. St. 1916, § 4141, mortgaged automobile, used by mortgagor in introducing intoxicants into Indian country, was subject to forfeiture, notwithstanding mortgagee's interest. U. S. v. One Buick Roadster Automobile (D. C.) 244 F. 961.

Congress held presumed to have enacted this section, with knowledge of construction placed on Rev. St. § 2140 (Comp. St. 1916, § 4141). Id.

§ 4144a. (Act May 18, 1916, c. 125, § 1.) Same; §§ 4141, 4144, applicable to liquors mentioned in § 4137; possession prima facie evidence.

Questions for jury.—In prosecution for introducing or causing to be introduced, into Indian territory intoxicating liquors in violation of Rev. St. § 2139, as amended by Act Feb. 27, 1877, and by Act July 23, 1892 (Comp. St. 1916, § 4136a), where offense was committed after passage of this section, question of defendant's guilt held under evidence properly submitted to jury. Harris v. U. S., 249 F. 41, 161 C. C. A. 101, certiorari denied 38 S. Ct. 425, 246 U. S. 675, 62 L. Ed. 933.

§ 4148. (R. S. § 2145.) General laws as to punishment of crimes extended to country.

3. **Effect of other statutes.**—Adultery committed by Indian on Indian reservation held not punishable under Penal Code, § 316 (Comp. St. 1916, § 10,489), it not referring in terms to Indians in view of the express enumeration in sections 328 and 329 (Comp. St. 1916, §§ 10,502 and 10,503), of other crimes and offenses against the United States, though such crime is not an offense within provisions of Rev. St. § 2146 (Comp. St. 1916, § 4149). U. S. v. Quiver, 36 S. Ct. 699, 241 U. S. 602, 60 L. Ed. 1196.

Cited without definite application, U. S. v. Lewis (D. C.) 253 F. 469.

§ 4149. (R. S. § 2146, as amended, Act Feb. 18, 1875, c. 80, § 1.) Same; exceptions.

2. **Offenses against laws of United States.**—See U. S. v. Quiver, 36 S. Ct. 699, 241 U. S. 602, 60 L. Ed. 1196.

§ 4150. (R. S. § 2147.) Removal from Indian country.

3. Authority of Indian officers in general.—Under this and the following section, an Indian subagent cannot, without going into court, seize property of Indian ward held by white man in Indian country. Murdock v. Farrell (Utah) 163 P. 1102.

§ 4151. (R. S. § 2148.) Same; return.

See note to § 4150, ante.

§ 4152. (R. S. § 2149.) Removal from reservations.

Cited without definite application, Northern Pac. Ry. Co. v. Wismer, 38 S. Ct. 240, 246 U. S. 283, 62 L. Ed. 716.

§ 4159. (R. S. § 2156.) Injuries to property by Indians.

Cited without definite application, U. S. v. Lewis (D. C.) 253 F. 469.

CHAPTER FOUR A—EDUCATION OF INDIANS

Sec.
4161. Agricultural instructions; teaching children.
4164. Census of Indians and report of numbers of school children.
4165a. No appropriation for sectarian school.
4170a. Expenditure of appropriations; per capita restrictions.
4170aa. Same; limitation on per capita expenditure.
4170b. Same; expenditure for children with less than ¼ Indian blood.
4171a. Sale of lands purchased for day school or other Indian administrative uses.

§ 4161. (R. S. § 2071.) Agricultural instructions; teaching children.

See 30 Op. Atty. Gen. 51.

§ 4164. (Act July 4, 1884, c. 180, § 9.) Census of Indians and report of numbers of school children.

Census card as evidence.—See Gilcrease v. McCullough (Okl.) 162 P. 178; Miller v. Thompson (Okl.) 163 P. 528; Sharshontay v. Hicks (Okl.) 166 P. 881; Culver v. Diamond (Okl.) 167 P. 223; Johnson v. Alexander (Okl.) 167 P. 989.

§ 4165a. (Act March 2, 1917, c. 146, § 21.) No appropriation for sectarian school.

It is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever out of the Treasury of the United States for education of Indian children in any sectarian school. (39 Stat. 988.)

This was a provision of the Indian appropriation act for the fiscal year 1918, cited above.

§ 4170a. (Act Sept. 7, 1916, c. 455.) Expenditure of appropriations; per capita restrictions.

The provisions of this section limiting expenditures at Indian schools were suspended for the fiscal year ending June 30, 1918, by Act March 28, 1918, c. 28, § 1, 40 Stat. 490, which has been omitted from this compilation because its temporary force has expired.

§ 4170aa. (Act May 25, 1918, c. 86, § 1.) Same; limitation on per capita expenditure.

Hereafter, except for pay of superintendents and for transportation of goods and supplies and transportation of pupils, not more than $200 shall be expended from appropriations made in this Act, or any other Act, for the annual support and education of any one pupil in any Indian school, unless the attendance in any school shall

be less than one hundred pupils, in which case the Secretary of the Interior may authorize a per capita expenditure of not to exceed $225: Provided, That the total amount appropriated for the support of such school shall not be exceeded: Provided further, That the number of pupils in any school entitled to the per capita allowance hereby provided for shall be determined by taking the average attendance for the entire fiscal year and not any fractional part thereof: Provided further, That the foregoing shall also apply to expenditures for the fiscal year ending June thirtieth, nineteen hundred and eighteen. (40 Stat. 565.)

§ 4170b. (Act May 25, 1918, c. 86, § 1.) Same; expenditure for children with less than ¼ Indian blood.

Hereafter no appropriation, except appropriations made pursuant to treaties, shall be used to educate children of less than one-fourth Indian blood whose parents are citizens of the United States and of the State wherein they live and where there are adequate free school facilities provided. (40 Stat. 564.)

§ 4171a. (Act March 2, 1917, c. 146, § 1.) Sale of lands purchased for day school or other Indian administrative uses.

The Secretary of the Interior is hereby authorized to cause to be sold, to the highest bidder, under such rules and regulations as he may prescribe, any tract or part of a tract of land purchased by the United States for day school or other Indian administrative uses, not exceeding one hundred and sixty acres in any one tract, when said land or a part thereof is no longer needed for the original purpose; the net proceeds therefrom in all cases to be paid into the Treasury of the United States; title to be evidenced by a patent in fee simple for such lands as can be described in terms of the legal survey, or by deed duly executed by the Secretary of the Interior containing such metes-and-bounds description as will identify the land so conveyed as the land which had been purchased: Provided, That where the purchase price was paid from tribal funds, such proceeds shall be placed in the Treasury of the United States to the credit of the respective tribes of Indians. (39 Stat. 973.)

This was a provision of the Indian appropriation act for the fiscal year 1918, cited above.

CHAPTER FOUR B—RIGHTS OF WAY THROUGH INDIAN LANDS

§ 4181. (Act March 2, 1899, c. 374, § 1, as amended, Act June 25, 1910, c. 431, § 16.) Rights of way for railway, telegraph and telephone lines; town site stations.

Effect of other legislation.—Act Feb. 28, 1902, and Act May 27, 1908, are not a grant of authority to railroads, engaged or organized to engage in interstate commerce, to appropriate private property in Oklahoma, but are limited to Indian lands. Oklahoma, K. & M. I. Ry. Co. v. Bowling, 249 F. 592, 161 C. C. A. 518.

§ 4191. (Act March 3, 1901, c. 832, § 3.) Same; telephone and telegraph lines; grants by Secretary of Interior.

Revocable license.—A permit under Comp. St. 1916, § 4946, to construct a power line over the Cœur d'Alene Indian reservation, held a mere license, revocable by the Secretary of the Interior together with a right of way for a telephone line granted to the same company under this section; the latter being a mere incident to the license.—Washington Water Power Co. v. Harbaugh (D. C.) 253 F. 681.

§ 4192. (Act March 11, 1904, c. 505, § 1, as amended, Act March 2, 1917, c. 146, § 1.) Rights of way for pipe lines.

The Secretary of the Interior is hereby authorized and empowered to grant a right of way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, through any lands held by an Indian tribe or nation in the Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, upon the terms and conditions herein expressed. Before title to rights of way applied for hereunder shall vest, maps of definite location shall be filed with and approved by the Secretary of the Interior: Provided, That before such approval the Secretary of the Interior may, under such rules and regulations as he may prescribe, grant temporary permits revocable in his discretion for the construction of such lines. Provided, That the construction of lateral lines from the main pipe line establishing connection with oil and gas wells on the individual allotments of citizens may be constructed without securing authority from the Secretary of the Interior and without filing maps of definite location, when the consent of the allottee upon whose lands oil or gas wells may be located and of all other allottees through whose lands said lateral pipe lines may pass has been obtained by the pipe line company: Provided further, That in case it is desired to run a pipe line under the line of any railroad, and satisfactory arrangements can not be made with the railroad company, then the question shall be referred to the Secretary of the Interior, who shall prescribe the terms and conditions under which the pipe line company shall be permitted to lay its lines under said railroad. The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval. And where such lines are not subject to State or Territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding five dollars

for each ten miles of line so constructed and maintained under such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by either State, Territorial, or municipal authority. And incorporated cities and towns into and through which such pipe lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities, and nothing herein shall authorize the use of such right of way except for pipe line, and then only so far as may be necessary for its construction, maintenance, and care: Provided, That the rights herein granted shall not extend beyond a period of twenty years: Provided further, That the Secretary of the Interior, at the expiration of said twenty years, may extend the right to maintain any pipe line constructed under this Act for another period not to exceed twenty years from the expiration of the first right, upon such terms and conditions as he may deem proper. (33 Stat. 65, 39 Stat. 973.)

This section was amended by Act March 2, 1917, c. 146, § 1, cited above, by striking out, after the words "with full power of alienation, upon the terms and conditions herein expressed," the words "No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from, and the maps of definite location of said lines approved by, the Secretary of the Interior," and substituting therefor the words "Before title to rights of way applied for hereunder shall vest, maps of definite location shall be filed with and approved by the Secretary of the Interior: Provided, that before such approval the Secretary of the Interior may, under such rules and regulations as he may prescribe, grant temporary permits revocable in his discretion for the construction of such lines"—so as to make the section read as set forth here.

CHAPTER FOUR C—ALLOTMENT OF INDIAN LANDS

Sec.
4195. Allotments on reservations; irrigable and non-irrigable lands, etc.
4196. Selection.
4197. Same; making by agents.
4201. Patents to be held in trust; descent and partition applicable.
4202. Same; restrictions on alienation in patent.
4203. Patents in fee to allottees.
4207. Allotment Act extended to certain tribes in Indian Territory.
4214. Actions for allotments.
4217. Leases of allotted lands where allottee is incapacitated.
4218. Leases of farming lands occupied by Indians.
4219. Leases of surplus lands.
4220. Leases of allotted lands; mining purposes.
4221. Same; lands held in trust.
4222. Descent of land.
4223. Sale of allotted lands; heirs of decedent.
4225. Same; of noncompetent Indian.
4226. Ascertainment of heirs of deceased allottee, etc.
4234a. Determination of heirship of deceased members of Cherokee, Choctaw, Chickasaw, Creek and Seminole tribes.
4234b. Same; laws applicable to lands of full-blooded members.
4238a. Sale of allotted lands for townsites.

§ 4195. (Act Feb. 8, 1887, c. 119, § 1, as amended, Act Feb. 28, 1891, c. 383, § 1, and Act June 25, 1910, c. 431, § 17.) Allotments on reservations; irrigable and non-irrigable lands, etc.

4. Indian reservations—Creation.—Under Indian treaty and executive order of December 23, 1873, setting aside a reservation of lands acquired from the Indians, held, that tidelands separated from reservation by a deep water channel were not included. U. S. v. Snohomish River Boom Co., 246 F. 112, 158 C. C. A. 338, affirming judgment (D. C.) 234 F. 95.

Tidelands are no part of an Indian reservation, unless expressly included, where not attached to the upland. Id.

6. —— **Power of the Secretary of the Interior.**—As this and the following section, Act Jan. 14, 1889, and Act April 28, 1904, do not require the distribution of all lands embraced on the White Earth reservation, reservation of land by the Secretary of the Interior in accordance with the treaty of 1867 for an agency farm, etc., will not be reviewed, and, there being other land, an Indian is not entitled to select such land as an allotment. Gravelle v. U. S. (C. C. A.) 253 F. 549.

21. **Indians entitled to allotments.**—Act Aug. 7, 1882, and Act March 3, 1893, relating to allotments in severalty of lands of the Omaha Indian reservation in Nebraska, construed. Chase v. U. S., 238 F. 887, 152 C. C. A. 21.

In a suit to establish plaintiff's right to an allotment of land in the White Earth Indian Reservation, evidence held to show that plaintiff was by blood a member of a band of the Chippewa Indians of Lake Superior. Vezina v. U. S., 245 F. 411, 157 C. C. A. 573.

23. **Decisions of Department of Interior.**—Decision of Land Department that contestant was owner of improvements within Cherokee Allotment Act July 1, 1902, § 11, held binding on the courts, unless it was without evidence to support it, or with error of law. Harnage v. Martin, 37 S. Ct. 148, 242 U. S. 386, 61 L. Ed. 382, affirming decree 136 P. 154, 40 Okl. 341.

Final decision of Commissioner to Five Civilized Tribes and Secretary of Interior in contest proceedings awarding right to allot certain lands, and issuance of patent, may be reviewed by court of equity and trust impressed on land if decision was based on erroneous view of law. Bozarth v. Mitchell (Okl.) 157 P. 1051.

Commissioner of Five Civilized Tribes, Commissioner of Indian Affairs and Secretary of Interior have duty of allotting lands in Indian Nation, and their action will not be reviewed unless they have committed error of law, have been imposed on by fraud, or are guilty of fraud. Higgins v. Waters (Okl.) 159 P. 1129.

The courts will not disturb decisions of the allotting powers where their findings in allotting Indian lands are based on testimony submitted and no fraud or error of law is apparent. Id.

23½. **Jurisdiction of state court of suit involving allotment.**—On April 27, 1915, the district court had no jurisdiction of suit by full-blood Indian heirs of deceased Pawnee involving lands allotted to decedent under this act, the determination of title, and, incidentally, the rights to possession of allotment while held in trust by United States. Cæsar v. Krow (Okl.) 176 P. 927.

Cited without definite application, U. S. v. Waller, 37 S. Ct. 430, 243 U. S. 452, 61 L. Ed. 843; Durrant v. U. S., 50 Ct. Cl. 1.

§ 4196. (Act Feb. 8, 1887, c. 119, § 2.) Selection.

Preference on account of improvements.—There is nothing inconsistent with Cherokee Allotment Act July 1, 1902, in giving tribal member, owner of equitable interest and improvements on land, when the act was passed, a preferential right to select it as her allotment. Harnage v. Martin, 37 S. Ct. 148, 242 U. S. 386, 61 L. Ed. 382, affirming decree 136 P. 154, 40 Okl. 341.

Where Indian gave her granddaughter right to select from the home place an allotment, held to give her sufficient interest in improvements thereon to support preferential right to allotment under Cherokee Allotment Act July 1, 1902, § 11. Id.

Indians claiming improvement on Choctaw and Chickasaw lands on surrender of surplus lands by the widow, after condemnation in Curtis Act June 28, 1898, §§ 17, 18, of practice of holding excess tribal lands to one who took possession in good faith and made valuable improvements, have better right to select lands for their allotment than other Indians claiming under subsequent conveyance from widow, her adult sons, and guardian of minor. Hill v. Reynolds, 37 S. Ct. 163, 242 U. S. 361, 61 L. Ed. 363, affirming decree Reynolds v. Hill, 143 P. 1155, 43 Okl. 749.

Indian citizens were not given the right to revive dormant claims to Choctaw and Chickasaw lands after others had entered into possession and improved them, by Supplemental Agreement with Choctaws and Chickasaws, §§ 19–21, set forth in Act July 1, 1902. Id.

Where an allotment of land was duly made to a freedman, a member of the Cherokee Nation, neither the Secretary of the Interior nor any subordinate officer of that department may cancel it for false representations as to ownership of improvements on the land. U. S. v. Whitmire, 236 F. 474, 149 C. C. A. 526.

Allotment to freedman of Cherokee Nation, on false testimony that he was owner of improvements thereon, held not subject to cancellation; owner of improvements, a white person who had intermarried with a Cherokee, not being entitled to contest, and owner's granddaughter, to whom improvements were transferred before Act March 2, 1907, not being entitled to contest un-

der Act July 1, 1902, § 69, transfer being more than nine months after allotment. Id.

Where an allotment by a freedman of the Cherokee Nation was not subject to attack, though obtained on false testimony as to improvements, the title of the freedman's grantee could not be attacked, though he knew the allotment was obtained by such testimony. Id.

Preference rights given enrolled member of Choctaw Nation to file on land of nation where his improvements are located and period in which to contest adverse filing by Act July 1, 1902, c. 1362, §§ 11, 71, cannot be destroyed by issuance of certificate of allotment on adversary filing prior to time given owner of improvements in which to file contest. O'Quinn v. Joiner (Okl.) 166 P. 142.

Refusal to select allotment.—Members of Creek nation, refusing to make selection of their allotments, could be put on the allotment roll by Dawes Commission, under Creek Agreement March 1, 1901, § 3. U. S. v. Wildcat, 37 S. Ct. 561, 244 U. S. 111, 61 L. Ed. 1024.

Evidence.—Evidence held insufficient to show that complainant selected, and applied for as her allotment, Indian lands allotted to defendant. Parent v. Picotte (C. C. A.) 254 F. 301.

Cited without definite application, Durrant v. U. S., 50 Ct. Cl. 1.

§ 4197. (Act Feb. 8, 1887, c. 119, § 3, as amended, Act June 25, 1910, c. 431, § 9.) Same; making by agents.

Cited without definite application, Reynolds v. U. S. (C. C. A.) 252 F. 65.

§ 4201. (Act Feb. 8, 1887, c. 119, § 5.) Patents to be held in trust; descent and partition applicable.

1. Power to restrict alienation by Indians.—While an Indian is a national ward, Congress may reimpose alienation restrictions on property previously freed from such restrictions. McCurdy v. U. S., 38 S. Ct. 289, 246 U. S. 263, 62 L. Ed. 706.

The state of Oklahoma cannot confer on a minor Cherokee Indian majority rights, so as to entitle him to alienate lands allotted before reaching 21. Egan v. Ingram (Okl.) 161 P. 225.

Congress held to have complete authority over tribal Indians to whom trust patents were granted under Act Feb. 8, 1887, and over the property, and, though holding it in trust, authorized to make rules governing execution of the trust. Daugherty v. McFarland (S. D.) 166 N. W. 143.

2. Purpose and construction of restrictions on alienation.—Restrictions on alienation by heirs of lands allotted to Osages, Creeks, Cherokees and other Indians in Oklahoma under particular statutes, see Levindale Lead & Zinc Mining Co. v. Coleman, 36 S. Ct. 644, 241 U. S. 432, 60 L. Ed. 1080, reversing judgment 140 P. 607, 43 Okl. 13; Gannon v. Johnston, 37 S. Ct. 330, 243 U. S. 108, 61 L. Ed. 622, affirming judgment 140 P. 430, 40 Okl. 695, Ann. Cas. 1915D, 522; Taylor v. U. S., 230 F. 580, 144 C. C. A. 634; Welty v. Reed, 231 F. 930, 146 C. C. A. 126; Hopkins v. U. S., 235 F. 95, 148 C. C. A. 589; Sunday v. Mallory, 237 F. 526, 150 C. C. A. 408; Youngken v. David (D. C.) 235 F. 621; McCosar v. Chapman (Okl.) 157 P. 1059; Egan v. Ingram (Okl.) 161 P. 225; Kenny v. Miles (Okl.) 162 P. 775; Fowler v. Rogers (Okl.) 167 P. 635.

Under this section, which provides that "upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees," the trust period during which the title was to be held in trust by the government began to run from the date of such approval, and not from the date of the patent. Reynolds v. U. S. (C. C. A.) 252 F. 65.

The congressional restrictions on the alienation of allotments are designed to protect Indians against their own improvidence, whether by acts of commission or omission, contracts or torts. Choctaw Lumber Co. v. Coleman (Okl.) 156 P. 222.

Partition of Indian lands constitutes an "alienation," within the meaning of the federal laws imposing restrictions thereon. Coleman v. Battiest (Okl.) 162 P. 786; Lewis v. Gillard (Okl.) 173 P. 1136.

3. —— Restriction as running with the land.—Lands allotted in the name of a deceased Indian under section 20 of the Cherokee Agreement (Act July 1, 1902), are not subject to any restrictions on the right of alienation by his heirs; sections 13-15 not applying. Sunday v. Mallory, 237 F. 526, 150 C. C. A. 408.

Full-blood heirs of a deceased enrolled citizen of one of the Five Civilized Tribes, on whose account an allotment was selected after his death by an administrator or by the Dawes Commission, take subject to the restriction in Act May 26, 1906, § 22, requiring conveyances to be approved. Harris v. Bell (C. C. A.) 250 F. 209.

The right of heirs of the full blood of a Cherokee Indian to convey lands selected for him by his administrator after his death held not restricted by section 22 of Act April 26, 1906, c.

1876, 34 Stat. 145. Youngken v. David (D. C.) 235 F. 621.

Land allotted by the Commission in the name of a deceased Creek child held to have descended to his heirs according to Mansf. Dig. Ark. §§ 2522–2545, free from restrictions on alienation. Harris v. Bell (D. C.) 235 F. 626.

Under Act March 1, 1901, § 28, as amended by Act Cong. June 30, 1902, the allotment of a Creek Indian dying prior to allotment descends to his heirs free of all restrictions, but if he dies after issuance of certificate but before patent, the surplus, but not the homestead, is restricted. Oates v. Freeman (Okl.) 157 P. 74.

Restrictions imposed by Act Cong. March 2, 1895, and Act June 7, 1897, upon the right of a Quapaw Indian to lease his land run with the land, and are binding on the heirs of the allottee. Ashton v. Noble (Okl.) 162 P. 784.

The restrictions of Act Cong. March 2, 1895, upon alienation of the allotments of Quapaw Indians, follow the lands in the hands of the heirs of the allottees. Id.

Under Act Cong. March 3, 1903, providing that homestead shall be inalienable, death removes all restrictions imposed by original Seminole Agreement, and where allottee died prior to Act Cong. April 26, 1906, title passed to heirs free from restrictions without regard to Indian blood. Lula, Seminole Roll No. 908, v. Powell (Okl.) 166 P. 1050.

Conveyance of part of allotment of member of Citizen Band of Pottawatomie Indians of Oklahoma in excess of 80 acres, approved by Secretary of Interior, under Act Cong. Aug. 15, 1894, c. 290, extinguishes the Indian title, and grantee holds free from any restrictions upon alienation. Bruno v. Getzelman (Okl.) 173 P. 850.

Patent issued to grantee in partial conveyance of allotment of member of Citizen Band of Pottawatomie Indians of Oklahoma, approved by Secretary of Interior, containing provisions of Act Cong. Feb. 8, 1887, c. 119, did not reimpose restrictions on alienation of lands by grantee. Id.

Under Supplemental Agreement of Choctaw and Chickasaw Nations of July 1, 1902, § 16, restrictions on alienation of surplus lands of deceased allottee selected before his death run with the land, and prevent alienation by heirs within restrictive period.—Wrigley v. McCoy (Okl.) 175 P. 259.

5. —— **Extension of trust period.**—See notes to § 4202, post.

7. **Removal or modifications of restrictions.**—Removal of restrictions as to Creeks, Seminoles, and other Indians in Oklahoma, see Scott v. Quimby (Okl.) 155 P. 1154; Henley v. Davis (Okl.) 156 P. 337; McKeever v. Carter (Okl.) 157 P. 56; Oates v. Freeman (Okl.) 157 P. 74; Hope v. Foley (Okl.) 157 P. 727; Bailey v. King (Okl.) 157 P. 763; Carter v. Prairie Oil & Gas Co. (Okl.) 160 P. 319; Roth v. Union Nat. Bank of Bartlesville (Okl.) 160 P. 505; Vann v. Adams (Okl.) 164 P. 113; Williams v. Diesel (Okl.) 165 P. 187; Nixon v. Woodcock (Okl.) 166 P. 183; Allison v. Crummey (Okl.) 166 P. 691; Clark v. De Graffenreid (Okl.) 166 P. 736; Lula, Seminole Roll No. 908, v. Powell (Okl.) 166 P. 1050; Kinzer v. Davis (Okl.) 167 P. 753; Chupco v. Chapman (Okl.) 170 P. 259, reversing judgment on rehearing 160 P. 88, certiorari denied 38 S. Ct. 427, 247 U. S. 506, 62 L. Ed. 1240; Folsom v. Jones (Okl.) 173 P. 649; Hardridge v. Smith (Okl.) 173 P. 818.

9. **Laws governing Indian allottees.**—An Indian allottee, on receipt of his first patent under the statute, held within the provisions of this section, subject to the laws of the state where he resides. In re Heff, 25 S. Ct. 506, 197 U. S. 488, 49 L. Ed. 848.

During the 25 years under which allottees under Act Feb. 8, 1887, and Act March 2, 1889, remain tribal Indians under guardianship, the allotted lands are inalienable, Congress may, as is done by Act Jan. 30, 1897 (Comp. St. 1916, § 4137) regulate or prohibit sale of intoxicating liquors to such Indians within a state. U. S. v. Nice, 36 S. Ct. 696, 241 U. S. 591, 60 L. Ed. 1192, overruling In re Heff, 25 S. Ct. 506, 197 U. S. 488, 49 L. Ed. 848.

No intention to dissolve tribal relations and terminate national guardianship on making of allotments and issuing of trust patents without waiting for expiration of trust period is shown by this section and section 4203. Id.

Under Acts Cong. Feb. 8, 1887, Act May 8, 1906, Act June 21, 1906, and Act March 1, 1907, after patent in fee is issued to Indian, questions as to validity of his transfers are controlled by state laws. Luck Land Co. v. Minor, 157 N. W. 655, 132 Minn. 396.

The alienation of an Indian allotment being governed by the act of Congress, the right of an Indian to devise it must be governed and controlled entirely by the act of Congress pertaining thereto, and not by the state law. Letts v. Letts (Okl.) 176 P. 234.

10. —— **Jurisdiction of state courts.**—See Luck Land Co. v. Minor, 157 N. W. 655, 132 Minn. 396; Bell v. Fitzpatrick (Okl.) 157 P. 334.

The state courts have no power to authorize a conveyance of restricted Indian lands in contravention of the treaties and acts of Congress relating thereto. Brown v. Anderson (Okl.) 160 P. 724.

On April 27, 1915, the district court had no jurisdiction of suit by full-blood Indian heirs of deceased Pawnee in-

volving lands allotted to decedent under General Allotment Act Feb. 8. 1887, as amended by Act Feb. 28, 1891, the determination of title, and, incidentally, the rights to possession of allotment while held in trust by United States. Cæsar v. Krow (Okl.) 176 P. 927.

11. United States title during trust period.—The federal government held authorized to dispose of property for which it issued trust patents under this act through the agency of the Secretary of the Interior. Daugherty v. McFarland (S. D.) 166 N. W. 143.

Trust patents issued to Indian allottees under this section, as amended by Act Feb. 28, 1891, § 5 (Comp. St. 1916, § 4222), cover merely the tribal possessory right, and the land remains government property. Id.

13. Indian title during trust period.—Allotment certificate regularly issued under Act July 1, 1902, c. 1362, to Indian lands conveys equitable title to allottee which may in due time ripen into legal title. O'Quinn v. Joiner (Okl.) 166 P. 142.

14. —— Devisable interest during trust period.—Member of Cherokee Tribe has no interest prior to allotment in lands belonging to tribe subject to be devised by will, and attempted devise of lands held for allotment vests no title. Powell v. Crittenden (Okl.) 156 P. 661.

A devise by a minor allottee of the Creek Nation of his allotment is void, a will being an alienation within meaning of Act Cong. May 27, 1908. Letts v. Letts (Okl.) 176 P. 234.

In view of Acts Cong. April 26, 1906, and May 27, 1908, a minor Indian under 21 years of age, though not affected by such acts, cannot will his allotment, minority being a federal restriction and controlling. Id.

15. —— Inheritable estate.—Allotment of full-blood Creek Indian, who died in April, 1910, intestate, passed to heirs free from debts created by allottee before death. Eastern Oil Co. v. Harjo (Okl.) 157 P. 921.

16. —— Dower.—Under laws of Arkansas in force in Indian Territory prior to statehood, widow is entitled to dower in lands held by husband for allotment and subsequently selected in allotment by administrator. Powell v. Crittenden (Okl.) 156 P. 661.

In action for possession of land held by widow under will of deceased Cherokee Indian devising land held for allotment, judgment should give widow dower interest in whole land. Id.

Where wife of Cherokee Indian as widow and as administratrix selected lands in allotment and caused decedent's will to be probated and remained in possession claiming title under will she did not waive right to dower. Id.

Surviving widow of duly enrolled Seminole citizen, who died July 4, 1901, before receiving allotment, is entitled to dower where lands are afterwards selected. Wadsworth v. Crump (Okl.) 157 P. 713, reversing judgment on rehearing 154 P. 60.

17. —— Curtesy.—Where a duly enrolled Choctaw Indian woman, residing with her husband and infant son on lands selected by her as her allotment, died in the Indian Territory before making formal application and receiving patents, and after her death patents were issued to her, held, that her husband was entitled to a life estate in the lands by curtesy. Bridges v. Wright (Okl.) 155 P. 883.

18. —— Rents, issues, and profits.—A decree in a suit for alimony allowing a portion of the rents and profits of a restricted allotment and appointing a receiver is a charge on the land and invalid under Act Cong. May 27, 1908, § 4. Burney v. Burney (Okl.) 160 P. 85.

Attempted assignment of rents conferred no enforceable legal rights on plaintiff, where restricted Indian executing such instruments had no legal capacity to do so. Guffey v. Pollan (Okl.) 175 P. 817.

20. —— Right to cut and sell timber.—Under Acts Cong. June 28, 1898, July 1, 1902, Jan. 21, 1903, and April 26, 1906, a conveyance by a member of Cherokee Tribe of growing timber upon his allotment is not void. Mitchell-Crittenden Tie Co. v. Crawford (Okl.) 160 P. 917.

24. Deeds and incumbrances by Indians during trust period.—In a minor Creek freedman allottee's action to set aside a void deed, plaintiff need not plead formal tender to restore consideration. McKeever v. Carter (Okl.) 157 P. 56.

In action to quiet title, evidence held to authorize finding that Indian grantor had reached majority at time of conveyances to defendant, authorizing judgment for defendant. Hawkins v. Boynton Land, Mining & Investment Co. (Okl.) 157 P. 753.

Under Act Cong. May 27, 1908, attempted alienation of allotted lands of Cherokee Indian minor of nine thirty-seconds Indian blood, in violation of law, is absolutely null and void. Egan v. Ingram (Okl.) 161 P. 225.

A deed to part of allotment of Cherokee citizen of three-sixteenths blood, before majority, after Act Cong. May 27, 1908, § 5, took effect, is absolutely void. Catron v. Allen (Okl.) 161 P. 829.

Statutes of limitation do not begin to run in favor of one in possession of Choctaw lands under deed by Indian inheriting it executed before removal of restriction against alienation imposed by section 15 of Supplemental Agreement of Choctaw and Chickasaw

Nations of July 1, 1902. Wrigley v. McCoy (Okl.) 175 P. 259.

One holding Choctaw land under a deed void because executed before removal of restrictions against incumbrances imposed by Supplemental Agreement of Choctaw and Chickasaw Nations of July 1, 1902, § 15, cannot recover, as occupying claimant, for improvements, or offset them against claim for rent in view of Rev. Laws Okl. 1910, § 4935. Id.

25. —— **Agreements to purchase.**—Making of contract to convey Indian lands, in violation of Act Cong. June 30, 1902, § 16, and Act Cong. April 26, 1906, § 19, is not to be inferred from fact alone that heirs executed deed during period of restriction and grantee caused deed to be recorded and after removal of restrictions deed was executed to same grantee. Oates v. Freeman (Okl.) 157 P. 74.

Deed to allotment of Cherokee Indian by blood, executed November 2, 1907, after removal of restrictions against alienation pursuant to written agreement to convey, entered into prior to removal of restrictions, is void under Act Cong. April 26, 1906, c. 1876, § 19. Nixon v. Woodcock (Okl.) 166 P. 183.

27. —— **Estoppel.**—The doctrine of estoppel cannot be invoked against an Indian grantor of land, to validate a deed not executed and approved as required by statute. Okla Oil Co. v. Bartlett, 236 F. 488, 149 C. C. A. 540, affirming decree Bartlett v. Okla Oil Co. (D. C.) 218 F. 380.

Guardian of Indian minor allottee cannot, by commencing action and entering into compromise and settlement, divest title of minor to lands or create estoppel against allottee thereafter asserting invalidity of conveyance. Bell v. Fitzpatrick (Okl.) 157 P. 334.

31. **Leases by Indians during trust period.**—See McCullough v. Smith, 243 F. 823, 156 C. C. A. 335; Reirdon v. Smith (Okl.) 161 P. 798; Boxley v. Scott (Okl.) 162 P. 688; Brown v. Van Pelt (Okl.) 166 P. 102; Hoyt v. Fixico (Okl.) 175 P. 517.

Under Atoka Agreement June 28, 1898, an unacknowledged lease of Indian allotment, though recorded, would be a nullity. Reirdon v. Smith (Okl.) 161 P. 798.

A lease by a Quapaw Indian of his allotment is an alienation of such land. Ashton v. Noble (Okl.) 162 P. 784.

Conditional lease contract conferred no enforceable legal rights on plaintiff, where restricted Indian executing such instruments had no legal capacity to do so. Guffey v. Pollan (Okl.) 175 P. 817.

34. **Descent—Laws governing.**—As to Creeks, Seminoles, and other Indians in Oklahoma, see Parker v. Riley, 243 F. 42, 155 C. C. A. 572, affirming decree Riley v. Kelsey (D. C.) 218 F. 391; Jefferson v. Cook (Okl.) 155 P. 852; Crouthamel v. Welch (Okl.) 156 P. 302; Aldridge v. Whitten (Okl.) 156 P. 667; Van Buskirk v. Grisso (Okl.) 157 P. 307; Wadsworth v. Crump (Okl.) 157 P. 713, reversing judgment on rehearing 154 P. 60; Hill v. Hill (Okl.) 160 P. 1116; Bruner v. Nordmeyer (Okl.) 166 P. 126; Buck v. Simpson (Okl.) 166 P. 146; McDonald v. Ralston (Okl.) 166 P. 405, certiorari denied 38 S. Ct. 14, 245 U. S. 657, 62 L. Ed. 534.

35. **Judgment lien during trust period.**—The prohibition in Act Cong. July 1, 1902, § 15, as to incumbering allotments by contracts made prior to termination of the period of restriction on alienation, applies to a judgment, whether based on tort or contract. Choctaw Lumber Co. v. Coleman (Okl.) 156 P. 222.

37. **Taxation by states during trust period.**—Act June 28, 1906, c. 3572, providing for division of Osage Indian trust funds and lands after 25 years, conferred no authority upon Secretary of the Interior to release, exempt from taxation, any part of such trust funds during the 25-year period. McCurdy v. U. S., 38 S. Ct. 289, 246 U. S. 263, 62 L. Ed. 706.

Act April 18, 1912, c. 83, § 5, authorizing Secretary of the Interior to pay trust funds to Osage allottees under rules to be prescribed by Secretary, did not authorize Secretary to give property purchased with released funds immunity from state taxation. Id.

Under this section, and Act Jan. 14, 1889, c. 24, and Act June 21, 1906, c. 3504, relinquishment by Chippewa Indians of lands in exchange for allotments in reservations in trust is a valid contract creating vested rights of which an Indian could not be deprived against his will and his land could not be taxed by the state. Morrow v. U. S., 243 F. 854, 156 C. C. A. 366.

Lands of full-blood Seminole Indian heirs, inalienable under Act April 26, 1906, c. 1876, § 22, and Act May 27, 1908, c. 199, § 9, are not subject to state taxation, notwithstanding provisions in each of the acts that all lands restrictions upon which are removed shall be subject to taxation. U. S. v. Bean (C. C. A.) 253 F. 1.

While homesteads of Seminole allottees were not subject to taxation, both because inalienable and by reason of the direct terms of the Seminole Agreement, yet when the restrictions on alienation were removed, and the homesteads became alienable, they were subject to taxation whenever the allottees disposed of them. Id.

Improvements placed upon Indian lands not subject to taxation, under terms of lease providing that improvements should become property of lessor as part of consideration for lease, are personal property subject to taxa-

tion until the lease expires. Central Coal & Lumber Co. v. Board of Equalization of Le Flore County (Okl.) 173 P. 442.

Lands, previously taxable, purchased from private owners with oil royalties accruing to a full-blood Creek Indian from her allotment restricted by act Cong. May 27, 1908, are not exempted from state taxation by clause in grantor's deed making land inalienable without consent of Secretary of Interior. Jones v. Whitlow (Okl.) 175 P. 753.

39. Suits by United States to cancel conveyances or leases.—Where the Secretary of the Interior removed restrictions against sale of the allotment of a full-blood Cherokee and, reserving right to dispose of the proceeds, reinvested same in other property, which was conveyed to allottee with a valid restriction against alienation, the United States may maintain a suit to cancel a mortgage executed by the allottee and a sheriff's deed transferring the property. U. S. v. Law (C. C. A.) 250 F. 218.

45. Suits by United States to protect allotted lands—Against adverse claims.—Where an island belonging to the Osage Tribe was claimed by others, suit by the United States for the benefit of the tribe and allottee cannot be defeated on the ground of the illegality of the allotment. U. S. v. Hutchings (D. C.) 252 F. 841.

49. Proceeding in state court involving Indian allottee's title.—Where purchaser of government homesteads from Indians, while title was held in trust for them by United States under Act Cong. July 4, 1884, sued such Indians in state court to quiet title, on service by publication, default judgment quieting title was void as touching rights of United States and of Indians. Robinson v. Steele, 157 P. 845, 91 Wash. 268.

Cited without definite application, Jefferson v. Fink, 38 S. Ct. 516, 247 U. S. 288, 62 L. Ed. 1117.

§ 4202. (Act June 21, 1906, c. 3504.) Same; restrictions on alienation in patent.

Power of Congress.—Congress may continue or extend period of restriction against alienation by Indians, or provide other restrictions during period of existing restrictions. Boxley v. Scott (Okl.) 162 P. 688.

Extension as affecting period already expired.—Under statutory authority given the President to extend the period during which Indian allotments are held in trust by the government, a proclamation extending the period as to certain classes of allottees does not affect one whose period had already expired. Reynolds v. U. S. (C. C. A.) 252 F. 65.

§ 4203. (Act Feb. 8, 1887, c. 119, § 6, as amended, Act May 8, 1906, c. 2348.) Patents in fee to allottees.

1. Removal or modifications of restrictions against alienation.—Act May 8, 1906, amendatory of Act Feb. 8, 1887, § 6, applies to allottees only; and, a homestead patent, having been issued to an Indian under Act July 4, 1884, imposing a 25-year restriction on alienation, cannot be canceled, and a new patent issued, without restriction. Seaples v. Card (D. C.) 246 F. 501.

3. Allottees as citizens and electors.—No intention to dissolve tribal relations and terminate national guardianship on making of allotments and issuing of trust patents without waiting for expiration of trust period is shown by this section and § 4201. U. S. v. Nice, 36 S. Ct. 696, 241 U. S. 591, 60 L. Ed. 1192.

An Indian, who became a citizen by Act March 3, 1901, can, after attaining his majority, sue to recover land conveyed by him while a minor. McDaniel v. Holland, 230 F. 945, 145 C. C. A. 139.

In view of Comp. St. 1916, § 3951, securing personal rights of citizenship and protection of laws to members of tribes of Indians to whom allotments are made under this section, United States, as trustee and guardian of Indian allottee and trust patentee of certain Indian reservation lands, cannot maintain an action for damages caused to fish wheel owned and operated by Indian on Columbia river; wheel having been constructed, maintained, and repaired by Indian with funds derived from sale of 40 acres of his allotment of lands. U. S. v. Seufert Bros. Co., 252 F. 51, 164 C. C. A. 163.

5. Laws governing Indian allottees.—See notes to § 4201, ante.

8. Taxation by states.—Under Act March 1, 1901, Act June 30, 1902, Act March 3, 1903, Act April 26, 1906, § 19, and Act May 27, 1908, § 4, lands allotted to Creek freedwoman, who petitioned for removal of restrictions on alienation, in order that she might sell for townsite purposes, held taxable. Sweet v. Schock, 38 S. Ct. 101, 245 U. S. 192, 62 L. Ed. 237, affirming judgment Schock v. Sweet, 145 P. 388, 45 Okl. 51.

Where mixed-blood Chippewa Indian receiving trust patent under Act Jan. 14, 1889, c. 24, was insisting upon holding thereunder and claiming no rights under the Act June 21, 1906, c. 3504, held that the state could not tax his

land. Morrow v. U. S., 243 F. 854, 156 C. C. A. 366.

Allotted lands of the United Peoria and Miami Tribes on alienation pursuant to Acts Cong. June 7, 1897, and May 31, 1900, cease to be exempt from taxation. Scanland v. Board of Com'rs of Ottawa County (Okl.) 155 P. 898.

Under Act Cong. June 30, 1902, § 16, lands allotted to Creek citizen as homestead, while possessing such characteristic, are nontaxable for 21 years from date of patent, and tax sale thereof is void. Davenport v. Doyle (Okl.) 157 P. 110.

Where conveyance of interest of full-blood Indian heir of allottee of land allotted in Choctaw Nation is invalid, unless approved by Secretary of Interior, etc., such interest in land is not subject to taxation, prior to conveyance by heirs and approval. Watkins v. Howard (Okl.) 166 P. 706.

Lands passing to heirs of allottees held subject to restrictions on alienation, and hence not subject to assessment for taxation. Id.

Lands certified to a Mississippi Choctaw Indian under Act Cong. July 1, 1902, are not subject to taxation until after proof of bona fide residence and subsequent alienation by allottee, and tax sale while land is exempted is void. Blackwell v. Harts (Okl.) 167 P. 325.

10. Patents to allotted lands.—Finding that Indian allottee attained his majority, imported by issuing patent to him in fee under Act March 1, 1907, held not decisive of the allottee's age for any other purpose than fixing his right to receive the title free from restrictions, and the validity of his conveyance must be tested by the state laws to which the allottee became subject under this section. Dickson v. Luck Land Co., 37 S. Ct. 167, 242 U. S. 371, 61 L. Ed. 371, affirming judgment Luck Land Co. v. Minor, 157 N. W. 655, 132 Minn. 396.

Patent issued after death of Indian selecting allotment under Act Aug. 7, 1882, held not open to attack by anybody but the United States and the tribe, especially in view of Rev. St. § 2448 (Comp. St. 1916, § 5098). U. S. v. Chase, 38 S. Ct. 24, 245 U. S. 89, 62 L. Ed. 168, reversing judgment Chase v. U. S., 222 F. 593, 138 C. C. A. 117.

Adjudication by Dawes Commission of enrollment of Indians and allotment of land, and patents issued thereon, are impervious to collateral attack. Folk v. U. S., 233 F. 177, 147 C. C. A. 183.

As Act July 1, 1902, § 21, makes the allotment certificate issued by the Dawes Commission conclusive evidence of the right of the allottee to land of Cherokee Nation described, a conveyance of allottee before issuance of patent carries title. U. S. v. Whitmire, 236 F. 474, 149 C. C. A. 526.

Equitable maxims being to an extent applicable to Indians, held, Land Department having improperly canceled a trust patent issued under Act July 4, 1884, and issued a fee-simple patent under Act Feb. 8, 1887, § 6, or Act May 8, 1906, amendatory thereof, Indian could not, having conveyed land, recover same on theory that purchaser was chargeable with notice of her incapacity to alienate. Seaples v. Card (D. C.) 246 F. 501.

Where Land Department, purporting to act under Act Feb. 8, 1887, § 6, or Act May 8, 1906, amendatory thereof, canceled a trust patent to homestead issued to Indian under Act July 4, 1884, which restricted alienation for 25 years and issued a fee-simple patent, such patent was not void, being within jurisdiction of Land Department, and it could not be collaterally attacked by Indian, who after issuance disposed of land. Id.

Where trust patent was issued to Indian pursuant to Act July 4, 1884, containing a 25-year restriction on alienation, Land Department is without authority, Indian having abandoned tribal life, to thereafter cancel such patent, and issue a new patent, without restrictions, under Act Feb. 8, 1887, § 6. Id.

Irrespective of whether an allotment of Indian lands under Act May 8, 1906, and the recording of a patent in fee simple to the allottee, vests title in the latter to the allotted land, mandamus at the instance of the allottee against the Secretary of the Interior will not lie to compel the delivery of a patent to the allottee, where it appears that the allotment was procured by false and fraudulent representations as to the competency and qualifications of the relator. United States ex rel. Prettybull v. Lane, 47 App. D. C. 134.

Determination by United States officials in issuing patent to mixed-blood Chippewa Indian of White Earth Indian reservation that he was an adult is conclusive as to his right to take title, except in direct action to set aside patent. Luck Land Co. v. Minor, 157 N. W. 655, 132 Minn. 396.

Cited without definite application, U. S. v. Lewis (D. C.) 253 F. 469.

§ 4207. (Act March 2, 1889, c. 422, § 1.) Allotment Act extended to certain tribes in Indian Territory.

Cited without definite application, Reynolds v. U. S. (C. C. A.) 252 F. 65.

§ 4214. (Act Aug. 15, 1894, c. 290, § 1, as amended, Act Feb. 6, 1901, c. 217, § 1.) Actions for allotments.

1. Construction in general.—This section did not deprive the Secretary of the Interior of authority to settle disputes concerning allotments, but only gave Circuit Courts concurrent authority. Daugherty v. McFarland (S. D.) 166 N. W. 143.

6. Grounds for relief.—Government held to have right of action against defendant for value of land which he procured to be fraudulently entered under Act Aug. 15, 1894, c. 290, though false showing made by the entrymen did not entitle them to patents. U. S. v. Jones, 242 F. 609, 155 C. C. A. 299, reversing judgment (D. C.) 232 F. 218.

8. Jurisdiction and proceedings of courts—State or territorial courts.—A full-blood Indian, being a citizen of the United States and of the state, has a right to sue in the state courts, and may have his rights growing out of treaties and acts of Congress relating to his land adjudicated, and such rights as may be protected at suit of the executive department of the federal government may also be enforced in state courts by an action by the Indian. Brown v. Anderson (Okl.) 160 P. 724.

On April 27, 1915, the district court had no jurisdiction of suit by full-blood Indian heirs of deceased Pawnee involving lands allotted to decedent under general allotment Act Feb. 8, 1887, as amended by Act Feb. 28, 1891, the determination of title, and, incidentally, the rights of possession of allotment while held in trust by United States. Cæsar v. Krow (Okl.) 176 P. 927.

Under this section and § 4223, county court held without jurisdiction to distribute land of deceased Indian allottees held under trust patents and to partition such lands. Daugherty v. McFarland (S. D.) 166 N. W. 143.

10. —— Parties.—Though the allottee of lands belonging to the Cherokee Nation, who had conveyed them, relinquished his allotment in a contest, a proceeding to which his grantee was not a party, the rights of the grantee were unaffected. U. S. v. Whitmire, 236 F. 474, 149 C. C. A. 526.

Cited without definite application, In re Wright, 50 Ct. Cl. 19.

§ 4217. (Act May 31, 1900, c. 598, § 1.) Leases of allotted lands where allottee is incapacitated.

Right of Indian allottees to make leases.—Secretary of Interior held not deprived of authority to exercise discretion respecting approval of Indian leases by giving reasons which might not in all respects meet with approval. Anicker v. Gunsburg, 38 S. Ct. 228, 246 U. S. 110, 62 L. Ed. 603, affirming decree 226 F. 176, 141 C. C. A. 174.

§ 4218. (Act Feb. 28, 1891, c. 383, § 3.) Leases of farming lands occupied by Indians.

Validity of lease by Chickasaw Indian.—An agricultural lease made by a full-blood Chickasaw Indian of his allotted lands, executed April 13, 1912, to take effect January 1, 1914, is void, and such lease cannot be legally set up as a defense in an action for the recovery of the lands described therein. Taylor v. Granger (Okl.) 174 P. 234.

Cited without definite application, Indian Territory Illuminating Oil Co. v. State of Oklahoma, 36 S. Ct. 453, 240 U. S. 522, 60 L. Ed. 779.

§ 4219. (Act Aug. 15, 1894, c. 290, § 1.) Leases of surplus lands.

Leases of restricted surplus allotments of Creek or Choctaw Indians.—A valid lease for agricultural purposes, of a Creek Indian's restricted surplus allotment, may be made pending a prior lease, provided it is made for a fair rental, near the termination of the existing lease, and does not extend the term more than five years from the date of the new lease. Brown v. Van Pelt (Okl.) 166 P. 102.

A lease executed on January 4, 1913, by full-blood Creek Indian woman, on her restricted surplus allotment to commence January 1, 1914, and run four years, is void, where there was not shown it was necessary to make the new lease at such time to regulate the course of cultivation. Id.

Valid lease for agricultural purposes of restricted Choctaw Indian's surplus allotment may be made during existence of prior valid lease, provided it is made for fair rental near termination of existing lease and is not for more than five years. Mullen v. Noah (Okl.) 166 P. 742.

Lease executed by full-blood Choctaw Indian on his restricted surplus allotment to commence seven months in future, which was not shown to be necessary to regulate course of cultivation, is void; lessor not being in possession. Id.

§ 4220. (Act March 3, 1909, c. 263.) Leases of allotted lands; mining purposes.

1. Approval of leases by secretary of the Interior.—An Indian allottee, who holds his land subject to Act May 27, 1908, § 2, authorizing leases with the approval of the Interior Department, and has leased the surface, may also lease it for oil, with the right to drill thereon. Kemmerer v. Midland Oil & Drilling Co., 229 F. 872, 144 C. C. A. 154.

The death of a minor Creek allottee held, under Act May 27, 1908, c. 199, § 9, to terminate all control by the Secretary of the Interior over the land, including an oil lease previously made with his approval, and the royalties accrued and accruing thereunder. Richard v. Parker, 245 F. 330, 157 C. C. A. 522.

An appeal from a decree dismissing a bill for an injunction does not disturb the operative effect of the decree or operate as a stay of the proceedings; so that if, during the pendency of an appeal from such a decree dismissing a bill to enjoin the Secretary of the Interior from approving and delivering mineral leases of Indian lands, the Secretary approves and delivers the leases, the appeal will be dismissed as presenting only a moot question. Shaw v. Lane, 47 App. D. C. 170.

Where, pending an appeal from a decree dismissing a bill to enjoin the approval and delivery of certain mineral leases by the Secretary of the Interior, the Secretary approves and delivers the leases, the fact that the bill contains a prayer for general relief will not permit this court to take jurisdiction to determine whether a mandatory injunction should not be granted to compel the Secretary to cancel the leases for the excess or abuse of discretion in approving and delivering them. Id.

Where full-blood Creek Indian executed oil and gas lease on his allotment which was filed with Indian agent, and died before its approval by Secretary of Interior, and his heirs conveyed his land, the subsequent approval related to date of lease, and heirs' grantees took subject thereto. Scioto Oil Co. v. O'Hern (Okl.) 169 P. 483.

2. —— Removal of restrictions against alienation.—Oil and gas lease by heirs of Indian allottee held an alienation of the oil and gas taken therefrom, and approval by the Secretary of Interior a removal of restrictions on such alienation. Parker v. Riley, 243 F. 42, 155 C. C. A. 572, affirming decree Riley v. Kelsey (D. C.) 218 F. 391.

Under Act May 27, 1908, §§ 1, 2, 9, where Indian allottee died leaving issue born since March 4, 1906, and other heirs, approval of oil and gas lease by Secretary of Interior held to remove restrictions on alienation from the leasehold and the royalties thereunder. Id.

3½. Validity of leases.—An oil and gas lease, executed by the guardian of an Indian minor in Oklahoma and approved by the proper probate court, is valid for its term, although the minor reaches majority before its expiration. Etchen v. Cheney, 235 F. 104, 148 C. C. A. 598.

On oil and gas lease executed by a Creek Indian is void under Act May 27, 1908, where undisputed parol evidence showed he was a minor at date of execution. Gilcrease v. McCullough (Okl.) 162 P. 178.

Where a minor citizen of the Creek Nation of one-eighth Indian blood executed an oil and gas lease void under Act May 27, 1908, and after his majority, without fraud, and for valuable consideration, executed another lease, held, that such second lease was valid and binding. Id.

8½. Regulations by secretary of Interior.—The discretionary power of the Secretary of the Interior to make regulations concerning oil and gas leases of Indian lands implies the power and discretion on his part to change or wholly abrogate such regulations. United States ex rel. Reynolds v. Lane, 45 App. D. C. 50.

11. Royalty—Assignment of.—An attempted assignment, by a full-blood Cherokee, of accruing royalties under a departmental oil and gas lease on his allotment, is void, unless approved by the Secreary of the Interior. Day v. Charlton (Okl.) 160 P. 606.

11½. Suits to set aside or cancel leases.—In suit to set aside an oil and gas lease executed by an Indian, evidence held insufficient to show fraud in its procurement. Gilcrease v. McCullough (Okl.) 162 P. 178.

In suit by Indian to cancel oil and gas lease under Act May 27, 1908, on ground that he was a minor when it was executed, census card showing Indian's enrollment at age of nine years held inadmissible to show his minority on date of execution of lease, not showing date of application for enrollment. Id.

In a suit by plaintiff, enrolled as an Indian, to set aside an oil and gas lease under Act May 27, 1908, on the ground of minority at the time of execution, the certified copy of the rolls of the Creek citizens by blood held not admissible to show plaintiff's age. Id.

Under Act May 27, 1908, § 3, held, that an enrollment record of the Commission to the Five Civilized Tribes, showing June 9, 1899, plaintiff was enrolled, being of the age of 9 years, will not establish his minority on February 8, 1911, 11 years and 4 months later. Id.

§ 4221. (Act June 25, 1910, c. 431, § 4.) Same; lands held in trust.

Leases of allotments to Indians in Oklahoma under special acts.—See Apple v. Pierce (Okl.) 155 P. 892; Baken v. Fox (Okl.) 157 P. 340; Bailey v. King (Okl.) 157 P. 763; Crosbie v. Brewer (Okl.) 158 P. 388.

§ 4222. (Act Feb. 28, 1891, c. 383, § 5.) Descent of land.

Applicability and operation of statute.—Trust patents issued to Indian allottees under Act Cong. Feb. 8, 1887, § 5 (Comp. St. 1916, § 4201), as amended by this section, cover merely the tribal possessory right, and the land remains government property. Daugherty v. McFarland (S. D.) 166 N. W. 143.

§ 4223. (Act May 27, 1902, c. 888, § 7.) Sale of allotted lands; heirs of decedent.

Removal of restrictions.—See Nuzum v. Springer, 156 P. 704, 97 Kan. 744.

Congress had power to remove restrictions imposed upon alienation by heirs of Indian patentee by Act March 2, 1889, § 11, as was done by this section. Egan v. McDonald, 38 S. Ct. 223, 246 U. S. 227, 62 L. Ed. 680, affirming judgment 153 N. W. 915, 36 S. D. 92.

Jurisdiction of county court.—Under this section, and Comp. St. 1916, § 4214, county court held without jurisdiction to distribute land of deceased Indian allottees held under trust patents and to partition such lands. Daugherty v. McFarland (S. D.) 166 N. W. 143.

Adjudication of heirship as condition precedent to conveyance.—Adjudication of heirship by some federal court held not condition precedent to valid conveyance by Indian allottee's heirs made in 1908, and approved by the Secretary of the Interior in 1909. Egan v. McDonald, 38 S. Ct. 223, 246 U. S. 227, 62 L. Ed. 680, affirming judgment 153 N. W. 915, 36 S. D. 92.

Approval by Secretary of Interior.—Lands allotted to Creeks, Chickasaws, and other Indians in Oklahoma, see David v. Youngken (C. C. A.) 250 F. 208.

Where, under original Creek Agreement (Act March 1, 1901) § 28, supplemental Creek Agreement (Act June 30, 1902) § 7, and Appropriation Act March 3, 1905, allotment was made by Dawes Commission, and name of a full-blood Creek Indian, born in 1903, enrolled on June 10, 1905, who died on June 22d of that year, the provisions of Act April 26, 1906, §§ 5, 19, imposing restrictions on alienations by allottees, do not apply; but section 22, declaring that all conveyances made by heirs who are full-blood Indians shall be subject to approval of the Secretary of the Interior, governs. Harris v. Bell (C. C. A.) 250 F. 209.

After Act Cong. May 27, 1908, became effective, Secretary of Interior had no authority to approve conveyances of full-blood inherited Indian lands. Hope v. Foley (Okl.) 157 P. 727.

Where in 1907 full-blood heir conveyed inherited lands without approval by Secretary of Interior under Act Cong. April 26, 1906, and in 1910 executed other deeds for which no present payment of consideration was proven, which were approved by Secretary of Interior and, after suit for their cancellation, were approved by proper court, conveyances were valid. Id.

Under Act Cong. April 26, 1906, § 22, the deed of a full-blood Indian husband succeeding to possession of his wife's allotment on her death by curtesy must have been approved by the Secretary of the Interior to be valid; he being an "heir" under such statute. Zimmerman v. Holmes (Okl.) 159 P. 303.

Act Cong. April 26, 1906, § 22, relating to conveyances by heirs of deceased Indian and approval by Secretary of Interior, applies to conveyances by adult full-blood Creek heirs of allotment set apart in right of deceased's ancestor after his death and patented to the "heirs." Moffett v. Conley (Okl.) 163 P. 118.

Congress has power to require conveyances by Indians of inherited allotted lands to be approved by Secretary of Interior, without regard to fact that land descended to heirs free of restrictions on alienation except disability of minority. Id.

Conveyances of inherited allotted lands through which intervener claimed equitable title not being approved by Secretary of Interior, except as to part as to which rights of third parties had attached, the equitable rights of the intervener fall with the legal title. Id.

Act Cong. April 26, 1906, c. 1876, § 22, invalidates deed of inherited lands allotted to full-blood Chickasaw dying before passage of act, where his adult full-blood Chickasaw heirs conveyed without the approval of the Secretary of the Interior. Cushing v. Whaley (Okl.) 165 P. 135.

While governmental guardianship of full-blood Indians continues, Congress may constitutionally require that conveyances by full-blood Indian heirs of inherited allotted lands be approved by the Secretary of the Interior, although prior restrictions have expired by death of allottee. Id.

Deed executed in 1907 by full-blood Chickasaw heir, conveying land allotted after allottee's death, was void, without approval of Secretary of Interior,

under Act Cong. April 26, 1906, c. 1876, § 22. Bruner v. Nordmeyer (Okl.) 166 P. 126.

Conveyances of inherited lands made by full-blood heirs of a Mississippi Choctaw Indian who died in 1903 are void unless approved by the Secretary of the Interior, and conveyances made after Act Cong. May 27, 1908, are void unless approved by the judge of the county court having jurisdiction of settlement of estate of decedent. Sampson v. Smith (Okl.) 166 P. 422.

Act Cong. April 26, 1906, § 22, authorizes, where there are both adult and minor heirs, alienation prior to patent, and without approval of Secretary of Interior, of interest of minor Indian heir of less than full blood only by joining in sale with adult heirs by guardian duly appointed. Lula, Seminole Roll No. 908, v. Powell (Okl.) 166 P. 1050.

Under Act Cong. April 21, 1904, authorizing, when for best interest of allottee, sale of his restricted lands, recommendation by United States Indian agent and approval by Secretary of Interior is condition precedent to sale of such lands. Murrow Indian Orphans' Home v. McClendon (Okl.) 166 P. 1101.

Approval of Secretary of Interior was not necessary to validity of guardian's deed to interest of minor in lands of his full-blood mother, executed after her death, where it did not appear that minor was full-blood. Moffer v. Jones (Okl.) 169 P. 652.

Execution of deed to Indian allotment by heirs of allottee, and approval thereof by Secretary of Interior, not only divested federal government of title and terminated its jurisdiction over land, but transferred jurisdiction to state courts. Tripp v. Sieler, 161 N. W. 337, 38 S. D. 321, rehearing denied 164 N. W. 67.

Under this section, though one of heirs of deceased allotee of Indian allotment, who executed conveyance thereof, which was approved by Secretary of Interior, was a refractory Indian, the deed conveyed full title to the purchaser, nevertheless. Id.

Where deed approved by the Secretary of the Interior, executed by heirs of deceased allottee of Indian lands, had been recorded in office of register of deeds of proper county before passage or approval of Laws S. D. 1911, c. 3, defect in acknowledgment was cured by act, and deed or record was admissible in evidence. Id.

Where a United States Indian agent reported to Commissioner of Indian affairs that parties who executed deed to Indian allotment were sole heirs of deceased allottee, and deed was approved, it conveyed good prima facie title, and burden was on purchaser from party claiming under deed to show existence of other heirs before he could rescind. Id.

Recitals of report of special United States Indian agent to Commissioner of Indian Affairs, and Department of Interior's approval of deed executed by heirs of deceased allottee of Indian lands, held not an adjudication that parties who executed deed were sole heirs of allottee. Id.

Under this section, approval by Secretary of Interior of deed by Indian's widow claiming under distribution and partition by county court held to convey to grantee the fee-simple title free and clear of the rights of any other heirs. Daugherty v. McFarland (S. D.) 166 N. W. 143.

§ 4225. (Act March 1, 1907, c. 2285.) Same; of noncompetent Indian.

Cited without definite application,
U. S. v. Seufert Bros. Co. (C. C. A.) 252 F. 51.

§ 4226. (Act June 25, 1910, c. 431, § 1.) Ascertainment of heirs of deceased allottee, etc.

3. Construction.—Authority of Secretary of Interior.—Order of Secretary of Interior recognizing the adopted children of deceased Indian allottee as his heirs, though made final and conclusive by this section, did not exhaust his power so as to permit mandamus to interfere with his action in reopening the matter for further consideration. Lane v. U. S. ex rel. Mickadiet, 36 S. Ct. 599, 241 U. S. 201, 60 L. Ed. 956; reversing judgment United States of America ex rel. Mickadiet v. Lane, 43 App. D. C. 414.

A decree of adoption by a state court is no reason for interfering by mandamus with determination of Secretary of Interior, under this section, as to the legal heirs of a deceased Indian allottee. Id.

§ 4234a. (Act June 14, 1918, c. 101, § 1.) Determination of heirship of deceased members of Cherokee, Choctaw, Chickasaw, Creek and Seminole tribes.

A determination of the question of fact as to who are the heirs of any deceased citizen allottee of the Five Civilized Tribes of Indians who may die or may have heretofore died, leaving restricted

heirs, by the probate court of the State of Oklahoma having jurisdiction to settle the estate of said deceased, conducted in the manner provided by the laws of said State for the determination of heirship in closing up the estates of deceased persons, shall be conclusive of said question: Provided, That an appeal may be taken in the manner and to the court provided by law, in cases of appeal in probate matters generally: Provided further, That where the time limited by the laws of said State for the institution of administration proceedings has elapsed without their institution, as well as in cases where there exists no lawful ground for the institution of administration proceedings in said courts, a petition may be filed therein having for its object a determination of such heirship and the case shall proceed in all respects as if administration proceedings upon other proper grounds had been regularly begun, but this proviso shall not be construed to reopen the question of the determination of an heirship already ascertained by competent legal authority under existing laws: Provided further, That said petition shall be verified, and in all cases arising hereunder service by publication may be had on all unknown heirs, the service to be in accordance with the method of serving nonresident defendants in civil suits in the district courts of said State; and if any person so served by publication does not appear and move to be heard within six months from the date of the final order, he shall be concluded equally with parties personally served or voluntarily appearing. (40 Stat. 606.)

This section, and the section next following, were an act entitled "An act to provide for a determination of heirship in cases of deceased members of the Cherokee, Choctaw, Chickasaw, Creek, and Seminole Tribes of Indians in Oklahoma, conferring jurisdiction upon district courts to partition lands belonging to full-blood heirs of allottees of the Five Civilized Tribes, and for other purposes," cited above.

Notes of Decisions

Jurisdiction of courts prior to enactment.—The district courts of Oklahoma, prior to enactment of this and the following section, conferring such jurisdiction, were without jurisdiction in an action for partition of realty inherited by full-blood Indians of the Five Civilized Tribes from a deceased full-blood allottee. Hoodenpyl v. Champion (Okl.) 177 P. 369.

§ 4234b. (Act June 14, 1918, c. 101, § 2.) Same; laws applicable to lands of full-blooded members.

The lands of full-blood members of any of the Five Civilized Tribes are hereby made subject to the laws of the State of Oklahoma, providing for the partition of real estate. Any land allotted in such proceedings to a full-blood Indian, or conveyed to him upon his election to take the same at the appraisement, shall remain subject to all restrictions upon alienation and taxation obtaining prior to such partition. In case of a sale under any decree, or partition, the conveyance thereunder shall operate to relieve the land described of all restrictions of every character. (40 Stat. 606.)

See note to § 4234a.

§ 4238a. (Act June 21, 1906, c. 3504.) Sale of allotted lands for town-sites.

For the purpose of allowing any Indian allottee to sell for townsite purposes any portion of the lands allotted to him the Secretary of the Interior may, by order, remove restrictions upon the alienation of such lands and issue fee-simple patents therefor under such rules and regulations as he may prescribe. (34 Stat. 373.)

This was a provision in the Indian appropriation act for the fiscal year 1907, under the subtitle "South Dakota," cited above. This section is in its language of general application, although included in the provisions which relate only to Indians in South Dakota, and is therefore included in this compilation.

TITLE XXIX—IMMIGRATION

CHAPTER A—REGULATION AND RESTRICTION OF IMMIGRATION IN GENERAL

The provisions of various acts relating to immigration subsequent to the enactment of the Revised Statutes and prior to March 3, 1903, were superseded almost entirely by the more comprehensive provisions of the same nature contained in the Immigration Act of March 3, 1903, c. 1012, 32 Stat. 1213. But that act, except section 34 thereof, which related to a different subject, was expressly repealed and the provisions of the repealed sections relating to immigration, with some changes and additions, were re-enacted in sections designated by the same numbers, respectively, by the Immigration Act of Feb. 20, 1907, c. 1134, 34 Stat. 898. Said Act Feb. 20, 1907, c. 1134, except section 34 thereof, was in turn expressly repealed by Act Feb. 5, 1917, c. 29, and the provisions of said repealed act relating to immigration, with some changes and additions, were re-enacted by said Act Feb. 5, 1917, c. 29. Said Act Feb. 5, 1917, c. 29, did not, however, follow the same arrangement of its subject-matter as said Act Feb. 20, 1907, c. 1134, and hence it became impossible to give the new act the same section numberings as the repealed act, without doing violence to the arrangement of the new act. Accordingly said Act Feb. 5, 1917, c. 29, has been inserted at the end of this chapter as §§ 4289¼a–4289¼u thereof. The skeleton references set forth below indicate the sections of U. S. Comp. St. 1916 repealed and superseded by said Act Feb. 5, 1917, c. 29. Of the provisions relating to Immigration as set forth in this chapter in U. S. Comp. St. 1916 the following sections only may be said to be still in force: §§ 4241, 4243, 4245, 4257, 4271, 4281a, 4283.

Sec.
4242. [Repealed.]
4244. [Repealed.]
4245. Contracts for labor or service of aliens, made previous to migration or importation, void.
4246. Same; reward to informer.
4247, 4248. [Repealed.]
4249. [Superseded.]
4250–4256. [Repealed.]
4258. [Repealed.]
4259. [Superseded.]
4260–4263. [Repealed.]
4264. [Superseded.]
4265. [Repealed.]
4266. [Superseded.]
4267–4270. [Repealed.]
4272–4277. [Repealed.]
4278. [Superseded.]
4279–4281. [Repealed.]
4281a. Office for Immigration Service at Montreal, Canada.
4282. [Repealed.]
4284–4289. [Repealed.]
4289¼a. Definitions; enforcement of act in Philippines.
4289¼aa. Tax on aliens entering United States; lien of tax on vessels, etc.
4289¼b. Aliens excluded; literacy test; skilled labor; exceptions.
4289¼b(1). Aliens excluded; anarchists.
4289¼b(2). Same; deportation.
4289¼b(3). Same; deportation; reentry; punishment.

Sec.
4289¼bb. Importation of aliens for immoral purposes.
4289¼bbb. Aliens excluded; aliens conscripted or volunteering for military or naval service readmitted.
4289¼c. Contract laborers; prepaying transportation or assisting importation.
4289¼cc. Advertisements of employment to aliens, etc.
4289¼d. Solicitation of immigration by transportation companies.
4289¼dd. Bringing in or harboring or concealing certain aliens.
4289¼e. Bringing in aliens subject to disability, or afflicted with disease.
4289¼ee. Prevention of landing of aliens at time or place other than designated; failure to comply with requirements.
4289¼f. Detention of aliens for observation and examination.
4289¼ff. Detail of inspectors and matrons on vessels carrying immigrant or emigrant passengers.
4289¼g. Lists of alien passengers arriving or departing; record of resident aliens and citizens leaving for foreign country.

Sec.
4289¼gg. Grouping of alien passengers in lists; identification tickets.
4289¼h. Refusal or failure to furnish lists of alien passengers.
4289¼hh. Inspection of alien passengers upon arrival; temporary removal for examination.
4289¼i. Physical and mental examination of alien passengers; regulations.
4289¼ii. Boards of special inquiry; appointment.
4289¼j. Immediate deportation of aliens brought in violation of law; cost of maintenance and return.
4289¼jj. Deportation within certain time of aliens entering or found in United States in violation of law.
4289¼k. Ports to which aliens to be deported; cost of deportation.
4289¼kk. Admission of aliens liable to be excluded on giving bond or cash deposit.
4289¼l. Temporary detention and admission or deportation, in case of contagious disorder, of wife or minor child of naturalized alien or resident alien.
4289¼ll. Landing stations for alien passengers transported from Canada or Mexico.
4289¼m. Interior immigrant stations.
4289¼mm. Discrimination in rules and contracts for entry and inspection of aliens.
4289¼n. Aiding or assisting certain aliens to enter.
4289¼nn. International conference for regulation of immigration of aliens; special commissioners.
4289¼o. Immigration officers; duties.
4289¼oo. Same; appointment; compensation.
4289¼p. Jurisdiction of district courts; duties of district attorneys.
4289¼pp. Disposal of privileges at stations; sale of liquors.
4289¼q. Local jurisdiction over stations.
4289¼qq. Signing alien on ship's articles with intent to permit landing in violation of laws.
4289¼r. Landing of excluded aliens employed on vessels.
4289¼rr. Paying off or discharging excluded aliens employed on vessels; landing to allow reshipping.
4289¼s. Deportation of alien seamen landing contrary to law.
4289¼ss. Employment on passenger vessels of aliens afflicted with idiocy, etc.
4289¼t. Lists of aliens employed on vessels arriving from foreign ports; reports of aliens illegally landed.
4289¼tt. Definitions.
4289¼u. Time of taking effect of act; repeal.

§ 4242. [Repealed.]

This section was repealed by Act Feb. 5, 1917, c. 29, § 38.

For provisions similar to those of this section, see post, § 4289¼aa.

§ 4244. [Repealed.]

This section was repealed by Act Feb. 5, 1917, c. 29, § 38.

For provisions similar to those of this section, see § 4289¼b, post, and notes thereunder.

§ 4245. (Act Feb. 26, 1885, c. 164, § 2.) Contracts for labor or service of aliens, made previous to migration or importation, void.

Contract labor and acts relating thereto.—Where a defendant employed plaintiff to come to United States to work, contrary to this section, employé could not recover on a subsequent agreement to continue such work. Tomkins v. Seattle Construction & Dry Dock Co. (Wash.) 165 P. 384.

In determining whether a new contract is so connected with an illegal contract as to render it void, the test is whether plaintiff is required to resort to the illegal contract. Id.

Cited without definite application, U. S. v. Morrisey (C. C. A.) 245 F. 923.

§ 4246. (Act Oct. 19, 1888, c. 210, § 1, as amended, Res. April 28, 1904, No. 34.) Same; reward to informer.

This section was probably superseded by similar provisions in Act Feb. 5, 1917, c. 29, § 5, post, § 4289¼c.

§§ 4247, 4248. [Repealed.]

These sections were repealed by Act Feb. 5, 1917, c. 29, § 38.

For provisions similar to those of this section, see post, §§ 4289¼bb, 4289¼c, 4289¼jj, 4289¼k.

§ 4249. [Superseded.]

This section was superseded by similar provisions in Act Feb. 5, 1917, c. 29. See post, § 4289¼b.

§§ 4250–4256. [Repealed.]

These sections were repealed by Act Feb. 5, 1917, c. 29, § 38.
For provisions similar to those of these sections, see post, §§ 4289¼c–4289¼e, 4289¼ii, 4289¼j.

§ 4258. [Repealed.]

This section was repealed by Act Feb. 5, 1917, c. 29, § 38.
For provisions similar to those of this section, see § 4289¼g, post.

§ 4259. [Superseded.]

This section was rendered inoperative by the repeal of Act Feb. 20, 1907, c. 1134, § 12, by Act Feb. 5, 1917, c. 29, § 38, post, § 4289¼u.

§§ 4260–4263. [Repealed.]

These sections were repealed by Act Feb. 5, 1917, c. 29, § 38.
See post, §§ 4289¼gg–4289¼hh.

§ 4264. [Superseded.]

This section was superseded by similar provisions in Act Feb. 5, 1917, c. 29. See post, § 4289¼hh.

§ 4265. [Repealed.]

This section was repealed by Act Feb. 5, 1917, c. 29, § 38.
For provisions similar to those of this section, see post, § 4289¼i.

§ 4266. [Superseded.]

This section was superseded by similar provisions in Act Feb. 5, 1917, c. 29. See post, § 4289¼i.

§§ 4267–4270. [Repealed.]

These sections were repealed by Act Feb. 5, 1917, c. 29, § 38.
For provisions similar to those of these sections, see post, §§ 4289¼ee, 4289¼j–4289¼k.

§§ 4272–4277. [Repealed.]

These sections were repealed by Act Feb. 5, 1917, c. 29, § 38.
For provisions similar to those of these sections, see post, §§ 4289¼i, 4289¼ii, 4289¼jj, 4289¼kk, 4289¼o, 4289¼p.

§ 4278. [Superseded.]

This section was superseded by similar provisions in Act Feb. 5, 1917, c. 29.
For provisions similar to those in this section, see post, § 4289¼m.

§§ 4279–4281. [Repealed.]

These sections were repealed by Act Feb. 5, 1917, c. 29, § 38.
For provisions similar to those in these sections, see post, §§ 4289¼*ll*, 4289¼pp, 4289¼q.

§ 4281a. (Act July 1, 1918, c. 113, § 1.) Office for Immigration Service at Montreal, Canada.

The Secretary of Labor is authorized to execute a lease for office quarters for the United States Immigration Service at Montreal, Canada, for a period of five years from July first, nineteen hundred and eighteen at a rate of rental not exceeding $4,500 per annum. (40 Stat. 696.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of Act Aug. 1, 1914, c. 223, § 1, 38 Stat. 666.

§ 4282. [Repealed.]

This section was repealed by Act Feb. 5, 1917, c. 29, § 38.
For provisions similar to those in this section, see post, § 4289½a.

§§ 4284–4289. [Repealed.]

These sections were repealed by Act Feb. 5, 1917, c. 29, § 38.
For provisions similar to those in these sections, see §§ 4289¼b, 4289¼b(1), 4289¼jj, 4289¼k, 4289¼*l*, 4289¼n, 4289¼u.

§ 4289¼a. (Act Feb. 5, 1917, c. 29, § 1.) Definitions; enforcement of act in Philippines.

The word "alien" wherever used in this Act shall include any person not a native-born or naturalized citizen of the United States; but this definition shall not be held to include Indians of the United States not taxed or citizens of the islands under the jurisdiction of the United States. That the term "United States" as used in the title as well as in the various sections of this Act shall be construed to mean the United States, and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone; but if any alien shall leave the Canal Zone or any insular possession of the United States and attempt to enter any other place under the jurisdiction of the United States, nothing contained in this Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens. That the term "seaman" as used in this Act shall include every person signed on the ship's articles and employed in any capacity on board any vessel arriving in the United States from any foreign port or place.

That this Act shall be enforced in the Philippine Islands by officers of the general government thereof, unless and until it is superseded by an act passed by the Philippine Legislature and approved by the President of the United States to regulate immigration in the Philippine Islands as authorized in the Act entitled "An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands," approved August twenty-ninth, nineteen hundred and sixteen. (39 Stat. 874.)

This was an act entitled "An act to regulate the immigration of aliens to, and the residence of aliens in, the United States," cited above. See note at the beginning of this Chapter.

§ 4289¼aa. (Act Feb. 5, 1917, c. 29, § 2.) Tax on aliens entering United States; lien of tax on vessels, etc.

There shall be levied, collected, and paid a tax of $8 for every alien, including alien seamen regularly admitted as provided in this Act, entering the United States: Provided, That children under sixteen years of age who accompany their father or their mother shall not be subject to said tax. The said tax shall be paid to the collector of customs of the port or customs district to which said alien shall come, or, if there be no collector at such port or district, then to the collector nearest thereto, by the master, agent, owner, or consignee of the vessel, transportation line, or other conveyance or vehicle bringing such alien to the United States, or by the alien himself if he does not come by a vessel, transportation line, or other conveyance or vehicle or when collection from the master, agent, owner, or consignee of the vessel, transportation line, or other conveyance, or vehicle bringing such alien to the United States is impracticable. The tax imposed by this section shall be a lien upon the vessel or other vehicle of carriage or transportation bringing such aliens to the United States, and shall be a debt in favor of the United States against the owner or owners of such vessel or other vehicle, and the payment of such tax may be enforced by any legal or equitable remedy. That the said tax shall not be levied on account of aliens who enter the United States after an uninterrupted residence of at least one year immediately preceding such entrance in the Dominion of Canada, Newfoundland, the Republic of Cuba, or the Republic of Mexico, for a temporary stay, nor on account of otherwise admissible residents or citizens of any possession of the United States, nor on account of aliens in

transit through the United States, nor upon aliens who have been lawfully admitted to the United States and who later shall go in transit from one part of the United States to another through foreign contiguous territory, and the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and regulations and prescribe the conditions necessary to prevent abuse of these exceptions: Provided, That the Commissioner General of Immigration, under the direction or with the approval of the Secretary of Labor, by agreement with transportation lines, as provided in section twenty-three of this Act, may arrange in some other manner for the payment of the tax imposed by this section upon any or all aliens seeking admission from foreign contiguous territory: Provided further, That said tax, when levied upon aliens entering the Philippine Islands, shall be paid into the treasury of said islands, to be expended for the benefit of such islands: Provided further, That in the cases of aliens applying for admission from foreign contiguous territory and rejected, the head tax collected shall upon application, upon a blank which shall be furnished and explained to him, be refunded to the alien. (39 Stat. 875.)

§ 4289¼b. (Act Feb. 5, 1917, c. 29, § 3.) Aliens excluded; literacy test; skilled labor; exceptions.

The following classes of aliens shall be excluded from admission into the United States: All idiots, imbeciles, feeble-minded persons, epileptics, insane persons; persons who have had one or more attacks of insanity at any time previously; persons of constitutional psychopathic inferiority; persons with chronic alcoholism; paupers; professional beggars; vagrants; persons afflicted with tuberculosis in any form or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally or physically defective, such physical defect being of a nature which may affect the ability of such alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; polygamists, or persons who practice polygamy or believe in or advocate the practice of polygamy; anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all forms of law, or who disbelieve in or are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the unlawful destruction of property; persons who are members of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or who advocate or teach the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or who advocate or teach the unlawful destruction of property; prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who directly or indirectly procure or attempt to procure or import prostitutes or persons for the purpose of prostitution or for any other immoral purpose; persons who are supported by or receive in whole or in part the proceeds of prostitution; persons hereinafter called contract laborers, who have been induced, assisted, encouraged, or solicited to migrate to this country by offers or promises of employment, whether such offers or promises are true or false, or in consequence of agree-

ments, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled; persons who have come in consequence of advertisements for laborers printed, published, or distributed in a foreign country; persons likely to become a public charge; persons who have been deported under any of the provisions of this Act, and who may again seek admission within one year from the date of such deportation, unless prior to their reembarkation at a foreign port or their attempt to be admitted from foreign contiguous territory the Secretary of Labor shall have consented to their reapplying for admission; persons whose tickets or passage is paid for with the money of another, or who are assisted by others to come, unless it is affirmatively and satisfactorily shown that such persons do not belong to one of the foregoing excluded classes; persons whose ticket or passage is paid for by any corporation, association, society, municipality, or foreign Government, either directly or indirectly; stowaways, except that any such stowaway, if otherwise admissible, may be admitted in the discretion of the Secretary of Labor; all children under sixteen years of age, unaccompanied by or not coming to one or both of their parents, except that any such children may, in the discretion of the Secretary of Labor, be admitted if in his opinion they are not likely to become a public charge and are otherwise eligible; unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or dependency situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States. The provision next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this Act.

That after three months from the passage of this Act, in addition to the aliens who are by law now excluded from admission into the United States, the following persons shall also be excluded from admission thereto, to wit:

All aliens over sixteen years of age, physically capable of reading, who can not read the English language, or some other language or dialect, including Hebrew or Yiddish: Provided, That any admissible alien, or any alien heretofore or hereafter legally admitted, or any citizen of the United States, may bring in or send for his father or grandfather over fifty-five years of age, his wife, his mother, his grandmother, or his unmarried or widowed daugh-

ter, if otherwise admissible, whether such relative can read or not; and such relative shall be permitted to enter. That for the purpose of ascertaining whether aliens can read the immigrant inspectors shall be furnished with slips of uniform size, prepared under the direction of the Secretary of Labor, each containing not less than thirty nor more than forty words in ordinary use, printed in plainly legible type in some one of the various languages or dialects of immigrants. Each alien may designate the particular language or dialect in which he desires the examination to be made, and shall be required to read the words printed on the slip in such language or dialect. That the following classes of persons shall be exempt from the operation of the illiteracy test, to wit: All aliens who shall prove to the satisfaction of the proper immigration officer or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt acts or by laws or governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith; all aliens who have been lawfully admitted to the United States and who have resided therein continuously for five years and who return to the United States within six months from the date of their departure therefrom; all aliens in transit through the United States; all aliens who have been lawfully admitted to the United States and who later shall go in transit from one part of the United States to another through foreign contiguous territory: Provided, That nothing in this Act shall exclude, if otherwise admissible, persons convicted, or who admit the commission, or who teach or advocate the commission, of an offense purely political: Provided further, That the provisions of this Act, relating to the payments for tickets or passage by any corporation, association, society, municipality, or foreign Government shall not apply to the tickets or passage of aliens in immediate and continuous transit through the United States to foreign contiguous territory: Provided further, That skilled labor, if otherwise admissible, may be imported if labor of like kind unemployed cannot be found in this country, and the question of the necessity of importing such skilled labor in any particular instance may be determined by the Secretary of Labor upon the application of any person interested, such application to be made before such importation, and such determination by the Secretary of Labor to be reached after a full hearing and an investigation into the facts of the case: Provided further, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed as domestic servants: Provided further, That whenever the President shall be satisfied that passports issued by any foreign Government to its citizens or subjects to go to any country other than the United States, or to any insular possession of the United States or to the Canal Zone, are being used for the purpose of enabling the holder to come to the continental territory of the United States to the detriment of labor conditions therein, the President shall refuse to permit such citizens or subjects of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possession or from the Canal Zone: Provided further, That aliens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive years may be admitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe:

Provided further, That nothing in the contract-labor or reading-test provisions of this Act shall be construed to prevent, hinder, or restrict any alien exhibitor, or holder of concession or privilege for any fair or exposition authorized by Act of Congress, from bringing into the United States, under contract, such otherwise admissible alien mechanics, artisans, agents, or other employees, natives of his country as may be necessary for installing or conducting his exhibit or for preparing for installing or conducting any business authorized or permitted under any concession or privilege which may have been or may be granted by any such fair or exposition in connection therewith, under such rules and regulations as the Commissioner General of Immigration, with the approval of the Secretary of Labor, may prescribe both as to the admission and return of such persons: Provided further, That the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission: Provided further, That nothing in this Act shall be construed to apply to accredited officials of foreign Governments, nor to their suites, families, or guests. (39 Stat. 875.)

See notes under § 4244, Comp. St. 1916.

Construction, operation, and validity of immigration laws—Application to Chinese.—As respected application of statute regarding importation of contract laborers to aliens brought to San Francisco to join crew of vessel, held that fact that they were Chinese subjects had no significance. Scharrenberg v. Dollar S. S. Co., 38 S. Ct. 28, 245 U. S. 122, 62 L. Ed. 189, affirming judgment 229 F. 970, 144 C. C. A. 252, Ann. Cas. 1917C, 258.

The Immigration Act applies to aliens born in China, and the minor son of a Chinese merchant cannot lawfully enter the United States, if at that time he be a person likely to become a public charge. Lam Fung Yen v. Frick, 233 F. 393, 147 C. C. A. 329.

That one who lawfully entered as the minor son of a Chinese merchant has since become a laborer is not enough of itself to destroy his right to remain, the general Immigration Act not forbidding the residence of Chinese laborers. Lew Loy v. U. S., 242 F. 405, 155 C. C. A. 181.

"Aliens"—Immigrants and citizens—Persons returning to the United States after absence.—One favorable inspection does not entitle an alien who has entered the United States and departed to re-enter at a future time; and this is so regardless of the alien's belief as to his rights. Ex parte Callow (D. C.) 240 F. 212.

Grounds for deportation and persons subject to exclusion—Persons likely to become public charges.—Finding by commissioner of immigration that alien was likely to become a public charge held without evidence to support it. U. S. v. Howe (D. C.) 235 F. 990.

In a proceeding for the deportation of an alien, evidence held insufficient to show that he was likely to become a public charge, so as to be subject to deportation under Act Feb. 20, 1907. Ex parte Callow (D. C.) 240 F. 212.

The Immigration Act, excluding persons likely to become a public charge, applies to persons who do not intend to engage in profitable industry, but to make their living by gambling. Lam Fung Yen v. Frick, 233 F. 393, 147 C. C. A. 329.

The Immigration Act, excluding persons likely to become a public charge, applies to the minor son of a Chinese merchant, whose father would be liable for his support only during minority. Id.

Under Immigration Act, §§ 2, 20, 21 (Comp. St. 1916, §§ 4244, 4269, 4270), a person likely to thereafter become a public charge may be deported, though he did not become a charge within three years after entry. Id.

In a proceeding for the deportation of an alien woman and her minor son, where there was uncertainty of continuing support of the son by the father alone, who was a resident of the United States, the son must be ordered deported, as one likely to become a public charge, if the mother be deported. Greenwood v. Frick, 233 F. 629, 147 C. C. A. 437.

Where an alien woman entered the United States for an immoral purpose, making her subject to possible prosecution and imprisonment at public expense, or naturally tending to a life not supported by honest work, she may be deported on the ground that she is likely to become a public charge. Id.

Under Immigration Act 1907, § 2, as amended by Act March 26, 1910, c. 128 (Comp. St. 1916, § 4244), and section 20 (Comp. St. 1916, § 4469), held, that alien, who regularly entered United States, could not be deported as person

likely to become public charge because, after his entry and establishment in business, it was contended, though he denied same, that he was guilty of fraud in country from which he came. Howe v. U. S., 247 F. 292, 159 C. C. A. 386.

—— **Persons admitting commission of crime involving moral turpitude.**—Where an alien woman, not having heard from her husband for 2 years, contracted a second marriage, and thereafter did not hear from him for over 11 years, he is presumed to be dead, and the second marriage legal, and her conduct does not involve moral turpitude, warranting deportation. Greenwood v. Frick, 233 F. 629, 147 C. C. A. 437.

Canadian soldier, entering the United States while on leave and not returning at the expiration of his furlough, held not subject to deportation under this section. Ex parte Hill (D. C.) 245 F. 687.

—— **Persons receiving earnings of prostitutes.**—Under Act Feb. 20, 1907, §§ 2, 3, as amended by Act March 26, 1910, §§ 1, 2 (Comp. St. 1916, §§ 4244, 4247), alien who, having entered United States, leases premises to prostitutes in which they ply their trade, is not to be deported as receiving earnings of prostitutes. Katz v. Commissioner of Immigration at Port of San Francisco, Cal., 245 F. 316, 157 C. C. A. 508.

—— **Contract laborers in general.**—"Offers or promises of employment," to come within the contract labor clause of Immigration Act Feb. 20, 1907, § 2, as amended by Act March 26, 1910 (Comp. St. 1916, § 4244), must be made by or with the authority of the proposed employer, and a mere assurance or promise in general terms of employment after reaching this country, made to an alien by a foreign steamship agent, is not ground for exclusion. Ex parte Prout (D. C.) 253 F. 97.

Nine Portuguese laborers, not shown to have acted in concert, bound to a point in this country where they were assured by steamship agents that they could find employment, but having no knowledge by whom or for what they would be employed, held not subject to exclusion as contract laborers. Id.

—— **Persons "assisted by others to come."**—See Tomkins v. Paterson (D. C.) 238 F. 879.

Under Immigration Act Feb. 20, 1907, c. 1134, § 2, 34 Stat. 898 (Comp. St. 1916, § 4244), which excluded from admission into the United States aliens "who have been induced or solicited to migrate to this country by offers or promises of employment or in consequence of agreements, * * * express or implied, to perform labor in this country of any kind, skilled or unskilled," or who have been assisted by others to come, unless it is affirmatively shown that they do not belong to one of the excluded classes, a Japanese alien who came to this country at the solicitation of an uncle and with money furnished by him for the purpose of entering his employ as a salesman in a store, although no contract for service was made, not being in one of the classes expressly excepted by such section, was held not entitled to entry. Ex parte Kunijirô Toguchi (D. C.) 238 F. 632.

—— **Persons induced to migrate by offer or promise of employment.**—The action of a Dutch steamship company in bringing a clerk from its Amsterdam office to New York for limited employment in its New York office, and paying his expenses, held not in violation of this section. U. S. v. Royal Dutch West India Mail (D. C.) 250 F. 913.

—— **Seaman.**—Bringing aliens from China to San Francisco under contract to join crew of vessel of American registry, held not a violation of Act Feb. 20, 1907, §§ 2, 4, and 5, as amended in 1910 (Comp. St. 1916, §§ 4244, 4248), respecting importation of contract laborers. Scharrenberg v. Dollar S. S. Co., 38 S. Ct. 28, 245 U. S. 122, 62 L. Ed. 189, affirming judgment 229 F. 970, 144 C. C. A. 252, Ann. Cas. 1917C, 258.

Administration of law.—Under Immigration Act Feb. 20, 1907, §§ 2, 26 (Comp. St. 1916, §§ 4244, 4275), Secretary of Labor held authorized to take bond conditioned that alien children should attend school, and not become a public charge, and that reports should be made. Illinois Surety Co. v. U. S., 229 F. 527, 143 C. C. A. 595; Id., 229 F. 533, 143 C. C. A. 601.

—— **Review by courts.**—See Ex parte Chan Kam, 230 F. 990, 145 C. C. A. 184.

Where aliens, sought to be deported, were given a fair hearing, and there was evidence to support the findings of the Secretary of Labor, the courts were not concerned with its weight. Wallis v. U. S., 230 F. 71, 144 C. C. A. 369.

Former statute cited without definite application, U. S. v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321; U. S. v. Woo Jan, 38 S. Ct. 207, 245 U. S. 552, 62 L. Ed. 466; Mok Nuey Tau v. White (C. C. A.) 244 F. 742; U. S. v. River Spinning Co. (C. C. A.) 250 F. 586; Tomkins v. Paterson (D. C.) 239 F. 402; U. S. v. River Spinning Co. (D. C.) 243 F. 759; Ex parte Lalime (D. C.) 244 F. 279.

§ 4289¼b(1). (Act Oct. 16, 1918, c. 186, § 1.) Aliens excluded; anarchists.

Aliens who are anarchists; aliens who believe in or advocate the overthrow by force or violence of the Government of the United States or of all forms of law; aliens who disbelieve in or are opposed to all organized government; aliens who advocate or teach the assassination of public officials; aliens who advocate or teach the unlawful destruction of property; aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States or of all forms of law, or that entertains or teaches disbelief in or opposition to all organized government, or that advocates the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or that advocates or teaches the unlawful destruction of property shall be excluded from admission into the United States. (40 Stat. 1012.)

This section, and the two sections next following, were an act entitled "An act to exclude and expel from the United States aliens who are members of the anarchistic and similar classes," cited above.

Notes of Decisions

See notes under § 4244, Comp. St. 1916.

When deportation properly ordered.—See Ex parte Callow (D. C.) 240 F. 212.

Former statute cited without definite application, U. S. v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321.

§ 4289¼b(2). (Act Oct. 16, 1918, c. 186, § 2.) Same; deportation.

Any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in section one of this Act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act irrespective of the time of their entry into the United States. (40 Stat. 1012.)

See note to § 4289¼b(1), ante.

§ 4289¼b(3). (Act Oct. 16, 1918, c. 186, § 3.) Same; deportation; reentry; punishment.

Any alien who shall, after he has been excluded and deported or arrested and deported in pursuance of the provisions of this Act, thereafter return to or enter the United States or attempt to return to or to enter the United States shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment for a term of not more than five years; and shall, upon the termination of such imprisonment, be taken into custody, upon the warrant of the Secretary of Labor, and deported in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen. (40 Stat. 1012.)

See note to § 4289¼b(1), ante.

§ 4289¼bb. (Act Feb. 5, 1917, c. 29, § 4.) Importation of aliens for immoral purposes.

The importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien, in pursuance of such illegal importation, shall in every such case be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment for a term of not more than ten years and by a fine of not more than $5,000. Jurisdiction for the trial and punishment of the felonies hereinbefore set forth shall be in any district to or into which said alien is brought in pursuance of said importation by the person or persons accused, or in any district in which a violation of any of the foregoing provisions of this section occurs. That any alien who shall, after he has been excluded and deported or arrested and deported in pursuance of the provisions of this Act which relate to prostitutes, procurers, or other like immoral persons, attempt thereafter to return to or to enter the United States shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment for a term of not more than two years. In all prosecutions under this section the testimony of a husband or wife shall be admissible and competent evidence against each other. (39 Stat. 878.)

See notes under § 4247, Comp. St. 1916.

Persons receiving earnings of prostitutes.—Under Act Feb. 20, 1907, §§ 2, 3, as amended by Act March 26, 1910, §§ 1, 2 (Comp. St. 1916, §§ 4244, 4247), alien who, having entered United States, leases premises to prostitutes in which they ply their trade, is not to be deported as receiving earnings of prostitutes. Katz v. Commissioner of Immigration of Port of San Francisco, Cal., 245 F. 316, 157 C. C. A. 508.

Former statute cited without definite application, U. S. v. Woo Jan, 38 S. Ct. 207, 245 U. S. 552, 62 L. Ed. 466; United States ex rel. Hen Lee v. Sisson (C. C. A.) 232 F. 599; Mok Nuey Tau v. White (C. C. A.) 244 F. 742; Tomkins v. Paterson (D. C.) 239 F. 402.

§ 4289¼bbb. (Res. Oct. 19, 1918, c. 190.) Aliens excluded; aliens conscripted or volunteering for military or naval service readmitted.

Notwithstanding the provisions of section three of the immigration Act of February fifth, nineteen hundred and seventeen, excluding from the United States aliens who are likely to become a public charge, or who are physically defective, or who are contract laborers, or who have come in consequence of advertisements for labor printed, published, or distributed in a foreign country, or who are assisted by others to come, or whose ticket or passage is paid for with the money of another or by any corporation, association, society, municipality, or foreign government, or who are stowaways, or who are illiterate, aliens lawfully resident in the United States when heretofore or hereafter enlisted or conscripted for the military or naval service of the United States, or of any one of the nations cobelligerent of the United States in the present war; and aliens lawfully resident in the United States who have

enlisted for service with Czecho-Slovak, Polish, or other independent forces attached to the United States Army or to the army or navy of any one of the cobelligerents of the United States in the present war, who may during or within one year after the termination of the war apply for readmission to this country, after being honorably discharged or granted furlough abroad by the proper military or naval authorities, or after being rejected on final examination in connection with their enlistment or conscription shall, within two years after the termination of the war, be readmitted; and that any alien of either of the foregoing descriptions who would otherwise be excluded under said section of the immigration Act on the ground that he is idiotic, imbecile, feeble-minded, epileptic, insane, or has had one or more attacks of insanity, or on the ground that he is afflicted with constitutional psychopathic inferiority, tuberculosis, a loathsome or dangerous contagious disease, or mental defect, shall be readmitted if it is proved that the disability was acquired while the alien was serving in the military or naval forces of the United States or of any one of the nations cobelligerent of the United States in the present war or in an independent force of the kind hereinbefore described, if such alien returns to a port of the United States within two years after the termination of the war; and that the head tax provided in the immigration Act of February fifth, nineteen hundred and seventeen, shall not be collected from aliens readmitted into the United States under the provisions of this resolution. (40 Stat. 1014.)

This section was a resolution entitled a "Joint Resolution authorizing the readmission to the United States of certain aliens who have been conscripted or have volunteered for service with the military forces of the United States or cobelligerent forces," cited above. It supersedes a somewhat similar resolution enacted June 29, 1918, Res. June 29, 1918, c. 112, 40 Stat. 634, which reads as follows:

Notwithstanding the provisions of section three of the immigration Act of February fifth, nineteen hundred and seventeen, excluding from the United States aliens who are likely to become a public charge, or who are physically defective, or who are contract laborers, or who have come in consequence of advertisements for labor printed, published, or distributed in a foreign country, or who are assisted by others to come, or whose ticket or passage is paid for with the money of another or by any corporation, association, society, municipality, or foreign government, or who are stowaways, or who are illiterate, aliens lawfully resident in the United States when heretofore or hereafter enlisted or conscripted for the military service of the United States; and aliens lawfully resident in the United States who, prior to April sixth, nineteen hundred and seventeen, declared their intention to become citizens of the United States, and who have enlisted for service with Czecko-Slovak, Polish, or other independent forces attached to the United States Army or to the army of any one of the cobelligerents of the United States in the present war, who may, within one year after the termination of the war, apply for readmission to this country, after being honorably discharged or granted furlough abroad by the proper military authorities, or after being rejected on final examination in connection with their enlistment or conscription, shall be readmitted; and that any alien of either of the two foregoing descriptions who would otherwise be excluded under said section of the immigration Act on the ground that he is idiotic, imbecile, feeble-minded, epileptic, insane, or has had one or more attacks of insanity, or on the ground that he is afflicted with constitutional psychopathic inferiority, tuberculosis, a loathsome or dangerous contagious disease, or mental defect, shall be readmitted if it is proved that the disability was acquired while the alien was serving in the military forces of the United States or in an independent force of the kind hereinbefore described, if such alien returns to a port of the United States within one year after the termination of the war; and that the head tax provided in the immigration Act of February fifth, nineteen hundred and seventeen, shall not be collected from aliens readmitted into the United States under the provisions of this resolution.

§ 4289¼c. (Act Feb. 5, 1917, c. 29, § 5.) Contract laborers; prepaying transportation or assisting importation.

It shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to induce, assist, encourage, or solicit, or attempt to induce, assist, encourage, or solicit the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract laborers are exempted under the fifth proviso of section three of this Act, or have been imported with the permission of the Secretary of Labor in accordance with the fourth proviso of said section, and for every violation of any of the provisions of this section the person, partnership, company, or corporation violating the same shall forfeit and pay for every such offense the sum of $1,000, which may be sued for and recovered by the United States, as debts of like amount are now recovered in the courts of the United States. For every violation of the provisions hereof the person violating the same may be prosecuted in a criminal action for a misdemeanor, and on conviction thereof shall be punished by a fine of $1,000, or by imprisonment for a term of not less than six months nor more than two years; and under either the civil or the criminal procedure mentioned separate suits or prosecutions may be brought for each alien thus offered or promised employment as aforesaid. The Department of Justice, with the approval of the Department of Labor, may from any fines or penalties received pay rewards to persons other than Government employés who may furnish information leading to the recovery of any such penalties, or to the arrest and punishment of any person, as in this section provided. (39 Stat. 879.)

See notes under §§ 4248, 4250, Comp. St. 1916.

Construction and operation in general.—Immigration Act Feb. 20, 1907, § 5 (Comp. St. 1916, § 4250), imposing penalties for importation of contract laborers, etc., should be strictly construed. U. S. v. River Spinning Co. (C. C. A.) 250 F. 586.

In construing Contract Labor Act Feb. 20, 1907 (Comp. St. 1916, § 4248), strict construction adopted by Circuit Court of Appeals for circuit in which District Court was located should be followed. U. S. v. River Spinning Co. (D. C.) 243 F. 759.

Violation of statute.—See Scharrenberg v. Dollar S. S. Co., 38 S. Ct. 28, 245 U. S. 122, 62 L. Ed. 189, affirming judgment 229 F. 970, 144 C. C. A. 252, Ann. Cas. 1917C, 258.

Where railroad company, by its agent, violated provisions of Act Feb. 20, 1907, §§ 4, 5 (Comp. St. 1916, §§ 4248, 4250), relative to importation of contract laborers, held, that its agent's ignorance of existence of act, was no defense. New York Cent. & H. R. R. Co. v. U. S., 239 F. 130, 152 C. C. A. 172, affirming judgment U. S. v. New York Cent. & H. R. R. Co. (D. C.) 232 F. 179.

Under Immigration Act Feb. 20, 1907, §§ 4 and 5 (Comp. St. §§ 4248, 4250), imposing penalty upon any person assisting, encouraging, or soliciting immigration or importation of contract laborers actual migration into or entry into territory of United States is necessary to warrant recovery of penalty, and where laborers were rejected at port of entry none can be recovered. U. S. v. River Spinning Co. (C. C. A.) 250 F. 586.

A railroad corporation, which gave a pass over its lines for men to be employed in Canada and brought into the United States, is guilty of prepaying transportation of contract laborers, contrary to Act Feb. 20, 1907, § 4 (Comp. St. 1916, § 4248). U. S. v. New York Cent. & H. R. R. Co. (D. C.) 232 F. 179.

A corporation which sent an agent into Canada to employ men to work on its section in the United States solicits the immigration of contract laborers, contrary to Act Feb. 20, 1907, § 5 (Comp. St. 1916, § 4250), though the laborers were denied admission. Id.

Liability for penalty or fine.—See U. S. v. Morrisey, 245 F. 923, 158 C. C. A. 211.

Under Act Feb. 20, 1907, §§ 4, 5 (Comp. St. §§ 4248, 4250), defendant, who solicited contract laborers to en-

ter the United States, is guilty of a violation of the act, and liable to fine though laborers did not actually enter. New York Cent. & H. R. R. Co. v. U. S., 239 F. 130, 152 C. C. A. 172, affirming judgment U. S. v. New York Cent. & H. R. R. Co. (D. C.) 232 F. 179.

Under Immigration Act Feb. 20, 1907, §§ 4 and 5 (Comp. St. 1916, §§ 4248, 4250), imposing penalty upon any person assisting, encouraging, or soliciting immigration or importation of contract laborers actual migration into or entry into territory of United States is necessary to warrant recovery of penalty, and where laborers were rejected at port of entry none can be recovered. U. S. v. River Spinning Co. (C. C. A.) 250 F. 586.

Penalty for importation of contract laborers into United States cannot be recovered, under Act Feb. 20, 1907, c. 1134 (Comp. St. 1916, § 4250), where such laborers did not actually enter country. U. S. v. River Spinning Co. (D. C.) 243 F. 759.

Action to recover penalty.—Alien ordered deported may be detained and required to give bail when needed as witness in suit for penalty under Immigration Act Feb. 20, 1907, § 5, especially in view of Rev. St. § 881 (Comp. St. 1916, § 1492). In re Aliens (D. C.) 231 F. 335.

—— **Jurisdiction in venue.**—An action to recover the penalty provided by section 5 of the Immigration Act of February 20, 1907, amended March 26, 1910, is not governed by Judicial Code, § 51, § 1033, ante, but may, under Rev. St. § 732, § 1025, ante, be brought in the district where the imported alien was to perform labor for a foreign corporation. Tomkins v. Paterson (D. C.) 238 F. 879.

—— **Pleadings.**—In an action to recover the penalty for importing an alien contract laborer denial by defendant of the allegation that plaintiff was within the prohibition of the act is a denial of a conclusion which is not inconsistent with an affirmative defense. Tomkins v. Paterson (D. C.) 239 F. 402.

§ 4289¼cc. (Act Feb. 5, 1917, c. 29, § 6.) Advertisements of employment to aliens, etc.

It shall be unlawful and be deemed a violation of section five of this Act to induce, assist, encourage, or solicit or attempt to induce, assist, encourage, or solicit any alien to come into the United States by promise of employment through advertisements printed, published, or distributed in any foreign country, whether such promise is true or false, and either the civil or criminal penalty or both imposed by said section shall be applicable to such a case. (39 Stat. 879.)

See notes to § 4251, Comp. St. 1916.

Liability for penalty.—That an alien, seeking to enter the United States in consequence of a foreign advertisement offering employment, was denied admission, held not to relieve the advertiser from liability for the penalty imposed by Immigration Act Feb. 20, 1907, §§ 4–6 (Comp. St. 1916, §§ 4248, 4250, 4251). U. S. v. Morrisey, 245 F. 923, 158 C. C. A. 211.

§ 4289¼d. (Act Feb. 5, 1917, c. 29, § 7.) Solicitation of immigration by transportation companies.

It shall be unlawful for any person, association, society, company, partnership, corporation, or others engaged in the business of transporting aliens to or within the United States, including owners, masters, officers, and agents of vessels, directly or indirectly, by writing, printing, oral representation, payment of any commissions to an alien coming into the United States, allowance of any rebates to an alien coming into the United States, or otherwise to solicit, invite, or encourage or attempt to solicit, invite, or encourage any alien to come into the United States, and anyone violating any provision hereof shall be subject to either the civil or the criminal prosecution, or both, prescribed by section five of this Act; or if it shall appear to the satisfaction of the Secretary of Labor that any owner, master, officer, or agent of a vessel has brought or caused to be brought to a port of the United States any alien so solicited, invited, or encouraged to come by such owner, master, officer, or agent, such owner, master, officer, or agent shall pay to the collector of customs of the customs district in which the port of arrival is located, or in which any vessel of the line may be

found, the sum of $400 for each and every such violation; and no vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine, or while the fine imposed remains unpaid, nor shall such fine be remitted or refunded: Provided, That clearance may be granted prior to the determination of such questions upon the deposit with the collector of customs of a sum sufficient to cover such fine: Provided further, That whenever it shall be shown to the satisfaction of the Secretary of Labor that the provisions of this section are persistently violated by or on behalf of any transportation company, it shall be the duty of said Secretary to deny to such company the privilege of landing alien immigrant passengers of any or all classes at United States ports for such a period as in his judgment may be necessary to insure an observance of such provisions: Provided further, That this section shall not be held to prevent transportation companies from issuing letters, circulars, or advertisements, confined strictly to stating the sailing of their vessels and terms and facilities of transportation therein: Provided further, That under sections five, six, and seven hereof it shall be presumed from the fact that any person, company, partnership, corporation, association, or society induces, assists, encourages, solicits or invites, or attempts to induce, assist, encourage, solicit or invite the importation, migration or coming of an alien from a country foreign to the United States, that the offender had knowledge of such person's alienage. (39 Stat. 879.)

See notes under § 4252, Comp. St. 1916.

§ 4289¼dd. (Act Feb. 5, 1917, c. 29, § 8.) Bringing in or harboring or concealing certain aliens.

Any person, including the master, agent, owner, or consignee of any vessel, who shall bring into or land in the United States, by vessel or otherwise, or shall attempt, by himself or through another, to bring into or land in the United States, by vessel or otherwise, or shall conceal or harbor, or attempt to conceal or harbor, or assist or abet another to conceal or harbor in any place, including any building, vessel, railway car, conveyance, or vehicle, any alien not duly admitted by an immigrant inspector or not lawfully entitled to enter or to reside within the United States under the terms of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $2,000 and by imprisonment for a term not exceeding five years, for each and every alien so landed or brought in or attempted to be landed or brought in. (39 Stat. 880.)

See notes under § 4253, Comp. St. 1916.

Application to Chinese.—Offenses of bringing in, or aiding or abetting bringing in, of unqualified Chinese alien, are governed by provisions of Chinese Exclusion Act May 6, 1882, § 11, as amended by Act July 5, 1884 (Comp. St. 1916, § 4298), and not by section 8, Immigration Act Feb. 20, 1907 (Comp. St. 1916, § 4253). Stoneberg v. Morgan, 246 F. 98, 158 C. C. A. 324.

§ 4289¼e. (Act Feb. 5, 1917, c. 29, § 9.) Bringing in aliens subject to disability, or afflicted with disease.

It shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Sec-

retary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $200, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien afflicted with any mental defect other than those above specifically named, or physical defect of a nature which may affect his ability to earn a living, as contemplated in section three of this Act, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $25, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien for whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien who is excluded by the provisions of section three of this Act because unable to read, or who is excluded by the terms of section three of this Act as a native of that portion of the Continent of Asia and the islands adjacent thereto described in said section, and if it shall appear to the satisfaction of the Secretary of Labor that these disabilities might have been detected by the exercise of reasonable precaution prior to the departure of such aliens from a foreign port, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $200, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. And no vessel shall be granted clearance papers pending the determination of the question of the liability to the payment of such fines, or while the fines remain unpaid, nor shall such fines be remitted or refunded: Provided, That clearance may be granted prior to the determination of such questions upon the deposit of a sum sufficient to cover such fines: Provided further, That nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or exceptions to section three hereof exempted from the excluding provisions of said section. (39 Stat. 880.)

See notes under § 4254, Comp. St 1916.

§ 4289¼ee. (Act Feb. 5, 1917, c. 29, § 10.) Prevention of landing of aliens at time or place other than designated; failure to comply with requirements.

It shall be the duty of every person, including owners, officers, and agents of vessels or transportation lines, or international bridg-

es or toll roads, other than railway lines which may enter into a contract as provided in section twenty-three of this Act, bringing an alien to, or providing a means for an alien to come to, any seaport or land border port of the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers, and the failure of any such person, owner, officer, or agent to comply with the foregoing requirements shall be deemed a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, a penalty of $1,000 shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court. (39 Stat. 881.)

§ 4289¼f. (Act Feb. 5, 1917, c. 29, § 11.) Detention of aliens for observation and examination.

For the purpose of determining whether aliens arriving at ports of the United States belong to any of the classes excluded by this Act, either by reason of being afflicted with any of the diseases or mental or physical defects or disabilities mentioned in section three hereof, or otherwise, or whenever the Secretary of Labor has received information showing that any aliens are coming from a country or have embarked at a place where any of said diseases are prevalent or epidemic, the Commissioner General of Immigration, with the approval of the Secretary of Labor, may direct that such aliens shall be detained on board the vessel bringing them, or in a United States immigration station at the expense of such vessel, as circumstances may require or justify, a sufficient time to enable the immigration officers and medical officers stationed at such ports to subject such aliens to an observation and examination sufficient to determine whether or not they belong to the said excluded classes by reason of being afflicted in the manner indicated: Provided, That, with a view to avoid undue delay in landing passengers or interference with commerce, the Commissioner General of Immigration may, with the approval of the Secretary of Labor, issue such regulations, not inconsistent with law, as may be deemed necessary to effect the purposes of this section: Provided further, That it shall be the duty of immigrant inspectors to report to the Commissioner General of Immigration the condition of all vessels bringing aliens to United States ports. (39 Stat. 881.)

§ 4289¼ff. (Act Feb. 5, 1917, c. 29, § 11a.) Detail of inspectors and matrons on vessels carrying immigrant or emigrant passengers.

The Secretary of Labor is hereby authorized and directed to enter into negotiations, through the Department of State, with countries vessels of which bring aliens to the United States, with a view to detailing inspectors and matrons of the United States Immigration Service for duty on vessels carrying immigrant or emigrant passengers between foreign ports and ports of the United States. When such inspectors and matrons are detailed for said duty they shall remain in that part of the vessel where immigrant passengers are carried; and it shall be their duty to observe such passengers during the voyage and report to the immigration authorities in charge at the port of landing any information of value in determining the

admissibility of such passengers that may have become known to them during the voyage. (39 Stat. 882.)

§ 4289¼g. (Act Feb. 5, 1917, c. 29, § 12.) List of alien passengers arriving or departing; record of resident aliens and citizens leaving for foreign country.

Upon the arrival of any alien by water at any port within the United States on the North American Continent from a foreign port or a port of the Philippine Islands, Guam, Porto Rico, or Hawaii, or at any port of the said insular possessions from any foreign port, from a port in the United States on the North American Continent, or from a port of another insular possession of the United States, it shall be the duty of the master or commanding officer, owners, or consignees of the steamer, sailing, or other vessel having said alien on board to deliver to the immigration officers at the port of arrival typewritten or printed lists or manifests made at the time and place of embarkation of such alien on board such steamer or vessel, which shall, in answer to questions at the top of said list, contain full and accurate information as to each alien as follows: Full name, age, and sex; whether married or single; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); whether able to read or write; nationality; country of birth; race; country of last permanent residence; name and address of the nearest relative in the country from which the alien came; seaport for landing in the United States; final destination, if any, beyond the port of landing; whether having a ticket through to such final destination; by whom passage was paid; whether in possession of $50, and if less, how much; whether going to join a relative or friend, and, if so, what relative or friend, and his or her name and complete address; whether ever before in the United States, and if so, when and where; whether ever in prison or almshouse or an institution or hospital for the care and treatment of the insane; whether ever supported by charity; whether a polygamist; whether an anarchist; whether a person who believes in or advocates the overthrow by force or violence of the Government of the United States or of all forms of law, or who disbelieves in or is opposed to organized government, or who advocates the assassination of public officials, or who advocates or teaches the unlawful destruction of property, or is a member of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or which teaches the unlawful destruction of property, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government because of his or their official character; whether coming by reason of any offer, solicitation, promise, or agreement, express or implied, to perform labor in the United States; the alien's condition of health, mental and physical; whether deformed or crippled, and if so, for how long and from what cause; whether coming with the intent to return to the country whence such alien comes after temporarily engaging in laboring pursuits in the United States; and such other items of information as will aid in determining whether any such alien belongs to any of the excluded classes enumerated in section three hereof; and such master or commanding officer, owners, or consignees shall also furnish information in relation to the sex, age, class of travel, and the foreign port of embarkation of arriving passengers who are United States citizens. That it shall further be the duty of the master or commanding officer of every vessel taking passengers

from any port of the United States on the North American Continent to a foreign port or a port of the Philippine Islands, Guam, Porto Rico, or Hawaii, or from any port of the said insular possessions to any foreign port, to a port of the United States on the North American Continent, or to a port of another insular possession of the United States to file with the immigration officials before departure a list which shall contain full and accurate information in relation to the following matters regarding all alien passengers, and all citizens of the United States or insular possessions of the United States departing with the stated intent to reside permanently in a foreign country, taken on board: Name, age, and sex; whether married or single; calling or occupation; whether able to read or write; nationality; country of birth; country of which citizen or subject; race; last permanent residence in the United States or insular possessions thereof; if a citizen of the United States or of the insular possessions thereof, whether native born or naturalized; if native born, the place and date of birth, or if naturalized the city or town in which naturalization has been had; intended future permanent residence; and time and port of last arrival in the United States, or insular possessions thereof; and such master or commanding officer shall also furnish information in relation to the sex, age, class of travel, and port of debarkation of the United States citizens departing who do not intend to reside permanently in a foreign country, and no master of any such vessel shall be granted clearance papers for his vessel until he has deposited such list or lists with the immigration officials at the port of departure and made oath that they are full and complete as to the name and other information herein required concerning each person of the classes specified taken on board his vessel; and any neglect or omission to comply with the requirements of this section shall be punishable as provided in section fourteen of this Act: Provided, That in the case of vessels making regular trips to ports of the United States the Commissioner General of Immigration, with the approval of the Secretary of Labor, may, when expedient, arrange for the delivery of such lists of outgoing aliens at a later date: Provided further, That it shall be the duty of immigration officials to record the following information regarding every resident alien and citizen leaving the United States by way of the Canadian or Mexican borders for permanent residence in a foreign country: Name, age, and sex; whether married or single; calling or occupation; whether able to read or write; nationality; country of birth; country of which citizen or subject; race; last permanent residence in the United States; intended future permanent residence; and time and port of last arrival in the United States; and if a United States citizen, whether native born or naturalized. (39 Stat. 882.)

See notes under § 4258, Comp. St. 1916.

§ 4289¼gg. (Act Feb. 5, 1917, c. 29, § 13.) Grouping of alien passengers in lists; identification tickets.

All aliens arriving by water at the ports of the United States shall be listed in convenient groups, the names of those coming from the same locality to be assembled so far as practicable, and no one list or manifest shall contain more than thirty names. To each alien or head of a family shall be given a ticket on which shall be written his name, a number or letter designating the list in which his name, and other items of information required by this Act, are contained, and his number on said list, for convenience of identification on arrival. Each list or manifest shall be verified by the signature and the oath or affirmation of the master or commanding offi-

cer, or the first or second below him in command, taken before an immigration officer at the port of arrival, to the effect that he has caused the surgeon of said vessel sailing therewith to make a physical and mental examination of each of said aliens, and that from the report of said surgeon and from his own investigation he believes that no one of said aliens is of any of the classes excluded from admission into the United States by section three of this Act, and that also according to the best of his knowledge and belief the information in said lists or manifests concerning each of said aliens named therein is correct and true in every respect. That the surgeon of said vessel sailing therewith shall also sign each of said lists or manifests and make oath or affirmation in like manner before an immigration officer at the port of arrival, stating his professional experience and qualifications as a physician and surgeon, and that he has made a personal examination of each of the said aliens named therein, and that the said list or manifest, according to the best of his knowledge and belief, is full, correct, and true in all particulars relative to the mental and physical condition of said aliens. If no surgeon sails with any vessel bringing aliens, the mental and physical examinations and the verifications of the lists or manifests shall be made by some competent surgeon employed by the owners of the said vessels, and the manifests shall be verified by such surgeon before a United States consular officer or other officer authorized to administer oaths: Provided, That if any changes in the condition of such aliens occur or develop during the voyage of the vessel on which they are traveling, such changes shall be noted on the manifest before the verification thereof. (39 Stat. 884.)

Former statute cited without definite application, Ex parte Prout (D. C.) 253 F. 97. See Comp. St. 1916, § 4260.

§ 4289¼h. (Act Feb. 5, 1917, c. 29, § 14.) Refusal or failure to furnish lists of alien passengers.

It shall be unlawful for the master or commanding officer of any vessel bringing aliens into or carrying aliens out of the United States to refuse or fail to deliver to the immigration officials the accurate and full manifests or statements or information regarding all aliens on board or taken on board such vessel required by this Act, and if it shall appear to the satisfaction of the Secretary of Labor that there has been such a refusal or failure, or that the lists delivered are not accurate and full, such master or commanding officer shall pay to the collector of customs at the port of arrival or departure the sum of $10 for each alien concerning whom such accurate and full manifest or statement or information is not furnished, or concerning whom the manifest or statement or information is not prepared and sworn to as prescribed by this Act. No vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine, or while it remains unpaid, nor shall such fine be remitted or refunded: Provided, That clearance may be granted prior to the determination of such question upon the deposit with the collector of customs of a sum sufficient to cover such fine. (39 Stat. 884.)

See notes under § 4262, Comp. St. 1916.

§ 4289¼hh. (Act Feb. 5, 1917, c. 29, § 15.) Inspection of alien passengers upon arrival; temporary removal for examination.

Upon the arrival at a port of the United States of any vessel bringing aliens it shall be the duty of the proper immigration officials to go or to send competent assistants to the vessel and there inspect all such aliens, or said immigration officials may order a temporary removal of such aliens for examination at a designated time

and place, but such temporary removal shall not be considered a landing, nor shall it relieve vessels, the transportation lines, masters, agents, owners, or consignees of the vessel upon which said aliens are brought to any port of the United States from any of the obligations which, in case such aliens remain on board, would under the provisions of this Act bind the said vessels, transportation lines, masters, agents, owners, or consignees: Provided, That where removal is made to premises owned or controlled by the United States, said vessels, transportation lines, masters, agents, owners, or consignees, and each of them, shall, so long as detention there lasts, be relieved of responsibility for the safekeeping of such aliens. Whenever a temporary removal of aliens is made the vessels or transportation lines which brought them and the masters, owners, agents, and consignees of the vessel upon which they arrive shall pay all expenses of such removal and all expenses arising during subsequent detention, pending decision on the aliens' eligibility to enter the United States and until they are either allowed to land or returned to the care of the line or to the vessel which brought them, such expenses to include those of maintenance, medical treatment in hospital or elsewhere, burial in the event of death, and transfer to the vessel in the event of deportation, excepting only where they arise under the terms of any of the provisos of section eighteen hereof. Any refusal or failure to comply with the provisions hereof shall be punished in the manner specified in section eighteen of this Act. (39 Stat. 885.)

See notes under § 4263, Comp. St. 1916.

Expenses pending examination.—Section 16 of the act of February 20, 1907 (Comp. St. 1916, § 4263), does not obligate steamship lines transporting alien immigrants to defray the expenses of the treatment, care, and maintenance of aliens in hospitals where they are treated prior to their examination by immigration officials and subsequent landing and admission to the United States, but contemplates that the United States shall pay the charges incurred for maintenance and treatment preceding examination and admission to the country. Nederlansch-Amerikaansche Stoomvart Maatschappy (Holland-America Line) v. U. S., 53 Ct. Cl. 522.

§ 4289¼i. (Act Feb. 5, 1917, c. 29, § 16.) Physical and mental examination of alien passengers; regulations.

The physical and mental examination of all arriving aliens shall be made by medical officers of the United States Public Health Service who shall have had at least two years' experience in the practice of their profession since receiving the degree of doctor of medicine, and who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the boards of special inquiry hereinafter provided for, any and all physical and mental defects or diseases observed by said medical officers in any such alien; or, should medical officers of the United States Public Health Service be not available, civil surgeons of not less than four years' professional experience may be employed in such emergency for such service upon such terms as may be prescribed by the Commissioner General of Immigration, under the direction or with the approval of the Secretary of Labor. All aliens arriving at ports of the United States shall be examined by not less than two such medical officers at the discretion of the Secretary of Labor, and under such administrative regulations as he may prescribe and under medical regulations prepared by the Surgeon General of the United States Public Health Service. Medical officers of the United States Public Health Service who have had especial training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at all ports of entry designated by the Secretary of Labor, and such medical officers shall be provided with suitable

facilities for the detention and examination of all arriving aliens in whom insanity or mental defect is suspected, and the services of interpreters shall be provided for such examination. Any alien certified for insanity or mental defect may appeal to the board of medical officers of the United States Public Health Service, which shall be convened by the Surgeon General of the United States Public Health Service, and said alien may introduce before such board one expert medical witness at his own cost and expense. That the inspection, other than the physical and mental examination, of aliens, including those seeking admission or readmission to or the privilege of passing through or residing in the United States, and the examination of aliens arrested within the United States under this Act, shall be conducted by immigrant inspectors, except as hereinafter provided in regard to boards of special inquiry. All aliens arriving at ports of the United States shall be examined by at least two immigrant inspectors at the discretion of the Secretary of Labor and under such regulations as he may prescribe. Immigrant inspectors are hereby authorized and empowered to board and search for aliens any vessel, railway car, or any other conveyance, or vehicle in which they believe aliens are being brought into the United States. Said inspectors shall have power to administer oaths and to take and consider evidence touching the right of any alien to enter, reenter, pass through, or reside in the United States, and, where such action may be necessary, to make a written record of such evidence; and any person to whom such an oath has been administered, under the provisions of this Act, who shall knowingly or willfully give false evidence or swear to any false statement in any way affecting or in relation to the right of any alien to admission, or readmission to, or to pass through, or to reside in the United States shall be deemed guilty of perjury and be punished as provided by section one hundred and twenty-five of the Act approved March fourth, nineteen hundred and nine, entitled "An Act to codify, revise, and amend the penal laws of the United States." All aliens coming to the United States shall be required to state under oath the purposes for which they come, the length of time they intend to remain in the United States, whether or not they intend to abide in the United States permanently and become citizens thereof, and such other items of information regarding themselves as will aid the immigration officials in determining whether they belong to any of the excluded classes enumerated in section three hereof. Any commissioner of immigration or inspector in charge shall also have power to require by subpœna the attendance and testimony of witnesses before said inspectors and the production of books, papers, and documents touching the right of any alien to enter, reenter, reside in, or pass through the United States, and to that end may invoke the aid of any court of the United States; and any district court within the jurisdiction of which investigations are being conducted by an immigrant inspector may, in the event of neglect or refusal to respond to a subpœna issued by any commissioner of immigration or inspector in charge or refusal to testify before said immigrant inspector, issue an order requiring such person to appear before said immigrant inspector, produce books, papers, and documents if demanded, and testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof. That any person, including employees, officials, or agents of transportation companies, who shall assault, resist, prevent, impede, or interfere with any immigration official or employee in the performance of his duty under this Act shall be deemed guilty of a misdemeanor, and on conviction thereof shall

be punished by imprisonment for a term of not more than one year, or by a fine of not more than $2,000, or both; and any person who shall use any deadly or dangerous weapon in resisting any immigration official or employee in the performance of his duty shall be deemed guilty of a felony and shall, on conviction thereof, be punished by imprisonment for not more than ten years. Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In the event of rejection by the board of special inquiry, in all cases where an appeal to the Secretary of Labor is permitted by this Act, the alien shall be so informed and shall have the right to be represented by counsel or other adviser on such appeal. The decision of an immigrant inspector, if favorable to the admission of any alien, shall be subject to challenge by any other immigrant inspector, and such challenge shall operate to take the alien whose right to land is so challenged before a board of special inquiry for its investigation. (39 Stat. 885.)

See notes under § 4265, Comp. St. 1916.

Proceedings for admission in general.—Denial of communication between Chinese woman and citizen, whose wife she claimed to be, pending determination of the matter by the immigration authorities, held not an injustice. Mah Shee v. White, 242 F. 868, 155 C. C. A. 456.

On habeas corpus to obtain discharge of a Chinese woman, ordered deported, though she applied for admission as wife of native-born Chinese citizen of United States, evidence held insufficient to show that applicant was not given fair hearing or that order of deportation was not justified. Tsuie Shee v. Backus, 243 F. 551, 156 C. C. A. 249.

An order denying admission to this country of a Chinese alien held to have been made after a fair hearing, and to be sustained by the evidence. Chew Hoy Quong v. White, 244 F. 749, 157 C. C. A. 197.

Hearing before immigration officers held unfair, where examination is had and evidence weighed in a spirit hostile to the statute making foreign-born children of citizens also citizens. Ex parte Tom Toy Tin (D. C.) 230 F. 747.

Exclusion of alleged son of native-born citizen on ground that his alleged father had not taken advantage of the rights of an American citizen, without evidence of any failure in this respect, held manifestly unfair. Id.

Representation by counsel.—As rules of Bureau of Immigration contemplate submission of evidence on appeal in addition to that brought out at hearing, refusal to permit applicant's counsel to communicate with her held to deprive her of a fair hearing. Mah Shee v. White, 242 F. 868, 155 C. C. A. 456.

A Chinese woman, applying for admission into the United States as the wife of a Chinese merchant, was denied a fair hearing where, pending the determination of her application by the immigration authorities, her attorneys were not allowed to interview her. Chew Hoy Quong v. White (C. C. A.) 249 F. 869.

As proceedings for an alien's admission are summary and informal, he cannot, where not denied counsel or right to produce witnesses, complain that counsel was not present or given opportunity to cross-examine. Ex parte Ng Kwack Kang (D. C.) 233 F. 478.

Rehearing.—On application of a Chinese alien for entry, the commissioner has jurisdiction to order rehearings by inspectors until the facts are sufficiently developed to afford a basis for his judgment. Chew Hoy Quong v. White, 244 F. 749, 157 C. C. A. 197.

Administering of oaths in deportation proceeding.—Under Immigration Act Feb. 20, 1907, § 24 (Comp. St. 1916, § 4273), an immigration inspector is not authorized to administer an oath to take evidence in a proceeding for the deportation of an alien. Backus v. Owe Sam Goon, 235 F. 847, 149 C. C. A. 159, affirming order Ex parte Owe Sam Goon (D. C.) 230 F. 654.

Former statute cited without definite application, Quan Hing Sun v. White (C. C. A.) 254 F. 402.

§ 4289¼ii. (Act Feb. 5, 1917, c. 29, § 17.) Boards of special inquiry; appointment.

Boards of special inquiry shall be appointed by the commissioner of immigration or inspector in charge at the various ports of arrival as may be necessary for the prompt determination of all cases of im-

migrants detained at such ports under the provisions of the law: Each board shall consist of three members, who shall be selected from such of the immigrant officials in the service as the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall from time to time designate as qualified to serve on such boards. When in the opinion of the Secretary of Labor the maintenance of a permanent board of special inquiry for service at any sea or land border port is not warranted, regularly constituted boards may be detailed from other stations for temporary service at such port, or, if that be impracticable, the Secretary of Labor shall authorize the creation of boards of special inquiry by the immigration officials in charge at such ports, and shall determine what Government officials or other persons shall be eligible for service on such boards. Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Secretary of Labor. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal through the commissioner of immigration at the port of arrival and the Commissioner General of Immigration to the Secretary of Labor, and the taking of such appeal shall operate to stay any action in regard to the final disposal of any alien whose case is so appealed until the receipt by the commissioner of immigration at the port of arrival of such decision which shall be rendered solely upon the evidence adduced before the board of special inquiry. In every case where an alien is excluded from admission into the United States, under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Secretary of Labor: Provided, That the decision of a board of special inquiry shall be based upon the certificate of the examining medical officer and, except as provided in section twenty-one hereof, shall be final as to the rejection of aliens affected with tuberculosis in any form or with a loathsome or dangerous contagious disease, or with any mental or physical disability which would bring such aliens within any of the classes excluded from admission to the United States under section three of this Act. (39 Stat. 887.)

See notes under § 4274, Comp. St. 1916.

Constitutionality.—Congress may intrust the decision of an immigrant's right to enter to an executive officer, and, though a denial deprives him of his liberty, he is not denied due process of law. Ex parte Chin Own (D. C.) 239 F. 391.

Members of boards of special inquiry.—A clerk in the immigration service may serve on a board of special inquiry under Immigration Act, § 25 (Comp. St. 1916, § 4274), notwithstanding section 24 (Comp. St. 1916, § 4273). Ex parte Momo Tomimatsu (D. C.) 232 F. 376.

Hearing on right to admission.—In warrant cases, where alien has been admitted, board of special inquiry takes evidence as to his right to remain and reports it to Secretary of Labor, and also makes findings and recommendations. In re Lalime (D. C.) 244 F. 279.

Appeal to secretary.—The authority of the Solicitor of the Department of Labor to affirm on appeal an order of the Commissioner of Immigration denying an alien admission to the United States is not reviewable on habeas corpus where the Secretary of Labor personally affirmed the order. Ching Hing v. White, 234 F. 616, 148 C. C. A. 382, affirming order Ex parte Ching Hing (D. C.) 224 F. 261.

On appeal to the Secretary of Labor from an order deporting a Chinese, appellant has no right to have his counsel appear to present further evidence or argue orally. Id.

Right of Commissioner of Immigration and Secretary of Labor to decide appeal on application by Chinese woman

for admission to the country held not affected by fact that immigration inspector believed she was married to her alleged husband. Mah Shee v. White, 242 F. 868, 155 C. C. A. 456.

In the absence of a showing to the contrary, a memorandum decision excluding a Chinese person from the country will be held the decision of the Secretary of Labor, within the Chinese Exclusion Acts. Ex parte Ng Kwack Kang (D. C.) 233 F. 478.

Conclusiveness of decision in general.—Under Act Feb. 20, 1907, § 25 (Comp. St. 1916, § 4274), which was a continuation of earlier similar enactments, decision of collector of customs, admitting a Chinese person to United States as native-born citizen, is not a conclusive adjudication, preventing subsequent deportation proceedings. Ex parte Chin Own (D. C.) 239 F. 391.

Fair hearing and dependency of right of review thereon.—Where board of special inquiry which heard evidence in proceeding for deportation of aliens admitted to country was guilty of intentional unfairness to aliens, and Secretary of Labor adopted findings of board, such unfairness invalidates order for deportation. In re Lalime (D. C.) 244 F. 279.

Denial by board of special inquiry of alien's application for counsel, held to show unfairness. Id.

Scope of review in general.—Where alien was refused admission to United States on ground that she was likely to become public charge, question of whether she was immoral cannot be considered, nor is her immorality ground for sustaining exclusion. U. S. v. Howe (D. C.) 235 F. 990.

Questions of fact.—Under Chinese Exclusion Act 1907, § 25 (Comp. St. 1916, § 4274), the courts cannot review an order of the immigration authorities excluding a Chinese person, where there is any evidence to support it. Ex parte Ng Kwack Kang (D. C.) 233 F. 478.

Discharge on habeas corpus.—Where alien excluded from the United States on ground she was likely to become a public charge brought habeas corpus, finding of commissioner of immigration must be upheld if there is any evidence, however slight, to support his decision. U. S. v. Howe (D. C.) 235 F. 990.

An order of exclusion and deportation unsupported by any evidence is invalid. Hence the question whether there was any evidence before the immigration tribunal in support of its findings may be raised in habeas corpus proceedings. Ex parte Prout (D. C.) 253 F. 97.

Former statute cited without definite application.—Quan Hing Sun v. White (C. C. A.) 254 F. 402.

§ 4289¼j. (Act Feb. 5, 1917, c. 29, § 18.) Immediate deportation of aliens brought in violation of law; cost of maintenance and return.

All aliens brought to this country in violation of law shall be immediately sent back, in accommodations of the same class in which they arrived, to the country whence they respectively came, on the vessels bringing them, unless in the opinion of the Secretary of Labor immediate deportation is not practicable or proper. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came. That it shall be unlawful for any master, purser, person in charge, agent, owner, or consignee of any such vessel to refuse to receive back on board thereof, or on board of any other vessel owned or operated by the same interests, such aliens; or to fail to detain them thereon; or to refuse or fail to return them in the manner aforesaid to the foreign port from which they came; or to fail to pay the cost of their maintenance while on land; or to make any charge for the return of any such alien, or to take any security for the payment of such charge; or to take any consideration to be returned in case the alien is landed; or knowingly to bring to the United States at any time within one year from the date of deportation any alien rejected or arrested and deported under any provision of this Act, unless prior to reembarkation the Secretary of Labor has consented that such alien shall reapply for admission, as required by section three hereof; and if it shall appear to the satisfaction of the Secretary of Labor that such master, purser, person in charge, agent, owner, or consignee has violated any of the foregoing provisions, or any of the provisions of section fifteen hereof, such master, purser, person in charge, agent, owner, or consignee shall pay to the collector of customs of the district in which the port of ar-

rival is located, or in which any vessel of the line may be found, the sum of $300 for each and every violation of any provision of said sections; and no vessel shall have clearance from any port of the United States while any such fine is unpaid, nor shall such fine be remitted or refunded: Provided, That clearance may be granted prior to the determination of such question upon the deposit with the collector of customs of a sum sufficient to cover such fine. If the vessel by which any alien ordered deported came has left the United States and it is impracticable for any reason to deport the alien within a reasonable time by another vessel owned by the same interests, the cost of deportation may be paid by the Government and recovered by civil suit from any agent, owner, or consignee of the vessel: Provided further, That the Commissioner General of Immigration, with the approval of the Secretary of Labor, may suspend, upon conditions to be prescribed by the Commissioner General of Immigration, the deportation of any aliens found to have come in violation of any provision of this Act if, in his judgment, the testimony of such alien is necessary on behalf of the United States Government in the prosecution of offenders against any provision of this Act or other laws of the United States; and the cost of maintenance of any person so detained resulting from such suspension of deportation, and a witness fee in the sum of $1 per day for each day such person is so detained, may be paid from the appropriation for the enforcement of this Act, or such alien may be released under bond, in the penalty of not less than $500, with security approved by the Secretary of Labor, conditioned that such alien shall be produced when required as a witness and for deportation. No alien certified, as provided in section sixteen of this Act, to be suffering from tuberculosis in any form, or from a loathsome or dangerous contagious disease other than one of quarantinable nature, shall be permitted to land for medical treatment thereof in any hospital in the United States, unless the Secretary of Labor is satisfied that to refuse treatment would be inhumane or cause unusual hardship or suffering, in which case the alien shall be treated in the hospital under the supervision of the immigration officials at the expense of the vessel transporting him: Provided further, That upon the certificate of an examining medical officer to the effect that the health or safety of an insane alien would be unduly imperiled by immediate deportation, such alien may, at the expense of the appropriation for the enforcement of this Act, be held for treatment until such time as such alien may, in the opinion of such medical officer, be safely deported: Provided further, That upon the certificate of an examining medical officer to the effect that a rejected alien is helpless from sickness, mental or physical disability, or infancy, if such alien is accompanied by another alien whose protection or guardianship is required by such rejected alien, such accompanying alien may also be excluded, and the master, agent, owner, or consignee of the vessel in which such alien and accompanying alien are brought shall be required to return said alien and accompanying alien in the same manner as vessels are required to return other rejected aliens. (39 Stat. 887.)

See notes under § 4268, Comp. St. 1916.

Detention as witness.—Under Immigration Act Feb. 20, 1907, § 19 (Comp. St. 1916, § 4268), deportation of alien may be suspended when testimony is necessary in suit for penalty as well as in prosecution for criminal offense. In re Aliens (D. C.) 231 F. 335.

Alien ordered deported may be detained and required to give bail when needed as witness in suit for penalty under Immigration Act Feb. 20, 1907, § 5 (Comp. St. 1916, § 4250), especially in view of Rev. St. § 881 (Comp. St. 1916, § 1492). Id.

Under Immigration Act Feb. 20, 1907, § 19 (Comp. St. 1916, § 4268), and rule of Commissioner General of Immigration, held, that court may order deten-

tion of alien as witness in criminal prosecution and require bond or commit him in default thereof. Id.

Suspension of deportation of alien needed as witness as provided by Immigration Act Feb. 20, 1907, § 19 (Comp. St. 1916, § 4268), held within the power of the government in dealing with aliens unlawfully in the country. Id.

Bond to care for alien while awaiting deportation.—See U. S. v. Rubin (D. C.) 233 F. 125.

§ 4289¼jj. (Act Feb. 5, 1917, c. 29, § 19.) Deportation within certain time of aliens entering or found in United States in violation of law.

At any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: Provided, That the marriage to an American citizen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed by this Act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or

after the commission of acts which make her liable to deportation under this Act: Provided further, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: Provided further, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: Provided further, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: Provided further, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final. (39 Stat. 889.)

See notes under §§ 4269, 4270, Comp. St. 1916.

Validity of statute.—While an alien who has acquired a residence in this country, is entitled to the same protection of life, liberty, and property as a citizen, he acquires no vested right to remain and the government has the power to deport him if, in the judgment of Congress the public interests so require, and such power is not dependent upon the existence of statutory conditions as to his right to remain at the time he became a resident. U. S. v. Sui Joy (C. C. A.) 240 F. 392.

Persons subject to deportation under statute in general.—In the provision of Immigration Act Feb. 20, 1907, c. 1134, § 3, 34 Stat. 899, as amended by Act March 26, 1910, c. 128, § 2, 36 Stat. 264 (Comp. St. 1916, § 4247), for the deportation of "any alien who shall be found * * * practicing prostitution after such alien shall have entered the United States," the words "after such alien shall have entered the United States" should be construed as though they read "while such alien is in the United States," and the provision applies to all alien women whether they came into the United States at a port of entry, or by the annexation of the land in which they lived, as in case of alien residents of Hawaii at the time of its annexation. U. S. v. Kimi Yamamoto (C. C. A.) 240 F. 390.

The provisions of Immigration Act Feb. 20, 1907, c. 1134, § 3, as amended by Act March 26, 1910, c. 128, § 2 (Comp. St. 1916, § 4247), for the deportation of "any alien * * * who shall receive, share in, or derive benefit from any part of the earnings of any prostitute," applies to any alien found in the United States, without regard to the manner of entry, including aliens who were resident in Hawaii at the time of its annexation. U. S. v. Sui Joy (C. C. A.) 240 F. 392.

Under Act Feb. 20, 1907, §§ 2, 3, as amended by Act March 26, 1910, §§ 1, 2 (Comp. St. 1916, §§ 4244, 4247), alien who, having entered United States, leases premises to prostitutes in which they ply their trade, is not to be deported as receiving earnings of prostitutes. Katz v. Commissioner of Immigration at Port of San Francisco, Cal., 245 F. 316, 157 C. C. A. 508.

Under Immigration Act 1907, § 2, as amended by Act March 26, 1910, c. 128 (Comp. St. 1916, § 4244), and section 20 (Comp. St. 1916, § 4469), held, that alien, who regularly entered United States, could not be deported as person likely to become public charge because, after his entry and establishment in business, it was contended, though he denied same, that he was guilty of fraud in country from which he came. Howe v. U. S., 247 F. 292, 159 C. C. A. 386.

Application of act to Chinese.—Under the Chinese Exclusion Acts, and Immigration Act Feb. 20, 1907, §§ 21, 43 (Comp. St. 1916, §§ 4270, 4289), the Secretary of Labor cannot arrest and deport a Chinese alien on the sole ground that he is found in the country in violation of the Chinese Exclusion

Acts. U. S. v. Woo Jan, 38 S. Ct. 207, 245 U. S. 552, 62 L. Ed. 466, answering certified questions (C. C. A.) 250 F. 595.

Under Act Cong. Feb. 20, 1907, §§ 21, 43 (Comp. St. 1916, §§ 4270, 4289), the Secretary of Commerce and Labor may order deportation of an alien violating the act, or any law of the United States, except the Chinese Exclusion Law, which requires formal proceedings in court before an order of deportation can be entered. U. S. v. United States ex rel. Lem Him, 239 F. 1023, 152 C. C. A. 661, affirming judgment Same v. Prentis (D. C.) 230 F. 935.

Under Chinese Exclusion Act Sept. 13, 1888, § 13 (Comp. St. 1916, § 4313), and Immigration Act Feb. 20, 1907, § 43 (Comp. St. 1916, § 4289), a Chinese person unlawfully within the United States, but who has committed no offense under the Immigration Act, cannot be deported after a merely administrative hearing, under Immigration Act, §§ 20, 21 (Comp. St. 1916, §§ 4269, 4270). Lee Wong Hin v. Mayo, 240 F. 368, 153 C. C. A. 294.

Immigration Act, §§ 20, 21 (Comp. St. 1916, §§ 4269, 4270), as to deportations by Secretary of Labor, held to authorize deportation of Chinese laborers in the country in violation of the Immigration Act. Yee Ling v. U. S., 242 F. 628, 155 C. C. A. 318, reversing order Ex parte Lee Ying (D. C.) 225 F. 335.

Immigration Act Feb. 5, 1917, construing the third proviso of this section and the second proviso of section 4289¼u, post, together, does not apply to a Chinese person against whom deportation proceedings were pending at the time of its taking effect, unless some offense was thereafter committed which changed his status. Mayo v. U. S. (C. C. A.) 251 F. 275.

Entering "in violation of law."—See Wallis v. United States ex rel. Ng Sam (C. C. A.) 230 F. 71.

A Chinese person, in the United States in violation of Chinese Exclusion Act, § 6 (Comp. St. 1916, § 4293), and Immigration Act, § 36 (Comp. St. 1916, § 4285), cannot, more than three years after his entry, be summarily deported under Immigration Act, §§ 20, 21 (Comp. St. 1916, §§ 4269, 4270), but proceedings must be brought under Chinese Exclusion Act, § 13, section 4313 post. Moy Wing Sun v. Prentis, 234 F. 24, 148 C. C. A. 40.

Proceeding to deport Chinese person held civil, and not criminal, though government intended to proceed on hypothesis that defendant entered the United States in violation of Immigration Act, § 36 (Comp. St. 1916, § 4285), and of the Chinese exclusion laws, and hence the government could call defendant as its witness. In re Chan Foo Lin, 243 F. 137, 156 C. C. A. 3.

Where aliens entered the United States surreptitiously, and without inspection, they may be deported, irrespective of other grounds of deportation. Singh v. U. S., 243 F. 557, 156 C. C. A. 255; Id., 243 F. 559, 156 C. C. A. 257.

Entry into United States by a naturalized citizen of Canada, who had applied for and been granted a pass by immigration officials at Montreal office, established under Immigration Act 1907, § 32 (Comp. St. 1916, § 4281), cannot be deemed in deportation proceedings, to have entered United States in violation of law. Howe v. U. S., 247 F. 292, 159 C. C. A. 386.

One who enlists in Canada and takes oath of allegiance, on his subsequent desertion and surreptitious return to the United States, not coming through any port of entry, may be deported as an alien under Immigration Act Feb. 20, 1907, § 36 (Comp. St. 1916, § 4285). Ex parte Griffin (D. C.) 237 F. 445.

Where an alien's deportation was properly ordered, because he had not been inspected as required by Immigration Act, § 36 (Comp. St. 1916, § 4285), fact that he was improperly denied by inspector of immigration right to rebut charges that he was guilty of statements and demonstrations of anarchistic tendencies was immaterial. Ex parte Callow (D. C.) 240 F. 212.

Under Immigration Act Feb. 20, 1907, c. 1134, § 36, 34 Stat. 908 (Comp. St. 1916, § 4285), declaring that all aliens who shall enter the United States, except at the seaports thereof or at such place or places as the secretary of labor may from time to time designate, shall be adjudged to have entered the country unlawfully and shall be deported, an alien who entered from Canada at a designated port of entry, but walked by unobserved the place of inspection, is subject to deportation; the act placing the burden on the alien to present himself at the proper place for inspection, and the result being the same, though the alien had been inspected and passed on a previous entry into United States. Id.

That alien not within excluded classes, seeking admittance into United States made misstatement as to where he was intending to proceed, is no ground for his deportation. In re Lalime (D. C.) 244 F. 279.

Limitation period.—Under Immigration Act Feb. 20, 1907, § 21 (Comp. St. 1916, § 4370), a Chinese person is not entitled to discharge because he was not actually deported within 3-year period, where deportation proceedings were instituted within that time. Bun Chew v. Connell, 233 F. 220, 147 C. C. A. 226.

Under Immigration Act, §§ 2, 20, 21 (Comp. St. 1916, §§ 4244, 4269, 4270), a person likely to thereafter become a public charge may be deported, though

he did not become a charge within three years after entry. Lam Fung Yen v. Frick, 233 F. 393, 147 C. C. A. 329.

A Chinese person, in the United States in violation of Chinese Exclusion Act, § 6 (Comp. St. 1916, § 4293), and Immigration Act, § 36 (Comp. St. 1916, § 4285), cannot, more than three years after his entry, be summarily deported under Immigration Act, §§ 20, 21 (Comp. St. 1916, §§ 4269, 4270), but proceedings must be brought under Chinese Exclusion Act, § 13. Moy Wing Sun v. Prentis, 234 F. 24, 148 C. C. A. 40.

To deport a Chinese person on the ground of his being in the United States in violation of the Immigration Act, in that he was a person likely to become a public charge and that he entered without inspection, proceedings must be begun within three years after his entry. Wong Yuen v. Prentis, 234 F. 28, 148 C. C. A. 44.

Under Immigration Act Feb. 20, 1907 (Comp. St. 1916, § 4270), the Secretary of Labor can order deportation of an alien only when he has entered the United States within the three years preceding his arrest by immigration authorities. Backus v. Owe Sam Goon, 235 F. 847, 149 C. C. A. 159, affirming order Ex parte Owe Sam Goon (D. C.) 230 F. 654.

Proceedings for the deportation of Chinese persons under the Exclusion Acts are not limited to three years by sections 20 and 21 of Immigration Act of February 20, 1907 (Comp. St. 1916, §§ 4269, 4270). Wong Chung v. U. S., 244 F. 410, 157 C. C. A. 36.

A Chinese alien who has entered this country in violation of Act Feb. 20, 1907, may be deported on order of the Commissioner of Labor under that act, § 20 (Comp. St. 1916, § 4269), at any time within three years. Mok Nuey Tau v. White, 244 F. 742, 157 C. C. A. 190.

The Commissioner of Labor has authority, under Immigration Act Feb. 20, 1907, § 20 (Comp. St. 1916, § 4269), to order the deportation of a Chinese alien found illegally in this country, within three years after his entry. Quan You v. White, 244 F. 746, 157 C. C. A. 194.

Where, admission of Chinese person being refused, he escaped from detention and remained in country for over three years, held that, under Immigration Act, § 21 (Comp. St. 1916, § 4270), he might thereafter be ordered deported; denial of admission being equivalent to deportation proceedings within three years. Gin Dock Sue v. U. S., 245 F. 308, 157 C. C. A. 500, affirming order U. S. v. Gin Dock Sue (D. C.) 230 F. 657.

Under Immigration Act, § 21, held, that Chinese person in the country in violation of the Chinese Exclusion Act may be deported by the immigration authorities within three years after his entry. Ex parte Chun Woi San (D. C.) 230 F. 538, appeal dismissed Chan Ngun Yuk v. White, 228 F. 1019, 142 C. C. A. 665.

A Chinese laborer could not be deported, except after a hearing before a commissioner, with the right of appeal to the District Court, unless he had entered the United States within three years. Ex parte Tom Yuen (D. C.) 230 F. 656.

Proceedings in general.—See Low Kwai v. Backus (C. C. A.) 229 F. 481.

In warrant cases, where alien has been admitted, board of special inquiry takes evidence as to his right to remain and reports it to Secretary of Labor and also makes findings and recommendations. In re Lalime (D. C.) 244 F. 279.

Jurisdiction.—As Chinese Exclusion Act Sept. 13, 1888 (Comp. St. 1916, § 4313), vests power to deport Chinese aliens solely in the judiciary, the only power of the Secretary of Labor to deport an alien, though he be a Chinese person, is derived from Immigration Act Feb. 20, 1907 (Comp. St. 1916, § 4269 et seq.). Backus v. Owe Sam Goon, 235 F. 847, 149 C. C. A. 159, affirming order Ex parte Owe Sam Goon (D. C.) 230 F. 654.

Warrants of arrest.—Under Immigration Act Feb. 20, 1907, §§ 20, 21 (Comp. St. 1916, §§ 4269, 4270), and section 3 as amended by Act March 26, 1910, § 2 (Comp. St. 1916, § 4247), Secretary of Labor held not authorized to delegate power to decide whether warrant for alien's arrest should be executed. Low Kwai v. Backus, 229 F. 481, 143 C. C. A. 549.

Where counsel for alien whose deportation was sought stated that he did not desire to offer further testimony, and later that he did not desire to file a brief, defects in cabled authority of warrants on which the alien was arrested were waived. Toku Sakai v. U. S., 239 F. 492, 152 C. C. A. 370.

Hearing.—In a proceeding for the deportation of an alien woman, held, that there was nothing to show that an order of deportation by the Secretary of Labor was based on evidence as to her entering the country for an immoral purpose, taken in a proceeding for her admission. Greenwood v. Frick, 233 F. 629, 147 C. C. A. 437.

While rule 22, subd. 4, par. "b," of the Bureau of Immigration may be so arbitrarily enforced as to infringe right of aliens, a Chinese person cannot complain of a preliminary examination for deportation before he was advised of his right to counsel and to inspect arrest warrant, where the questions asked were material and the hearing was fair. Wong Back Sue v. Connell, 233 F. 659, 147 C. C. A. 467.

Where it is sought to deport a Chi-

nese person who entered as a merchant on ground that he had later become a laborer, he is entitled, if fraud or misrepresentations in securing his entry are relied on, to be so advised. Lui Hip Chin v. Plummer, 238 F. 763, 151 C. C. A. 613.

Where an alien woman, whose deportation was sought under Act Feb. 20, 1907, c. 1134, § 3, 34 Stat. 899, as amended by Act March 26, 1910, c. 128, § 2, 36 Stat. 264 (Comp. St. 1916, § 4247), on the ground that she was practicing prostitution, admitted the charge, and her counsel stated that he desired to offer no further evidence, and subsequently waived the right to file a brief, such alien having been informed that she was entitled to counsel, and not having been taken advantage of, cannot complain of the order of deportation. Toku Sakai v. U. S. (C. C. A.) 239 F. 492.

The guaranty of due process forbids the deportation of an alien without according to him a full and fair hearing. In re Chan Foo Lin, 243 F. 137, 156 C. C. A. 3.

Statement of resident of Mexico, identifying photograph of Chinese sought to be deported for having entered United States from Mexico in violation of Chinese Exclusion Act 1888, § 7 (Comp. St. 1916, § 4308), held not sufficient legal foundation for order of deportation. White v. Tom Yuen, 244 F. 739, 157 C. C. A. 187.

Inability to produce a witness for cross-examination in deportation proceedings against a Chinese person held not to invalidate the proceedings. Chin Ah Yoke v. White, 244 F. 940, 157 C. C. A. 290.

One accused as an alien unlawfully in the country because of receiving earnings of prostitutes must be notified of the charge, given opportunity to inspect warrant, and advised of right to counsel. Ex parte Plastino (D. C.) 236 F. 295.

Evidence.—Evidence held to warrant finding by Secretary of Labor that Chinese persons who boarded a train near the Canadian border were aliens of the excluded class and entered the country in violation of law. Wallis v. U. S., 230 F. 71, 144 C. C. A. 369; Wallis v. Fei Nei (C. C. A.) 230 F. 77.

Fact that Chinese person entered country within three years, necessary to give jurisdiction to immigration authorities, held not provable by ex parte statements of witnesses, based upon photographs. Ex parte Tom Yuen (D. C.) 230 F. 656.

Where a Chinese person contended that he was born in San Francisco and resided there until 16 years of age, his ignorance of the city warrants an inference that his testimony was false, and justifies deportation. U. S. v. Sisson, 232 F. 599, 146 C. C. A. 557.

A Chinese person, admitted and domiciled as a merchant, will not be deported because he becomes a laborer; but a showing that almost immediately upon arrival he began work as a laborer, which he continued, warrants a finding that he was admitted on fraudulent representations. Ong Seen v. Burnett, 232 F. 850, 147 C. C. A. 44.

Where it was sought to deport a Chinese woman on the ground that she was guilty of prostitution, evidence held insufficient to establish the charge. Chan Kam v. U. S., 232 F. 855, 147 C. C. A. 49.

In a proceeding for the deportation of an alien woman, held, that evidence taken in proceeding for her admission was not made part of the record, so that it could be considered against her in the second proceeding. Greenwood v. Frick, 233 F. 629, 147 C. C. A. 437.

In a proceeding for the deportation of a Chinese person, a train inspection card held admissible over an objection to lack of identification. Wong Back Sue v. Connell, 233 F. 659, 147 C. C. A. 467.

A photograph, identified by a Chinese person as one of himself, and identified by persons who claimed to have seen him in Mexico, held admissible in evidence. Id.

Letters written to a Chinese person, held not to establish that he was born in China and had entered the United States at a recent date. Moy Wing Sun v. Prentis, 234 F. 24, 148 C. C. A. 40.

Proof that a Chinese person had been deported in November, 1910, for attempting to enter on a fraudulent certificate, does not show, nearly four years later, that his subsequent entry into the United States was within three years of the institution of proceedings for his deportation. Wong Yuen v. Prentis, 234 F. 28, 148 C. C. A. 44.

That after a freight car, sealed before it left the United States, whence it was carried into and out of Canada, was found to contain a Chinese person on return, does not establish his unlawful entry into the United States. Id.

The Secretary of Labor cannot order the deportation of an alien on the ground that he entered in violation of Immigration Act, where the judgment is based on mere conjecture. Backus v. Owe Sam Goon, 235 F. 847, 149 C. C. A. 159, affirming order Ex parte Owe Sam Goon (D. C.) 230 F. 654.

Though petitioner, a chinese person, was found in Arizona in a refrigerator car, evidence that a resident of Mexico, before an immigration inspector, identified petitioner from his photograph as one who had been in Mexico, held insufficient to justify deportation on ground he had within three years entered from Mexico in violation of Immigration Act. Id.

Evidence held to sustain a finding by

immigration officers that a Chinese woman, arrested for being unlawfully in the United States, was an alien, and not, as claimed, a native citizen. Chin Ah Yoke v. White, 244 F. 940, 157 C. C. A. 290.

In proceeding for deportation of alien, evidence held insufficient to show that he was receiving earnings of prostitute. Katz v. Commissioner of Immigration at Port of San Francisco, Cal., 245 F. 316, 157 C. C. A. 508.

Proof of ownership of a disorderly house cannot be made by proof of general reputation. Id.

In a proceeding for the deportation of an alien, evidence held insufficient to show that he had received or was receiving the earnings of a prostitute; hence deportation was improperly ordered. Backus v. Katz, 245 F. 320, 157 C. C. A. 512.

The order of deportation of an alien as unlawfully in the country because of receiving earnings of prostitutes must be supported by evidence at the hearing establishing the charge. Ex parte Plastino (D. C.) 236 F. 295.

Res judicata.—On deportation proceedings for an alien, she may be ordered deported on grounds considered in prior proceedings relating to her right to admission. Greenwood v. Frick, 233 F. 629, 147 C. C. A. 437.

Warrant of deportation.—A warrant of deportation should expressly name the country to which the alien is to be taken, and is too indefinite where it merely directed return to the country whence the alien came, and that fact was susceptible of more than one interpretation. Ex parte Callow (D. C.) 241 F. 212.

Review by courts—Fair hearing and dependency of right of review thereon.—A Chinese woman held to have been given a fair and impartial hearing before she was ordered deported. Ex parte Chan Kam, 230 F. 990, 145 C. C. A. 184.

Where fraud in procuring a certificate on which a Chinese person was admitted as a student under Act May 6, 1882, § 6, as amended by Act July 5, 1884 (Comp. St. 1916, § 4293), is charged, the action of the Secretary of Labor is conclusive, if the proceedings and hearing were fair. Lo Pong v. Dunn, 235 F. 510, 149 C. C. A. 56.

An alien deported under Immigration Act Feb. 20, 1907, § 3, as amended by Act March 26, 1910, § 2 (Comp. St. 1916, § 4247), on ground that she was practicing prostitution, held not entitled to complain of the order against her, having admitted the charge and received a fair hearing. Toku Sakai v. U. S., 239 F. 492, 152 C. C. A. 370.

Chinese person's right to enter country as returning Chinese merchant cannot be reviewed, where, pending an application to reopen his case, admission having been denied, he escaped from detention quarters, for proceedings before immigration officials can be reviewed only if unfair. Gin Dock Sue v. U. S., 245 F. 308, 157 C. C. A. 500, affirming order U. S. v. Gin Dock Sue (D. C.) 230 F. 657.

A hearing on an application of a Chinese person for admission into the United States is unfair, where the immigration authorities received and acted upon a confidential communication, the source and contents of which they did not disclose to the applicant or her attorneys, so as to allow rebuttal. Chew Hoy Quong v. White (C. C. A.) 249 F. 869.

Immigration authorities' decision, not unsupported by evidence and reached after a fair hearing, that Chinaman entering the country from Canada should be deported to China, held conclusive. Chin Teung v. Skeffington (D. C.) 229 F. 859.

Where right to enter the country as the son of a native-born citizen under Rev. St. § 1993 (Comp. St. 1916, § 3947), is examined in a spirit hostile to the law, held, that applicant is denied a fair hearing. Ex parte Lee Dung Moo (D. C.) 230 F. 746.

Where an alien's deportation was properly ordered, because he had not been inspected as required by Immigration Act, § 36 (Comp. St. 1916, § 4285), fact that he was improperly denied by inspector of immigration right to rebut charges that he was guilty of statements and demonstrations of anarchistic tendencies was immaterial. Ex parte Callow (D. C.) 240 F. 212.

—— **Jurisdictional questions.**—While the court cannot review evidence on which immigration authorities ordered the deportation of an alien on ground that he was in United States in violation of Immigration Act, courts may consider jurisdictional question of whether there is evidence to support finding of the immigation authorities. Backus v. Owe Sam Goon, 235 F. 847, 149 C. C. A. 159, affirming order Ex parte Owe Sam Goon (D. C.) 230 F. 654.

—— **Weight of evidence.**—While the courts will not review the evidence upon which immigration officials ordered the deportation of Chinese persons, an order of deportation of one prima facie entitled to remain, based upon conjecture, is arbitrary, and subject to review. Chan Kam v. U. S., 232 F. 855, 147 C. C. A. 49.

The sufficiency of the evidence to support order of immigration authorities deporting alien cannot be reviewed, where there is evidence in support of their determination and alien appears to have had impartial hearing. Ex parte Chin Doe Tung (D. C.) 236 F. 1017.

—— **Decisions of the secretary.**—Where aliens, sought to be deported, were given a fair hearing, and there was evidence to support the findings of the Secretary of Labor, the courts were not concerned with its weight. Wallis

v. U. S., 230 F. 71, 144 C. C. A. 369; Wallis v. Fei Nei (C. C. A.) 230 F. 77.

The decision of the Secretary of Labor that a Chinese person held for deportation is not a citizen is final, unless the Secretary acted unlawfully, improperly, or abused his dicretion. U. S. v. Sisson, 230 F. 974, 145 C. C. A. 168, modifying order (D. C.) 222 F. 693.

—— **Discharge on habeas corpus.**— On habeas corpus proceedings to secure the discharge of Chinese woman found guilty of violating Act Feb. 20, 1907, as amended by Act March 26, 1910 (Comp. St. 1916, § 4247), the court need not weigh the evidence. Ex parte Chan Kam, 230 F. 990, 145 C. C. A. 184.

On habeas corpus proceedings to secure the discharge of Chinese woman found guilty of violating Act Feb. 20, 1907, as amended by Act March 26, 1910 (Comp. St. 1916, § 4247) the court need not weigh the evidence. Id.

Where the warrant on which a Chinese person, whose deportation was sought, was indefinite, merely charging that he was subject to deportation being in the United States in violation of the Chinese Exclusion Laws, held that under Rev. St. § 761 (Comp. St. 1916, § 1289), he would not be ordered discharged for that reason. Ong Seen v. Burnett, 232 F. 850, 147 C. C. A. 44.

While courts will not weigh evidence on which immigration authorities ordered deportation of a Chinese person as one belonging to an exempt class, they may reverse where there is no evidence to sustain rulings by immigration authorities. Wong Yee Toon v. Stump, 233 F. 194, 147 C. C. A. 200, reversing judgment Ex parte Wong Yee Toon (D. C.) 227 F. 247.

On application by a Chinese person for writ of habeas corpus against the immigration inspector, evidence held to warrant a finding by the inspector that such Chinese person was addicted to gambling when he left China, and that he entered the United States, intending to make his living by gambling, and not by profitable industry. Lam Fung Yen v. Frick, 233 F. 393, 147 C. C. A. 329.

Where supported by competent evidence, a finding by the immigration authorities with regard to an alien is conclusive on the courts. Id.

On application by a Chinese person for writ of habeas corpus against the immigration inspector, evidence held to warrant a finding by the inspector that such Chinese person was addicted to gambling when he left China, and that he entered the United States, intending to make his living by gambling, and not by profitable industry. Id.

A Chinese person, arrested under a warrant signed by the Assistant Secretary of Labor, will not be discharged on habeas corpus because the warrant should have been signed by the Secretary of Labor. Moy Wing Sun v. Prentis, 234 F. 24, 148 C. C. A. 40.

Under the evidence, held, dismissal of habeas corpus granted Chinese laborers without certificate of residence, apprehended after being brought in from Canada, would not be disturbed. Arnk Bing v. U. S., 238 F. 348, 151 C. C. A. 364.

Where a Chinese person was ordered deported by immigration officials on account of errors in interpretation of his testimony, held that, though it was not raised at hearing, writ of habeas corpus may be granted on ground that he was not accorded a fair hearing because of errors. White v. Wong Quen Luck, 243 F. 547, 156 C. C. A. 245.

Proceedings for deportation of a Chinese person held not unfair, and an order of deportation held sustained by the evidence. Mok Nuey Tau v. White, 244 F. 742, 157 C. C. A. 190; Quan You v. White, 244 F. 746, 157 C. C. A. 194.

On habeas corpus, held, that court would not interfere because alien was broadly charged with violation of the Chinese Exclusion Act, where he knew what was specifically urged and had an opportunity to meet the charge. Ex parte Chun Woi San (D. C.) 230 F. 538, appeal dismissed Chan Ngun Yuk v. White, 228 F. 1019, 142 C. C. A. 665.

On habeas corpus, held, that court will consider character of evidence to establish jurisdictional fact that alien sought to be deported entered the country within three years. Ex parte Owe Sam Goon (D. C.) 230 F. 654, order affirmed Backus v. Owe Sam Goon (C. C. A.) 235 F. 847.

While the District Court will not prescribe rules of evidence for deportation proceedings before the immigration authorities, where the jurisdiction of such authorities depends upon the establishment of the fact that the alien entered the country within three years, the court on habeas corpus will consider the character of the evidence by which jurisdiction is sought to be established, though not, perhaps, the weight of the evidence. Id.

The court, on habeas corpus by one ordered deported as an alien who received earnings of a prostitute, will ascertain whether he was accorded a fair hearing, and whether there was any evidence to support the charge. Ex parte Plastino (D. C.) 236 F. 295.

Under the record in proceeding to deport an alien, held, on habeas corpus, that there was no evidence to support the charge of his having received earnings of prostitutes. Id.

On habeas corpus to obtain release from restraint under a warrant for deportation the District Court will not in the first instance determine the country from whence the alien came, where that question could be determined in more than one way and was left open

by the warrant of deportation. Ex parte Callow (D. C.) 240 F. 212.

Former statute cited without definite application, Low Kwai v. Backus (C. C. A.) 229 F. 481; In re Chan Foo Lin (C. C. A.) 243 F. 137; White v. Tom Yuen (C. C. A.) 244 F. 739; Mok Nuey Tau v. White (C. C. A.) 244 F. 742.

§ 4289¼k. (Act Feb. 5, 1917, c. 29, § 20.) Ports to which aliens to be deported; cost of deportation.

The deportation of aliens provided for in this Act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States. If deportation proceedings are instituted at any time within five years after the entry of the alien, such deportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the contractor, procurer, or other person by whom the alien was unlawfully induced to enter the United States, or, if that cannot be done, then the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of this Act, and the deportation from such port shall be at the expense of the owner or owners of such vessels or transportation line by which such aliens respectively came, or, if that is not practicable, at the expense of the appropriation for the enforcement of this Act. If deportation proceedings are instituted later than five years after the entry of the alien, or, if the deportation is made by reason of causes arising subsequent to entry, the cost thereof shall be payable from the appropriation for the enforcement of this Act. A failure or refusal on the part of the masters, agents, owners, or consignees of vessels to comply with the order of the Secretary of Labor to take on board, guard safely, and transport to the destination specified any alien ordered to be deported under the provisions of this Act shall be punished by the imposition of the penalties prescribed in section eighteen of this Act: Provided, That when in the opinion of the Secretary of Labor the mental or physical condition of such alien is such as to require personal care and attendance, the said Secretary shall when necessary employ a suitable person for that purpose, who shall accompany such alien to his or her final destination, and the expense incident to such service shall be defrayed in the same manner as the expense of deporting the accompanied alien is defrayed. Pending the final disposal of the case of any alien so taken into custody, he may be released under a bond in the penalty of not less than $500 with security approved by the Secretary of Labor, conditioned that such alien shall be produced when required for a hearing or hearings in regard to the charge upon which he has been taken into custody, and for deportation if he shall be found to be unlawfully within the United States. (39 Stat. 890.)

See notes under §§ 4247, 4269, 4284, Comp. St. 1916.

Places to which aliens deported in general.—Under the Immigration Law, §§ 20, 21, 35 (Comp. St. 1916, §§ 4269, 4270, 4284), alien native of India, who unlawfully entered the United States from Canada, should be deported to India, where it did not appear that he had acquired domicile in Canada. Singh v. U. S., 243 F. 557, 156 C. C. A. 255.

That alien was in British Columbia for 11 months and for 8 months of that time worked at lumber mill, living in company house, does not show that he acquired domicile in Canada so as to warrant his deportation to Canada from the United States instead of to country from whence he came. Id.

That an alien purchased land in Canada does not show that he had a domicile there, so as to warrant his deportation from the United States to Canada instead of to the country from whence he came. Id.

Where aliens, natives of India, were discovered surreptitiously entering the United States from Canada, they were properly ordered deported to India, where they denied having been in Canada, and there was no evidence that they had acquired any domicile there or had remained there any length of time. Singh v. U. S., 243 F. 559, 156 C. C. A. 257.

Place to which Chinese deported.—Chinese persons, claimed to have entered country from Canada, but who denied any previous residence, or even presence, in Canada, held in no position to insist that they should be deported to Canada. Wallis v. U. S., 230 F. 71, 144 C. C. A. 369; Wallis v. Fei Nei (C. C. A.) 230 F. 77.

Under Immigration Act 1907, § 35 (Comp. St. 1916, § 4284), evidence held to warrant deportation to China of persons of Chinese birth or descent, though it was claimed that they entered the United States from Canada. Id.

Where Chinese persons were evidently attempting a joint unlawful entry into the country, effect of possession by one of Chinese clothing and money held not limited to him, in determining country to which they should be deported. Id.

A Chinese person, who comes into the United States from Canada without being entitled to remain here, will be deported, not to China, but to Canada, the "country whence he came." U. S. v. Sisson, 230 F. 974, 145 C. C. A. 168, modifying order (D. C.) 222 F. 693.

One who was born in China, and came directly from there to Canada, whence he attempted to cross into the United States, can be deported to China. Jung Sew v. U. S., 231 F. 949, 146 C. C. A. 145, affirming order Ex parte Jung Sew (D. C.) 221 F. 500.

An order for deportation of an alien to China is not warranted, where the record does not show that he came from China, but that he entered the United States from an adjacent country. Yee Suey v. Berkshire, 232 F. 143, 146 C. C. A. 335.

Under Act Feb. 20, 1907, § 35 (Comp. St. 1916, § 4284), a Chinese person, who had resided in Canada for a number of years before seeking entry into the United States, should be deported to Canada, instead of being returned to China. U. S. v. Sisson, 232 F. 599, 146 C. C. A. 557.

Where a Chinese person entered the United States, remained there for some years, went to Mexico, and thereafter fraudulently re-entered the United States, so that he was subject to deportation, he will be deported to China, and not to Mexico. Bun Chew v. Connell, 233 F. 220, 147 C. C. A. 226.

Where a Chinese person unlawfully entered the United States from Mexico, he will be deported, not to Mexico, but to China. Wong Back Sue v. Connell, 233 F. 659, 147 C. C. A. 467.

A person of the Mongolian race must be deported to Canada or discharged, where all that is known regarding him is that he was last seen in Canada. Mark Seong v. U. S., 242 F. 496, 155 C. C. A. 272, modifying order Ex parte Chin Him (D. C.) 227 F. 131.

Persons of Chinese birth, not shown to have come to this country from China, held deportable to Canada, under Immigration Act, §§ 20, 21 (Comp. St. 1916, §§ 4269, 4270). Yee Ling v. U. S., 242 F. 628, 155 C. C. A. 318, reversing order Ex parte Lee Ying (D. C.) 225 F. 335.

Warrant or order for deportation.—Where the record does not show that an alien came from China, but that he entered the United States from an adjacent country, an order for his deportation to China may be amended. Yee Suey v. Berkshire, 232 F. 143, 146 C. C. A. 335.

A warrant of deportation should expressly name the country to which the alien is to be taken, and is too indefinite when it merely directs return to the country whence the alien came, and that fact is susceptible of more than one interpretation. Ex parte Callow (D. C.) 240 F. 212.

Cost of deportation.—Under Immigration Act 1907, § 3, as amended by Act March 26, 1910 (Comp. St. 1916, § 4247), and section 20 (Comp. St. 1916, § 4269), held, that a steamship which brought alien to country is liable for expense of his deportation after expiration of three-year period, where he was found guilty of sharing in earnings of a prostitute. Oceanic Steam Nav. Co. v. U. S., 232 F. 591, 146 C. C. A. 549.

§ 4289¼kk. (Act Feb. 5, 1917, c. 29, § 21.) Admission of aliens liable to be excluded on giving bond or cash deposit.

Any alien liable to be excluded because likely to become a public charge or because of physical disability other than tuberculosis in any form or a loathsome or dangerous contagious disease may,

if otherwise admissible, nevertheless be admitted in the discretion of the Secretary of Labor upon the giving of a suitable and proper bond or undertaking, approved by said Secretary, in such amount and containing such conditions as he may prescribe, to the United States and to all States, Territories, counties, towns, municipalities, and districts thereof, holding the United States and all States, Territories, counties, towns, municipalities, and districts thereof harmless against such alien becoming a public charge. In lieu of such bond, such alien may deposit in cash with the Secretary of Labor such amount as the Secretary of Labor may require, which amount shall be deposited by said Secretary in the United States Postal Savings Bank, a receipt therefor to be given the person furnishing said sum, showing the fact and object of its receipt and such other information as said Secretary may deem advisable. All accruing interest on said deposit during the time same shall be held in the United States Postal Savings Bank shall be paid to the person furnishing the sum for deposit. In the event of such alien becoming a public charge, the Secretary of Labor shall dispose of said deposit in the same manner as if same had been collected under a bond as provided in this section. In the event of the permanent departure from the United States, the naturalization, or the death of such alien, the said sum shall be returned to the person by whom furnished, or to his legal representatives. The admission of such alien shall be a consideration for the giving of such bond, undertaking, or cash deposit. Suit may be brought thereon in the name and by the proper law officers either of the United States Government or of any State, Territory, District, county, town, or municipality in which such alien becomes a public charge. (39 Stat. 891.)

See notes under § 4275, Comp. St. 1916.

Right to admit alien under bond.—Under Immigration Act Feb. 20, 1907, §§ 2, 26 (Comp. St. 1916, §§ 4244, 4275), Secretary of Labor held authorized to take bond conditioned that alien children should attend school, and not become a public charge, and that reports should be made. Illinois Surety Co. v. U. S., 229 F. 527, 143 C. C. A. 595; Id., 229 F. 533, 143 C. C. A. 601.

It is proper to take a bond conditioned that an alien contemporaneously admitted shall not within a specified time become a public charge, etc. U. S. v. Feldman, 247 F. 482, 159 C. C. A. 536.

Action on bond—Right of action.—In action on bond given to secure alien children's admission into the country, breach of any condition held to entitle government to recover the penalty, regardless of damages. Illinois Surety Co. v. U. S., 229 F. 527, 143 C. C. A. 595; Id., 229 F. 533, 143 C. C. A. 601.

—— **Question for jury.**—Where presumption of delivery of reports concerning alien deposited in mails was rebutted by presumption arising from fact that immigration officers did not have possession of reports, question whether surety on bond under which alien was admitted had made reports is for jury. U. S. v. Feldman, 247 F. 482, 159 C. C. A. 536.

—— **Review.**—Where jury was orally waived, whether evidence showed that alien children were unaccompanied by parents, so as to authorize the taking of the bond sued on, held not reviewable. Illinois Surety Co. v. U. S., 229 F. 527, 143 C. C. A. 595; Id. 229 F. 533, 143 C. C. A. 601.

Bond to care for alien while awaiting deportation.—See U. S. v. Rubin (D. C.) 233 F. 125.

Former statute cited without definite application, See Illinois Surety Co. v. U. S. (C. C. A.) 229 F. 533, 143 C. C. A. 601.

§ 4289¼*l*. (Act Feb. 5, 1917, c. 29, § 22.) Temporary detention and admission or deportation, in case of contagious disorder, of wife or minor child of naturalized alien or resident alien.

Whenever an alien shall have been naturalized or shall have taken up his permanent residence in this country, and thereafter shall send for his wife or minor children to join him, and said wife or any of said minor children shall be found to be affected with any contagious disorder, such wife or minor children shall be held, under such regulations as the Secretary of Labor shall prescribe, until it shall be determined whether the disorder will be easily curable

or whether they can be permitted to land without danger to other persons; and they shall not be either admitted or deported until such facts have been ascertained; and if it shall be determined that the disorder is easily curable and the husband or father or other responsible person is willing to bear the expense of the treatment, they may be accorded treatment in hospital until cured and then be admitted, or if it shall be determined that they can be permitted to land without danger to other persons, they may, if otherwise admissible, thereupon be admitted: Provided, That if the person sending for wife or minor children is naturalized, a wife to whom married or a minor child born subsequent to such husband or father's naturalization shall be admitted without detention for treatment in hospital, and with respect to a wife to whom married or a minor child born prior to such husband or father's naturalization the provisions of this section shall be observed, even though such person is unable to pay the expense of treatment, in which case the expense shall be paid from the appropriation for the enforcement of this Act. (39 Stat. 891.)

See notes under § 4286, Comp. St. 1916.

Wife of alien.—The wife of a Japanese domiciled in this country, who could not file his declaration of intention, is not entitled to hospital treatment under Immigration Act, § 37 (Comp. St. 1916, § 4286). Ex parte Momo Tomimatsu (D. C.) 232 F. 376.

§ 4289¼*ll*. (Act Feb. 5, 1917, c. 29, § 23.) Landing stations for alien passengers transported from Canada or Mexico.

No person, company, or transportation line engaged in carrying alien passengers for hire from Canada or Mexico to the United States, whether by land or water, shall be allowed to land any such passengers in the United States without providing suitable and approved landing stations, conveniently located, at the point or points of entry. The Commissioner General of Immigration is hereby authorized and empowered to prescribe the conditions, not inconsistent with law, under which the above-mentioned landing stations shall be deemed suitable within the meaning of this section. Any person, company, or transportation line landing an alien passenger in the United States without compliance with the requirement herein set forth shall be deemed to have violated section eight of this Act, and upon conviction shall be subject to the penalty therein prescribed. (39 Stat. 892.)

§ 4289¼m. (Act Feb. 5, 1917, c. 29, § 23.) Interior immigrant stations.

For the purpose of making effective the provisions of this section relating to the protection of aliens from fraud and loss, and also the provisions of section thirty of this Act, relating to the distribution of aliens, the Secretary of Labor shall establish and maintain immigrant stations at such interior places as may be necessary, and, in the discretion of the said Secretary, aliens in transit from ports of landing to such interior stations shall be accompanied by immigrant inspectors. (39 Stat. 892.)

§ 4289¼mm. (Act Feb. 5, 1917, c. 29, § 23.) Discrimination in rules and contracts for entry and inspection of aliens.

In prescribing rules and making contracts for the entry and inspection of aliens applying for admission from or through foreign contiguous territory, due care shall be exercised to avoid any discriminatory action in favor of foreign transportation companies transporting to such territory aliens destined to the United States, and all such transportation companies shall be required, as a condition precedent to the inspection or examination under such rules and contracts at the ports of such contiguous territory of aliens

brought thereto by them, to submit to and comply with all the requirements of this Act which would apply were they bringing such aliens directly to seaports of the United States, and, from and after the taking effect of this Act, no alien applying for admission from foreign contiguous territory shall be permitted to enter the United States unless upon proving that he was brought to such territory by a transportation company which had submitted to and complied with all the requirements of this Act, or that he entered, or has resided in, such territory more than two years prior to the date of his application for admission to the United States. (39 Stat. 893.)

§ 4289¼n. (Act Feb. 5, 1917, c. 29, § 28.) Aiding or assisting certain aliens to enter.

Any person who knowingly aids or assists any anarchist or any person who believes in or advocates the overthrow by force or violence of the Government of the United States, or who disbelieves in or is opposed to organized government, or all forms of law, or who advocates the assassination of public officials, or who is a member of or affiliated with any organization entertaining or teaching disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such anarchist or person aforesaid to enter therein, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than $5,000 or by imprisonment for not more than five years, or both.

Any person who knowingly aids or assists any alien who advocates or teaches the unlawful destruction of property to enter the United States shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment for not more than six months, or by both such fine and imprisonment. (39 Stat. 894.)

See notes under § 4287, Comp. St. 1916.

§ 4289¼nn. (Act Feb. 5, 1917, c. 29, § 29.) International conference for regulation of immigration of aliens; special commissioners.

The President of the United States is authorized, in the name of the Government of the United States, to call, in his discretion, an international conference, to assemble at such point as may be agreed upon, or to send special commissioners to any foreign country, for the purpose of regulating by international agreement, subject to the advice and consent of the Senate of the United States, the immigration of aliens to the United States; of providing for the mental, moral, and physical examination of such aliens by American consuls or other officers of the United States Government at the ports of embarkation, or elsewhere; of securing the assistance of foreign Governments in their own territories to prevent the evasion of the laws of the United States governing immigration to the United States; of entering into such international agreements as may be proper to prevent the immigration of aliens who, under the laws of the United States, are or may be excluded from entering the United States, and of regulating any matters pertaining to such immigration. (39 Stat. 894.)

§ 4289¼o. (Act Feb. 5, 1917, c. 29, § 23.) Immigration officers; duties.

The duties of commissioners of immigration and other immigration officials in charge of districts, ports, or stations shall be of an administrative character, to be prescribed in detail by regulations prepared under the direction or with the approval of the Secretary of Labor. (39 Stat. 892.)

See § 4272, Comp. St. 1916, and notes.

§ 4289¼oo. (Act Feb. 5, 1917, c. 29, § 24.) Same; appointment; compensation.

Immigrant inspectors and other immigration officers, clerks, and employés shall hereafter be appointed and their compensation fixed and raised or decreased from time to time by the Secretary of Labor, upon the recommendation of the Commissioner General of Immigration and in accordance with the provisions of the civil-service Act of January sixteenth, eighteen hundred and eighty-three: Provided, That said Secretary, in the enforcement of that portion of this Act which excludes contract laborers and induced and assisted immigrants, may employ, for such purposes and for detail upon additional service under this Act when not so engaged, without reference to the provisions of the said civil-service Act, or to the various Acts relative to the compilation of the Official Register, such persons as he may deem advisable and from time to time fix, raise, or decrease their compensation. He may draw annually from the appropriation for the enforcement of this Act $100,000, or as much thereof as may be necessary, to be expended for the salaries and expenses of persons so employed and for expenses incident to such employment; and the accounting officers of the Treasury shall pass to the credit of the proper disbursing officer expenditures from said sum without itemized account whenever the Secretary of Labor certifies that an itemized account would not be for the best interests of the Government: Provided further, That nothing herein contained shall be construed to alter the mode of appointing commissioners of immigration at the several ports of the United States as provided by the sundry civil appropriation Act approved August eighteenth, eighteen hundred and ninety-four, or the official status of such commissioners heretofore appointed. (39 Stat. 893.)

See § 4273, Comp. St. 1916, and notes.

§ 4289¼p. (Act Feb. 5, 1917, c. 29, § 25.) Jurisdiction of district courts; duties of district attorneys.

The district courts of the United States are hereby invested with full jurisdiction of all causes, civil and criminal, arising under any of the provisions of this Act. That it shall be the duty of the United States district attorney of the proper district to prosecute every such suit when brought by the United States under this Act. Such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with such violation may be found. That no suit or proceeding for a violation of the provisions of this Act shall be settled, compromised, or discontinued without the consent of the court in which it is pending, entered of record, with the reasons therefor. (39 Stat. 893.)

See § 4277, Comp. St. 1916, and notes.

Jurisdiction to adjudicate identity.—Where S., applying for admission as native-born citizen of United States, produced, when examined under Chinese Exclusion Acts, certified copy of court discharge in habeas corpus, and commissioner of immigration denied admission upon sole ground that applicant was not person described in court discharge, United States District Court had jurisdiction to adjudicate the matter of identity; decision of immigration authorities not precluding such inquiry. White v. Tam Sen (C. C. A.) 252 F. 131.

§ 4289¼pp. (Act Feb. 5, 1917, c. 29, § 26.) Disposal of privileges at stations; sale of liquors.

All exclusive privileges of exchanging money, transporting passengers or baggage, or keeping eating houses, and all other like privileges in connection with any United States immigrant station, shall be disposed of to the lowest responsible and capable bidder, after public competition, notice of such competitive bidding having been made in two newspapers of general circulation for a period of two weeks, subject to such conditions and limitations as the Commissioner General of Immigration, under the direction or with the approval of the Secretary of Labor, may prescribe, and all receipts accruing from the disposal of privileges shall be paid into the Treasury of the United States. No such contract shall be awarded to an alien. No intoxicating liquors shall be sold at any such immigration station. (39 Stat. 894.)

See § 4279, Comp. St. 1916, and notes.

§ 4289¼q. (Act Feb. 5, 1917, c. 29, § 27.) Local jurisdiction over stations.

For the preservation of the peace and in order that arrests may be made for crimes under the laws of the States and Territories of the United States where the various immigrant stations are located, the officers in charge of such stations, as occasion may require, shall admit therein the proper State and municipal officers charged with the enforcement of such laws, and for the purpose of this section the jurisdiction of such officers and of the local courts shall extend over such stations. (39 Stat. 894.)

See § 4280, Comp. St. 1916.

§ 4289¼qq. (Act Feb. 5, 1917, c. 29, § 31.) Signing alien on ship's articles with intent to permit landing in violation of laws.

Any person, including the owner, agent, consignee, or master of any vessel arriving in the United States from any foreign port or place, who shall knowingly sign on the ship's articles, or bring to the United States as one of the crew of such vessel, any alien, with intent to permit such alien to land in the United States in violation of the laws and treaties of the United States regulating the immigration of aliens, or who shall falsely and knowingly represent to the immigration authorities at the port of arrival that any such alien is a bona fide member of the crew, shall be liable to a penalty not exceeding $5,000, for which sum the said vessel shall be liable and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense. (39 Stat. 895.)

§ 4289¼r. (Act Feb. 5, 1917, c. 29, § 32.) Landing of excluded aliens employed on vessels.

No alien excluded from admission into the United States by any law, convention, or treaty of the United States regulating the immigration of aliens, and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States, and the negligent failure of the owner, agent, consignee, or master of such vessel to detain on board any such alien after notice in writing by the immigration officer in charge at the port of arrival, and to deport such alien, if required by such immigration officer or by the Secretary of Labor, shall render such owner, agent, consignee, or master liable to a penalty not exceeding $1,000, for which sum the said vessel shall be liable, and may be seized and proceeded against by way of libel in any district

court of the United States having jurisdiction of the offense. (39 Stat. 895.)

§ 4289¼rr. (Act Feb. 5, 1917, c. 29, § 33.) Paying off or discharging excluded aliens employed on vessels; landing to allow reshipping.

It shall be unlawful and be deemed a violation of the preceding section to pay off or discharge any alien employed on board any vessel arriving in the United States from any foreign port or place, unless duly admitted pursuant to the laws and treaties of the United States regulating the immigration of aliens: Provided, That in case any such alien intends to reship on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Secretary of Labor may prescribe to prevent aliens not admissible under any law, convention, or treaty from remaining permanently in the United States, and may be paid off, discharged, and permitted to remove his effects, anything in such laws or treaties or in this Act to the contrary notwithstanding, provided due notice of such proposed action be given by the master or the seaman himself to the principal immigration officer in charge at the port of arrival. (39 Stat. 896.)

§ 4289¼s. (Act Feb. 5, 1917, c. 29, § 34.) Deportation of alien seamen landing contrary to law.

Any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act. (39 Stat. 896.)

§ 4289¼ss. (Act Feb. 5, 1917, c. 29, § 35.) Employment on passenger vessels of aliens afflicted with idiocy, etc.

It shall be unlawful for any vessel carrying passengers between a port of the United States and a port of a foreign country, upon arrival in the United States, to have on board employed thereon any alien afflicted with idiocy, imbecility, insanity, epilepsy, tuberculosis in any form, or a loathsome or dangerous contagious disease, if it appears to the satisfaction of the Secretary of Labor, from an examination made by a medical officer of the United States Public Health Service, and is so certified by such officer, that any such alien was so afflicted at the time he was shipped or engaged and taken on board such vessel and that the existence of such affliction might have been detected by means of a competent medical examination at such time; and for every such alien so afflicted on board any such vessel at the time of arrival the owner, agent, consignee, or master thereof shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $50, and pending departure of the vessel the alien shall be detained and treated in hospital under supervision of immigration officials at the expense of the vessel; and no vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine and while it remains unpaid: Provided, That clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine: Provided further, That such fine may, in the discretion of the Secretary of Labor, be mitigated or remitted. (39 Stat. 896.)

§ 4289¼t. (Act Feb. 5, 1917, c. 29, § 36.) Lists of aliens employed on vessels arriving from foreign ports; reports of aliens illegally landed.

Upon arrival of any vessel in the United States from any foreign port or place it shall be the duty of the owner, agent, consignee, or master thereof to deliver to the principal immigration officer in charge of the port of arrival lists containing the names of all aliens employed on such vessel, stating the positions they respectively hold in the ship's company, when and where they were respectively shipped or engaged, and specifying those to be paid off and discharged in the port of arrival; or lists containing so much of such information as the Secretary of Labor shall by regulation prescribe; and after the arrival of any such vessel it shall be the duty of such owner, agent, consignee, or master to report to such immigration officer, in writing, as soon as discovered, all cases in which any such alien has illegally landed from the vessel, giving a description of such alien, together with any information likely to lead to his apprehension; and before the departure of any such vessel it shall be the duty of such owner, agent, consignee, or master to deliver to such immigration officer a further list containing the names of all alien employees who were not employed thereon at the time of the arrival but who will leave port thereon at the time of her departure, and also the names of those, if any, who have been paid off and discharged, and of those, if any, who have deserted or landed; and in case of the failure of such owner, agent, consignee, or master so to deliver either of the said lists of such aliens arriving and departing, respectively, or so to report such cases of desertion or landing, such owner, agent, consignee, or master shall, if required by the Secretary of Labor, pay to the collector of customs of the customs district in which the port of arrival is located the sum of $10 for each alien concerning whom correct lists are not delivered or a true report is not made as above required; and no such vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine, and, in the event such fine is imposed, while it remains unpaid; nor shall such fine be remitted or refunded: Provided, That clearance may be granted prior to the determination of such question upon deposit of a sum sufficient to cover such fine. (39 Stat. 896.)

§ 4289¼tt. (Act Feb. 5, 1917, c. 29, § 37.) Definitions.

The word "person" as used in this Act shall be construed to import both plural and the singular, as the case may be, and shall include corporations, companies, and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any director, officer, agent, or employee of any corporation, company, or association acting within the scope of his employment or office shall in every case be deemed to be the act, omission, or failure of such corporation, company, or association, as well as that of the person acting for or in behalf of such corporation, company, or association. (39 Stat. 897.)

§ 4289¼u. (Act Feb. 5, 1917, c. 29, § 38.) Time of taking effect of act; repeal.

This Act, except as otherwise provided in section three, shall take effect and be enforced on and after May first, nineteen hundred and seventeen. The Act of March twenty-sixth, nineteen hundred and ten, amending the Act of February twentieth, nineteen hundred and seven, to regulate the immigration of aliens into the United States; the Act of February twentieth, nineteen hundred and seven, to regulate the immigration of aliens into the United States, except section thirty-four thereof; the Act of March third,

nineteen hundred and three, to regulate the immigration of aliens into the United States, except section thirty-four thereof; and all other Acts and parts of Acts inconsistent with this Act are hereby repealed on and after the taking effect of this Act: Provided, That this Act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent, except as provided in section nineteen hereof, nor to repeal, alter, or amend section six, chapter four hundred and fifty-three, third session Fifty-eighth Congress, approved February sixth, nineteen hundred and five, nor to repeal, alter, or amend the Act approved August second, eighteen hundred and eighty-two, entitled "An Act to regulate the carriage of passengers by sea," and amendments thereto, except as provided in section eleven hereof: Provided further, That nothing contained in this Act shall be construed to affect any prosecution, suit, action, or proceedings brought, or any act, thing, or matter, civil or criminal, done or existing at the time of the taking effect of this Act, except as mentioned in the third proviso of section nineteen hereof; but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the laws or parts of laws repealed or amended by this Act are hereby continued in force and effect. (39 Stat. 897.)

The acts expressly repealed by this act are as follows: Act March 3, 1903, c. 1012, 32 Stat. 1213 (except § 34); Act Feb. 20, 1907, c. 1134, 34 Stat. 898 (except § 34); and Act March 26, 1910, c. 128, 36 Stat. 263. Other acts superseded by this act by the inclusion of the provisions thereof therein are as follows: a provision of Act Oct. 19, 1888, c. 1210, § 1, 25 Stat. 566, as amended by Res. April 28, 1904, No. 34, 33 Stat. 591; Act April 29, 1902, c. 641, § 3, 32 Stat. 177, as amended by Res. April 28, 1904, No. 34, 33 Stat. 591; a provision of Act March 4, 1909, c. 299, § 1, 35 Stat. 969; Act March 4, 1909, c. 305, 35 Stat. 1060; Act Feb. 25, 1913, c. 73, § 1, 37 Stat. 682; and a provision of Act Oct. 22, 1913, c. 32, 38 Stat. 226.

See, also, note at the beginning of this Chapter.

Notes of Decisions

Exclusion and deportation of Chinese.—Under the Chinese Exclusion Acts, and Immigration Act Feb. 20, 1907, §§ 21, 43 (Comp. St. 1916, §§ 4270, 4289) the Secretary of Labor cannot arrest and deport a Chinese alien on the sole ground that he is found in the country in violation of the Chinese Exclusion Acts. U. S. v. Woo Jan, 38 S. Ct. 207, 245 U. S. 552, 62 L. Ed. 466, answering certified questions (C. C. A.) 250 F. 595.

Under Chinese Exclusion Act Sept. 13, 1888, § 13 (Comp. St. 1916, § 4313, post), and Immigration Act Feb. 20, 1907, § 43 (Comp. St. 1916, § 4289) a Chinese person unlawfully within the United States, but who has committed no offense under the Immigration Act, cannot be deported after a merely administrative hearing, under Immigration Act, §§ 20, 21 (Comp. St. 1916, §§ 4269, 4270). Lee Wong Hin v. Mayo, 240 F. 368, 153 C. C. A. 294.

Immigration Act Feb. 5, 1917, construing the third proviso of section 4289¼jj, ante, and the second proviso of this section together, does not apply to a Chinese person against whom deportation proceedings were pending at the time of its taking effect, unless some offense was thereafter committed which changed his status. Mayo v. U. S. (C. C. A.) 251 F. 275.

Power of Secretary of Commerce and Labor to order deportation.—Under Act Cong. Feb. 20, 1907, §§ 21, 43 (Comp. St. 1916, §§ 4270, 4289), the Secretary of Commerce and Labor may order deportation of an alien violating the act, or any law of the United States, except the Chinese Exclusion Law, which requires formal proceedings in court before an order of deportation can be entered. U. S. v. United States ex rel. Lem Him, 239 F. 1023, 152 C. C. A. 661, affirming judgment Same v. Prentis (D. C.) 230 F. 935

CHAPTER B—EXCLUSION OF CHINESE

Sec.
4290. Coming of Chinese laborers to United States suspended.
4293. Chinese other than laborers; certificates of identity.
4296. Comparison of lists with certificates.
4297. Forfeitures of vessels.
4298. Bringing or landing Chinese laborers not entitled to enter.
4299. Chinese not to enter by land without certificate; deportation.
4300. Persons exempted from application of act.
4308. Return of Chinese laborers after departure; identification of laborers; certificates.
4313. Arrest and removal of Chinese unlawfully in United States.
4314. Same; diplomatic and consular officers excepted.
4315. Laws prohibiting coming of Chinese continued.
4316. Removal of Chinese not entitled to be or remain in United States.
4317. Arrested person to prove right to remain.
4319. Habeas corpus proceedings by Chinese denied landing; bail.
4320. Certificates of residence; arrest and deportation of laborers not having.
4321. Regulations for execution of act.
4324. "Laborer" and "merchant" defined; proof for entrance of merchant.
4328. Classes of Chinese permitted to enter; transit of laborers.
4338. Regulations for execution of acts and of treaty.

§ 4290. (Act May 6, 1882, c. 126, § 1, as amended, Act July 5, 1884, c. 220.) Coming of Chinese laborers to United States suspended.

1. Construction and operation of Chinese exclusion laws in general.—The Chinese Exclusion Act, embraces all Chinese within its terms, and imposes on all, including merchants, certain requirements as a condition to the privilege of remaining in this country. Louie Dai v. U. S., 238 F. 68, 151 C. C. A. 144.

3. Admission and exclusion of Chinese.—A Chinese boy seven years of age, who came to this country with an uncle and under his charge, should be given the status of the uncle. U. S. v. Jew Sung Gwong (D. C.) 232 F. 279.

4. —— Detention and arrest.—Chinese person, escaping from detention quarters, held deportable, though subsequently acquiring status of merchant or attaché of Chinese consular office. U. S. v. Gin Dock Sue (D. C.) 230 F. 657.

Chinese person, escaping from detention quarters, instead of establishing mercantile status before immigration officers or an appeal to courts, held subject to deportation. Id.

5. —— Citizens of the United States.—The son of an American citizen, though of Chinese descent, is a citizen of the United States, and entitled to enter the country as such. Ex parte Wong Foo (D. C.) 230 F. 534.

Foreign-born son of native-born citizen of Chinese descent held entitled to admission to the country, under Rev. St. § 1993 (Comp. St. 1916, § 3947), though he remained abroad until 27 years old. Ex parte Ng Doo Wong (D. C.) 230 F. 751.

6. —— "Chinese laborers."—A Chinese contractor is a Chinese laborer within the Exclusion Acts, and not entitled to enter. U. S. v. Jew Sung Gwong (D. C.) 232 F. 279.

7. —— Children of Chinese.—Hearsay evidence by a third person that petitioner, a Chinese person, admitted as the minor son of a merchant, was not the son of such merchant, held inadmissible to establish that fact. Wong Yee Toon v. Stump, 233 F. 194. 147 C. C. A. 200, reversing judgment Ex parte Wong Yee Toon (D. C.) 227 F. 247.

The son of an American citizen, though of Chinese descent, is a citizen of the United States, and entitled to enter the country as such. Ex parte Wong Foo (D. C.) 230 F. 534.

Minor son of Chinese merchant, who was entitled to remain in United States under Chinese Exclusion Act without registration, during his minority, at least, is one of the excepted class. U. S. v. Moy Nom (D. C.) 249 F. 772.

Where minor son of Chinese merchant, who was lawfully in United States, by reason of status of his father, acquired by gift or purchase interest in mercantile business, such minor is, after reaching his majority, entitled to remain in United States, notwithstanding his father's return to China. Id.

A Chinese person entering the United States in good faith as a minor child of a member of the exempt class and for the purpose of study, and who is still a student, although obliged to work a part of each day to earn living ex-

penses, is not subject to deportation. U. S. v. Gin Ong (D. C.) 253 F. 210.

12. Treaties and rights of Chinese thereunder.—Under article 2 of treaty of 1880 between United States and China, a Chinese merchant domiciled in United States has right to bring his wife and minor children into country, and this right may be exercised, though minor son was 20 years old and had contracted a marriage in China before admission was sought. Woo Hoo v. White, 243 F. 541, 156 C. C. A. 239.

§ 4293. (Act May 6, 1882, c. 126, § 6, as amended, Act July 5, 1884, c. 220.) Chinese other than laborers; certificates of identity.

See, also, notes under § 4290, ante.

1. Persons "other than laborers."—In deportation proceeding, Chinese person admitted as student, and receiving identification certificate as such pursuant to this section, held not subject to deportation because he did some manual labor while attending school. Moy Kong Chiu v. U. S., 246 F. 94, 158 C. C. A. 320.

A Chinese boy seven years of age, who came to this country with an uncle and under his charge, should be given the status of the uncle. U. S. v. Jew Sung Gwong (D. C.) 232 F. 279.

4. Wife and children of Chinese merchant.—A Chinese person having less than a year of minority remaining may enter as the minor son of a Chinese merchant domiciled in the United States. Lew Loy v. U. S., 242 F. 405, 155 C. C. A. 181.

The wife of a Chinese merchant domiciled in the United States, is on proof of that fact entitled to enter. Ex parte Chan Shee (D. C.) 236 F. 579.

8. Certificate of merchant.—Where a Chinese person, admitted as the minor child of a merchant, received a regular certificate of admission, the government, in subsequent deportation proceedings based on the fact such person had become a laborer, has the burden of showing that the entry was not for the purpose of conserving the family relation and following the occupation of a merchant. U. S. v. Lew Loy (D. C.) 253 F. 784.

13. Visèed certificate—Effect as evidence.—Where a Chinese person holds a merchant's certificate, such certificate is prima facie valid, and should not be set aside, unless there is some competent evidence to overcome it. Ong Chew Lung v. Burnett, 232 F. 853, 147 C. C. A. 47.

A certificate issued to a Chinese person, showing his right to enter and remain in the United States, is prima facie evidence of his right, and he cannot be deported by immigration authorities without substantial evidence showing that he was not entitled to enter and remain. Wong Yee Toon v. Stump, 233 F. 194, 147 C. C. A. 200, reversing judgment Ex parte Wong Yee Toon (D. C.) 227 F. 247.

Where a Chinese person left the country and then returned, he has the burden of showing that his re-entry was lawful, and his original certificate of residence is not prima facie evidence of his right to remain. Bun Chew v. Connell, 233 F. 220, 147 C. C. A. 226.

Under this section, continued by Act May 5, 1892 (Comp. St. 1916, § 4315), a Chinese person who entered under a merchant's certificate in due form cannot be deported for having fraudulently entered the United States, unless there is competent evidence to overcome the effect of the certificate. U. S. v. Fong Hong (D. C.) 233 F. 168.

14. —— Evidence to controvert certificate.—The prima facie case made by certificate as to the status of the alien as a student may be overcome by the other facts in the case. Lo Pong v. Dunn, 235 F. 510, 149 C. C. A. 56.

Where a Chinese person admitted on certificate as a merchant immediately engages in employment as a laborer, that fact has strong retroactive bearing as evidence that he entered with intent to become a laborer. Lui Hip Chin v. Plummer, 238 F. 763, 151 C. C. A. 613.

While certificate of admission issued to Chinese person, entering as merchant and minor son of a merchant, is prima facie evidence of his right to remain, government may show that he entered fraudulently for purpose of immediately becoming a laborer. Lew Loy v. U. S., 242 F. 405, 155 C. C. A. 181.

That a Chinese person securing admission as a merchant and as the minor son of a merchant immediately becomes and continues as a laborer is strong evidence tending to show that he entered to become a laborer. Id.

In proceeding for deportation of Chinese person who entered as a merchant and the minor son of a merchant evidence held to warrant finding that his entry was fraudulent and that he entered to become a laborer. Id.

Certificate of identity issued pursuant to this section to Chinese person entering United States as student, while declared to be prima facie evidence of right of person to whom issued to enter the country, may be overcome by competent evidence that it was fraudulently obtained. Moy Kong Chiu v. U. S., 246 F. 94, 158 C. C. A. 320.

That Chinese person, admitted as student on certificate issued pursuant to this section, immediately on his arrival engages in and continues in em-

ployment as a laborer, justifies conclusion that certificate was obtained by fraudulent representations. Id.

Certificate issued to Chinese person, pursuant to this section, who was admitted as student, cannot be annulled on mere suspicion or conjecture that Chinese person fraudulently procured it, but government has burden of proving that fact. Id.

Whether there is any substantial evidence warranting the immigration authorities in setting aside a certificate and deporting a Chinese person, admitted as a merchant under a certificate issued in accordance with this section, is for the courts to determine. Ex parte Hor Yuk Sang (D. C.) 251 F. 403.

Where a Chinese person was admitted into the United States as a merchant, receiving a certificate from the immigration authorities in accordance with this section, the certificate, being issued under a statute made pursuant to a treaty, cannot be set aside, and deportation ordered, without substantial evidence to overcome its effect. Id.

The effect of a certificate of admission issued to a Chinese person as the minor son of a merchant can be destroyed only by substantial evidence, and cannot be overthrown by a mere suspicion that such person entered to become a laborer. U. S. v. Lew Loy (D. C.) 253 F. 784.

16. Deportation of Chinese.—A Chinese person, admitted on a certificate as a student under this section, may be deported on order of Secretary of Labor, on ground that certificate was procured by fraud. Lo Pong v. Dunn, 235 F. 510, 149 C. C. A. 56.

17. —— Where merchant or student becomes a laborer.—A Chinese person, admitted and domiciled as a merchant, will not be deported because he becomes a laborer; but a showing that almost immediately upon arrival he began work as a laborer, which he continued, warrants a finding that he was admitted on fraudulent representations. Ong Seen v. Burnett, 232 F. 850, 147 C. C. A. 44.

A Chinese person, who was a merchant during the period of registration, does not lose his right to remain in the country by thereafter becoming a laborer. Louie Dai v. U. S., 238 F. 68, 151 C. C. A. 144.

That a Chinese person admitted to the United States as a merchant subsequently becomes a laborer is not in itself ground for his deportation. Lui Hip Chin v. Plummer, 238 F. 763, 151 C. C. A. 613.

Though evidence raised suspicion that appellant, a Chinese person, entered as a merchant intending to become a laborer, and had become laborer, held, that his deportation was not authorized under this section. Id.

Where a Chinese person admitted on certificate as a merchant immediately engages in employment as a laborer, that fact has strong retroactive bearing as evidence that he entered with intent to become a laborer. Id.

That one who lawfully entered as the minor son of a Chinese merchant has since become a laborer is not enough of itself to destroy his right to remain, the general Immigration Act not forbidding the residence of Chinese laborers. Lew Loy v. U. S., 242 F. 405, 155 C. C. A. 181.

The son of a Chinese merchant, born in the United States, in which place his father was engaged in business, is, though he becomes a laborer, entitled to remain. Woo Vey v. U. S., 242 F. 838, 155 C. C. A. 426, certiorari denied 38 S. Ct. 60, 245 U. S. 660, 62 L. Ed. 535.

A Chinese person, readmitted to the United States after a visit to China as a merchant, but who from that time was a laborer, held to have the status of a laborer, and to be subject to deportation, under this section. U. S. v. Fong Foo (D. C.) 235 F. 452.

Where defendant's status as Chinese merchant was established before he went to China for visit, fact that after his return and admission into the United States he worked as laborer for part of time does not of itself forfeit his right to remain in United States as one of exempted class. U. S. v. Moy Nom (D. C.) 249 F. 772.

Where a Chinese person, admitted into the United States as a merchant, was a member of the merchant class at that time, the fact that he later may become a laborer does not destroy his right to remain. Ex parte Hor Yuk Sang (D. C.) 251 F. 403.

Where the entry of a Chinese person as a merchant or student is valid, he does not lose his right to remain because he subsequently becomes a laborer. U. S. v. Lew Loy (D. C.) 253 F. 784.

Where a Chinese person is admitted as a student, merchant, or minor child of a merchant, the weight to be accorded the inference from his immediate adoption of the occupation of a laborer depends on the circumstances, etc. Id.

18. —— Deportation under Immigration Act.—See notes under § 4289¼jj.

A Chinese person, in the United States in violation of this section and Immigration Act, § 36 (Comp. St. 1916, § 4285), cannot, more than three years after his entry, be summarily deported under Immigration Act, §§ 20, 21 (Comp. St. 1916, §§ 4269, 4270), but proceedings must be brought under Chinese Exclusion Act, § 13 (Comp. St. 1916, § 4313). Moy Wing Sun v. Prentis, 234 F. 24, 148 C. C. A. 40.

Where fraud in procuring a certificate on which a Chinese person was

admitted as a student under this section is charged, the action of the Secretary of Labor is conclusive, if the proceedings and hearing were fair. Lo Pong v. Dunn, 235 F. 510, 149 C. C. A. 56.

On habeas corpus to review an order of deportation against a Chinese person, admitted as a merchant under certificate issued pursuant to this section, evidence held insufficient to sustain a finding that the admission was secured through fraud, though such Chinese person was found laboring in a laundry some five months after entrance in the United States. Ex parte Hor Yuk Sang (D. C.) 251 F. 403.

Cited without definite application, Quan Hing Sun v. White (C. C. A.) 254 F. 402.

§ 4296. (Act May 6, 1882, c. 126, § 9.) Comparison of lists with certificates.

Cited without definite application, Quan Hing Sun v. White (C. C. A.) 254 F. 402.

§ 4297. (Act May 6, 1882, c. 126, § 10, as amended, Act July 5, 1884, c. 220.) Forfeitures of vessels.

Interest of owner of vessel not consenting to violation of law.—The interest of the majority owner of a vessel held not subject to forfeiture, under this section, because of its use, without his knowledge or consent, by the owner of the lesser interest in violation of the act. The Calypso, 230 F. 962, 145 C. C. A. 156, affirming decree (D. C.) 217 F. 669.

§ 4298. (Act May 6, 1882, c. 126, § 11, as amended, Act July 5, 1884, c. 220.) Bringing or landing Chinese laborers not entitled to enter.

Application to offense.—Offenses of bringing in, or aiding or abetting bringing in, of unqualified Chinese alien, are governed by this section, and not by section 8, Immigration Act Feb. 20, 1907 (Comp. St. 1916, § 4253). Stoneberg v. Morgan, 246 F. 98, 158 C. C. A. 324.

Indictment.—An indictment for conspiracy to bring in Chinese not entitled to enter, under this section, held to charge a general conspiracy, so that names of Chinese need not be given or alleged to be unknown. Dahl v. U. S., 234 F. 618, 148 C. C. A. 384, affirming order U. S. v. Dahl (D. C.) 225 F. 909.

Indictment under Penal Code, § 37, charging conspiracy to bring into the United States, in violation of this section, persons not entitled to enter or remain, held sufficient, though giving the mere outlines of the plot. Lew Moy v. U. S., 237 F. 50, 150 C. C. A. 252.

Evidence.—Evidence that defendant pursuant to an understanding with another defendant to smuggle in Chinese, brought in four not entitled to enter held admissible on prosecution for general conspiracy to bring in Chinese not entitled to enter. Dahl v. U. S., 234 F. 618, 148 C. C. A. 384, affirming order U. S. v. Dahl (D. C.) 225 F. 909.

In a prosecution for conspiring to bring or cause to be brought into United States, in violation of this section, Chinese persons not allowed to enter, acts and statements of one co-conspirator after Chinese were brought across the international boundary held admissible against others; conspiracy not being there ended. Lew Moy v. U. S., 237 F. 50, 150 C. C. A. 252.

In a prosecution for conspiring in violation of this section, to bring into the United States aliens not entitled to enter, evidence held to warrant a conviction. Louie Ding v. U. S., 246 F. 80, 158 C. C. A. 306.

Instructions.—In a prosecution for conspiring to violate this section, by bringing into the United States aliens not lawfully entitled to enter, instructions on the defense of alibi held sufficient. Louie Ding v. U. S., 246 F. 80, 158 C. C. A. 306.

Cited without definite application, Louie Ding v. U. S. (C. C. A.) 247 F. 12.

§ 4299. (Act May 6, 1882, c. 126, § 12, as amended, Act July 5, 1884, c. 220.) Chinese not to enter by land without certificate; deportation.

Power of Congress to empower commissioner to determine facts.—It was competent for Congress by the Chinese Exclusion Act to empower a United States commissioner to determine the facts on which citizenship of person of Chinese descent depends. Louie Lit v. U. S., 238 F. 75, 151 C. C. A. 151.

Cited without definite application, Ex parte Owe Sam Goon (D. C.) 230 F. 654; Ex parte Tom Yuen (D. C.) 230 F. 656.

§ 4300. (Act May 6, 1882, c. 126, § 13, as amended, Act July 5, 1884, c. 220.) Persons exempted from application of act.

Officers of government.—Chinese merchant, connected with association of Chinese persons attached to consulate, held not an officer of Chinese government traveling on business of government, within this section. Gin Dock Sue v. U. S., 245 F. 308, 157 C. C. A. 500, affirming order U. S. v. Gin Dock Sue (D. C.) 230 F. 657.

§ 4308. (Act Sept. 13, 1888, c. 1015, § 7.) Return of Chinese laborer after departure; identification of laborers; certificates.

Return certificate.—A Chinese person, though he obtained a certificate of residence in the United States, is not, having departed from the country, entitled to return, unless he secured a return certificate. Wong Back Sue v. Connell, 233 F. 659, 147 C. C. A. 467.

Port of re-entry.—A Chinese person, though he secured certificate of residence, cannot, having left the United States and gone to Mexico, re-enter, save at port specified in the rules of the Secretary of Labor, made for the enforcement of the Chinese Exclusion Act. Wong Back Sue v. Connell, 233 F. 659, 147 C. C. A. 467.

Deportation.—Statement of resident of Mexico, identifying photograph of Chinese sought to be deported for having entered United States from Mexico in violation of this section, held not sufficient legal foundation for order of deportation. White v. Tom Yuen, 244 F. 739, 157 C. C. A. 187.

Cited without definite application, In re Chan Foo Lin (C. C. A.) 243 F. 137.

§ 4313. (Act Sept. 13, 1888, c. 1015, § 13.) Arrest and removal of Chinese unlawfully in United States.

I. OPERATION AND VALIDITY

2. Validity.—It was competent for Congress by the Chinese Exclusion Act to empower a United States commissioner to determine the facts on which citizenship of a person of Chinese descent depends. Louie Lit v. U. S., 238 F. 79, 151 C. C. A. 151.

II. DEPORTATION OF CHINESE

3. Chinese subject to removal and grounds for removal.—The United States is not estopped from deporting a Chinese person, not entitled to remain in the country, by reason of the acts of a special immigration agent. Ng Jung v. U. S., 233 F. 992, 147 C. C. A. 666.

A Chinese laborer could not be deported, except after a hearing before a commissioner, with the right of appeal to the District Court, unless he had entered the United States within three years. Ex parte Tom Yuen (D. C.) 230 F. 656.

4. —— Chinese "found unlawfully in the United States."—A Chinese, apprehended while in a boat on the American side of the Niagara river, has entered the country and may be deported. Jung Sew v. U. S., 231 F. 949, 146 C. C. A. 145, affirming order Ex parte Jung Sew (D. C.) 221 F. 500.

5. —— Change in occupation.—A minor son of a Chinese merchant, admitted as a member of an exempt class, does not forfeit his right to remain in the United States by subsequently working as a laborer. Wong Yee Toon v. Stump, 233 F. 194, 147 C. C. A. 200, reversing judgment Ex parte Wong Yee Toon (D. C.) 227 F. 247.

Where a Chinese person, who lawfully entered the United States as the minor son of a merchant, thereafter became a laborer, such fact will not deprive him of his right to remain in the country. Lam Fung Yen v. Frick, 233 F. 393, 147 C. C. A. 329.

A Chinese person, admitted to the country ostensibly as an attaché of a Chinese official, and thereafter found working in a laundry far from his ostensible chief, was subject to deportation. Ex parte Chun Woi San (D. C.) 230 F. 538, appeal dismissed Chan Ngun Yuk v. White, 228 F. 1019, 142 C. C. A. 665.

Under the treaty of November 17, 1880, between the United States and China, and Const. art. 6, cl. 2, a Chinese person who enters the United States as a merchant cannot be deported because thereafter he becomes a laborer. U. S. v. Fong Hong (D. C.) 233 F. 168.

6. Place to which removed.—Chinese persons, claimed to have entered country from Canada, but who denied any previous residence, or even presence, in Canada, held in no position to insist that they should be deported to Canada. Wallis v. U. S., 230 F. 71, 144 C. C. A. 369.

Where Chinese persons were evidently attempting a joint unlawful entry into the country effect of possession by one of Chinese clothing and money held not limited to him, in determining country to which they should be deported. Id.

See, also, notes under § 4289½k, ante.

10. Deportation proceedings—Nature.—Proceeding to deport Chinese persons held civil, and not criminal, though government intended to proceed on hypoth-

esis that defendant entered the United States in violation of Immigration Act, § 36 (Comp. St. 1916, § 4285), and of the Chinese exclusion laws, and hence the government could call defendant as its witness. In re Chan Foo Lin, 243 F. 137, 156 C. C. A. 3.

15. —— Hearing.—In proceeding for deportation of Chinese person, who entered as minor son of Chinese merchant, held, that statement of government's attorney that entry was valid, but that defendant had forfeited his right to remain, was not prejudicial, though judgment of deportation could be upheld only on theory of fraudulent entry. Lew Loy v. U. S., 242 F. 405, 155 C. C. A. 181.

Person of Chinese descent sought to be deported held denied a fair hearing, when not given opportunity to explain and meet statements of immigration inspectors received by those conducting the examination subsequent to the hearing. In re Chan Foo Lin, 243 F. 137, 156 C. C. A. 3.

18. —— Judgment and conclusiveness thereof.—Judgment adjudging that Chinese person was born in the country and entitled to enter held to estop the government from further deportation proceedings. U. S. v. Chin Dong Ying (D. C.) 229 F. 813.

20. —— Order of deportation.—Order for deportation of Chinese person cannot be sustained on ground of fraudulent entry, where that issue was not tried at hearing, and was disclaimed by government attorney. Lew Loy v. U. S., 242 F. 405, 155 C. C. A. 181.

21. Deportation under immigration act.—Under the Chinese Exclusion Acts, and Immigration Act Feb. 20, 1907, §§ 21, 43 (Comp. St. 1916, §§ 4270, 4289), the Secretary of Labor cannot arrest and deport a Chinese alien on the sole ground that he is found in the country in violation of the Chinese Exclusion Acts. U. S. v. Woo Jan, 38 S. Ct. 207, 245 U. S. 552, 62 L. Ed. 466, answering certified questions (C. C. A.) 250 F. 595.

A Chinese person, in the United States in violation of Chinese Exclusion Act, § 6 (Comp. St. 1916, § 4293), and Immigration Act, § 36 (Comp. St. 1916, § 4285), cannot, more than three years after his entry, be summarily deported under Immigration Act, §§ 20, 21 (Comp. St. 1916, §§ 4269, 4270), but proceedings must be brought under this section. Moy Wing Sun v. Prentis, 234 F. 24, 148 C. C. A. 40.

To deport a Chinese person on the ground of his being in the United States in violation of the Immigration Act, in that he was a person likely to become a public charge and that he entered without inspection, proceedings must be begun within three years after his entry. Wong Yuen v. Prentis, 234 F. 28, 148 C. C. A. 44.

As Chinese Exclusion Act 1888 vests power to deport Chinese aliens solely in the judiciary, the only power of the Secretary of Labor to deport an alien, though he be a Chinese person, is derived from Immigration Act Feb. 20, 1907. Backus v. Owe Sam Goon, 235 F. 847, 149 C. C. A. 159, affirming order Ex parte Owe Sam Goon (D. C.) 230 F. 654.

Under Act Cong. Feb. 20, 1907, §§ 21, 43 (Comp. St. 1916, §§ 4270, 4289), the Secretary of Commerce and Labor may order deportation of an alien violating the act, or any law of the United States, except the Chinese Exclusion Law, which requires formal proceedings in court before an order of deportation can be entered. U. S. v. United States ex rel. Leam Him, 239 F. 1023, 152 C. C. A. 661, affirming judgment Same v. Prentis (D. C.) 230 F. 935.

Under this section and Act Feb. 20, 1907, § 43 (Comp. St. 1916, § 4289), a Chinese person unlawfully within the United States, but who has committed no offense under the Immigration Act, cannot be deported after a merely administrative hearing, under Immigration Act, §§ 20, 21 (Comp. St. 1916, §§ 4269, 4270). Lee Wong Hin v. Mayo, 240 F. 368, 153 C. C. A. 294.

Proceedings for the deportation of Chinese persons under the Exclusion Acts are not limited to three years by sections 20 and 21 of Immigration Act of February 20, 1907 (Comp. St. 1916, §§ 4269, 4270). Wong Chung v. U. S., 244 F. 410, 157 C. C. A. 36.

Under Immigration Act, § 21 (Comp. St. 1916, § 4270), held, that Chinese person in the country in violation of the Chinese Exclusion Act may be deported by the immigration authorities within three years after his entry. Ex parte Chun Woi San (D. C.) 230 F. 538, appeal dismissed Chan Ngun Yuk v. White, 228 F. 1019, 142 C. C. A. 665.

See, also, notes under § 4289¼jj, ante.

24. Appeal in deportation proceedings — Effect of appeal. — Appeal by Chinese person, ordered deported by commissioner under this section, held to vacate the order of deportation and leave the case as if it had never been tried. U. S. v. Chin Dong Ying (D. C.) 229 F. 813.

27½. —— Dismissal.—Order by United States commissioner that order of deportation made by another commissioner, who had died, be executed, appeal therefrom having been dismissed, held ultra vires and of no effect. United States v. Chin Dong Ying (D. C.) 229 F. 813.

Where appeal from order of deportation was dismissed for want of prosecution, held, that it could not be restored to the docket at a subsequent term, even with the consent of the United States attorney. Id.

Order dismissing for want of pros-

ecution appeal from order of deportation held a final judgment, and not to restore the commissioner's order of deportation. Id.

30. —— Review of findings and decision.—A finding of the commissioner, approved by the District Court, will not be disturbed on appeal, where there is evidence in support of it. Lee Lew You v. U. S., 230 F. 820, 145 C. C. A. 130.

An order for the deportation of a Chinese person will not be reversed merely because on the evidence the appellate court would have found the facts differently. Chin Sing Quon v. U. S., 231 F. 948, 146 C. C. A. 144, affirming order U. S. v. Chin Sing Quong (D. C.) 224 F. 752.

Determination of commissioner of question of fact as to birthplace of Chinese person, whose deportation was sought, having been approved by District Court, will not be disturbed on appeal. Jew Lee v. U. S. (C. C. A.) 237 F. 1013.

A finding of the commissioner against the claim of a Chinese person that he was a merchant can be inquired into and reversed by the appellate court. Louie Dai v. U. S., 238 F. 68, 151 C. C. A. 144.

In proceedings for the deportation of a Chinese, who was a laborer when he was arrested, evidence held to show, notwithstanding the finding of the commissioner and of the lower court to the contrary, that he was a merchant during the registration period. Id.

A finding of the District Court against the claim of a Chinese person that he was a merchant can be inquired into and reversed by the Appellate Court. Id.

Judgments of the commissioner and of the District Court, ordering the deportation of Chinese persons, held not so clearly against the evidence adduced in proceedings under Chinese Exclusion Act, § 3 (Comp. St. 1916, § 4317), as to warrant reversal. Chin Hung v. U. S., 240 F. 341, 153 C. C. A. 267.

Where the commissioner, who heard the testimony and saw the witnesses, and the District Court, were both dissatisfied with the testimony of the Chinese person whose right to remain in the country was questioned, and of his Chinese witnesses, their judgments for deportation will not be reversed on appeal. Id.

Under Chinese Exclusion Act May 5, 1892, § 3 (Comp. St. 1916, § 4317), a Chinese person is not entitled to a rehearing on the facts on appeal from the order of the District Court affirming the commissioner's order of deportation, though he produced no witnesses before the commissioner. Wong Woo v. U. S., 240 F. 673, 153 C. C. A. 471.

The conclusion of the District Court in a Chinese exclusion case held entitled to great weight on appeal, particularly where much of the testimony was taken in the presence of the judge. Lew Loy v. U. S., 242 F. 405, 155 C. C. A. 181.

The finding of the trial judge in proceeding for deportation of Chinese person, which was in accordance with the conclusion of the commissioner, is entitled to great weight on appeal. Woo Vey v. U. S., 242 F. 838, 155 C. C. A. 426.

A finding by both the commissioner and District Court, which heard the witnesses, against the claim of a person of Chinese decent that he was born in the United States, held not so clearly erroneous as to warrant its reversal. Wong Chung v. U. S., 244 F. 410, 157 C. C. A. 36.

32. Review on habeas corpus.—While the courts will not review the evidence upon which immigration officials ordered the deportation of a Chinese person, an order of deportation of one prima facie entitled to remain, based upon conjecture, is subject to review. Ong Chew Lung v. Burnett, 232 F. 853, 147 C. C. A. 47.

See, also, notes under § 4289¼jj, ante.

§ 4314. (Act Sept. 13, 1888, c. 1015, § 14.) Same; diplomatic and consular officers excepted.

Consular attendant.—Chinese person, though secretary of association connected with consulate, held not consular attendant, within this section. Gin Dock Sue v. U. S., 245 F. 308, 157 C. C. A. 500, affirming order U. S. v. Gin Dock Sue (D. C.) 230 F. 657.

Attaché of consular office after escape from detention.—Chinese person, escaping from detention quarters, held deportable, though subsequently acquiring status of merchant or attaché of Chinese consular office. U. S. v. Gin Dock Sue (D. C.) 230 F. 657.

§ 4315. (Act May 5, 1892, c. 60, § 1.) Laws prohibiting coming of Chinese continued.

Cited without definite application, Chin Fong v. Backus, 36 S. Ct. 490, 60 L. Ed. 859.

§ 4316. (Act May 5, 1892, c. 60, § 2.) Removal of Chinese not entitled to be or remain in United States.

Power of Congress to empower commissioner to determine facts.—It was competent for Congress by the Chinese Exclusion Act to empower a United States commissioner to determine the facts on which citizenship of a person of Chinese descent depends. Louie Lit v. U. S., 238 F. 75, 151 C. C. A. 151.

Cited without definite application, United States ex rel. Hen Lee v. Sisson (C. C. A.) 232 F. 599.

§ 4317. (Act May 5, 1892, c. 60, § 3.) Arrested person to prove right to remain.

II. EVIDENCE IN PROCEEDINGS FOR REMOVAL OF CHINESE

5. In general.—The presumption that a person of the Mongolian race is not a citizen is strengthened when he attempts to enter the country in a clandestine manner. Lee Lew You v. U. S., 230 F. 820, 145 C. C. A. 130.

The language of the Chinese Exclusion Act, prescribing the character of the testimony required of defendant in deportation proceedings, does not authorize a judicial officer arbitrarily to disregard it. Louis Dai v. U. S., 238 F. 68, 151 C. C. A. 144.

Under this section a Chinese person is not entitled to a rehearing on the facts on appeal from the order of the District Court affirming the commissioner's order of deportation, though he produced no witnesses before the commissioner. Wong Woo v. U. S., 240 F. 673, 153 C. C. A. 471.

6. Admissibility.—Order directing deportation of a Chinese woman will not be reversed, because based on evidence obtained from search, in violation of Const. Amend. 4, of the trunk of her alleged husband, a native-born Chinese citizen of the United States. Tsuie Shee v. Backus, 243 F. 551, 156 C. C. A. 249.

7. Degree of proof.—Under this section a Chinese person must prove beyond a reasonable doubt that he was a merchant. Louis Dai v. U. S., 238 F. 68, 151 C. C. A. 144.

8. Sufficiency.—Where a Chinese person contended that he was born in San Francisco and resided there until 16, his ignorance of the city warrants an inference that his testimony was false, and justifies deportation. U. S. v. Sisson, 232 F. 599, 146 C. C. A. 557.

In proceedings to deport a Chinese person, evidence held insufficient to show that defendant had been recently smuggled into the United States. Louis Dai v. U. S., 238 F. 68, 151 C. C. A. 144.

In proceedings for the deportation of two Chinese laborers, evidence held to show that they were born in the United States, and therefore not liable to deportation. Louie Lit v. U. S., 238 F. 75, 151 C. C. A. 151.

Judgments of the commissioner and of the District Court, ordering the deportation of Chinese persons, held not so clearly against the evidence adduced in proceedings under this section as to warrant reversal. Chin Hung v. U. S., 240 F. 341, 153 C. C. A. 267.

In proceedings for the deportation of a Chinese person, evidence held to justify the ruling of the District Court that defendant had not affirmatively shown his right to remain in the United States, as required by this section. Wong Woo v. U. S., 240 F. 673, 153 C. C. A. 471.

In a proceeding for the deportation of a Chinese person, who claimed he was born in the United States, evidence held insufficient to sustain his contention. Woo Vey v. U. S., 242 F. 838, 155 C. C. A. 426, certiorari denied 38 S. Ct. 60, 245 U. S. 660, 62 L. Ed. 535.

In a proceeding to deport a person of Chinese descent, evidence held sufficient to support his claim that he was a native-born citizen of the United States. Yee Chung v. U. S., 243 F. 126, 155 C. C. A. 656.

In suit for deportation of Chinese laborers, who under this section had burden of establishing their right to remain, evidence held insufficient to establish right to remain in United States. Young Ti v. U. S., 246 F. 110, 158 C. C. A. 336.

In proceeding to deport Chinese person, evidence held to show that he was the same person adjudged entitled to enter the United States in a previous proceeding, on the ground that he was born there. U. S. v. Chin Dong Ying (D. C.) 229 F. 813.

Evidence held to show that defendant came to this country while a minor with an uncle who was a contractor, and not with another uncle who was a merchant. U. S. v. Jew Sung Gwong (D. C.) 232 F. 279.

Evidence held to establish that defendant, a Chinese person, was lawfully within the country and to show that the order for his deportation was improper. U. S. v. Jung You (D. C.) 235 F. 1012.

In proceedings for deportation of Chinese person, apprehended when surreptitiously entering the United States, evidence held insufficient to establish his claim of birth in the United States and right to remain therein, and so deportation was warranted. U. S. v. Hen Lee (D. C.) 236 F. 794.

In a proceeding for the deportation of a Chinese person, evidence held suffi-

cient, under this section, to establish his citizenship and right to remain in the United States. U. S. v. Fong On (D. C.) 240 F. 234.

Uncontradicted evidence held to establish the citizenship of a person of Chinese descent arrested for deportation. U. S. v. Charlie Dart (D. C.) 251 F. 394.

In proceedings to deport a Chinese person, who was admitted as the minor son of a merchant, but subsequently became a laborer, evidence held insufficient to warrant deportation, not showing that such person entered intending to become a laborer. U. S. v. Lew Loy (D. C.) 253 F. 784.

Proof as to a Chinese person's birth in the United States held to overcome the statutory presumption against him and to create a prima facie case in his favor. Moy Jik v. U. S., 47 App. D. C. 498.

9. Probative effect.—Under this section one claiming to have been a Chinese merchant during the registration period may prove that fact by Chinese witnesses, notwithstanding the provision of Comp. St. 1916, § 4320, relating to laborers. Louie Dai v. U. S., 238 F. 68, 151 C. C. A. 144.

In a proceeding to deport a Chinese person, the court could not arbitrarily reject or discredit the testimony of witnesses favorable to the defendant, on the ground that they were Chinese persons and unworthy of credit. Yee Chung v. U. S., 243 F. 126, 155 C. C. A. 656.

Where Chinese person, whose deportation was being sought, made contradictory statements at time he was being smuggled into United States, his subsequent testimony in conflict with such statements may be disregarded. U. S. v. Hen Lee (D. C.) 236 F. 794.

10. Burden of proof.—Where a Chinese person left the country and then returned, he has the burden of showing that his re-entry was lawful, and his original certificate of residence is not prima facie evidence of his right to remain. Bun Chew v. Connell, 233 F. 220, 147 C. C. A. 226.

A Chinese person, contesting deportation on ground that he was born in the United States, has burden of proof. Jew Lee v. U. S., 237 F. 1013.

Under this section a Chinese person, whose right to remain is challenged, has the burden of establishing such right to the satisfaction of the court. Lew Loy v. U. S., 242 F. 405, 155 C. C. A. 181.

Under this section and Act April 29, 1902, a person of Chinese descent does not, by asserting in deportation proceedings that he was a citizen of the United States, because born therein, cast upon the United States the burden of contradicting his contention. Woo Vey v. U. S., 242 F. 838, 155 C. C. A. 426, certiorari denied 38 S. Ct. 60, 245 U. S. 660, 62 L. Ed. 535.

Immigration officers have jurisdiction of proceedings for deportation of a Chinese person charged with being unlawfully in this country, although defendant claims to be an American citizen, and the burden of proof on that, as on other issues, is on defendant. Chin Ah Yoke v. White, 244 F. 940, 157 C. C. A. 290.

A person of Chinese descent, seeking to enter the country as the son of native-born citizen, had the burden of proving such relationship. Ex parte Wong Foo (D. C.) 230 F. 534.

Where immigration authorities, in passing upon right of admission of alleged son of native-born citizen, assumed without proof that the father's sense of allegiance was to the country of his ancestors, held, that the hearing was unfair. Id.

Where immigration authorities excluded alleged son of native-born citizen for lack of evidence of spirit of American allegiance, without investigation as to the father's allegiance, hearing held unfair. Ex parte Leong Wah Jam (D. C.) 230 F. 540.

In a proceeding for the deportation of an alien, the burden of establishing his right to remain in the country is imposed on the alien by reason of the practical necessities of the case. U. S. v. Jung You (D. C.) 235 F. 1012.

A Chinese person, who attempted to surreptitiously enter the United States and whose right to remain therein was raised on deportation proceedings, has burden of satisfactorily establishing his right to remain in United States. U. S. v. Hen Lee (D. C.) 236 F. 794.

Where, in Chinese deportation proceedings, defendant claims to be a natural-born citizen and never to have left the United States, he is entitled to rely on his constitutional right to remain, and the burden is on the government to prove noncitizenship. U. S. v. Charlie Dart (D. C.) 251 F. 394.

Where a person of Chinese descent claims to be a native-born citizen of the United States, the affirmative proof required by this section to establish his lawful right to remain in the United States is merely proof to establish a prima facie case sufficient to call for rebuttal. Moy Jik v. U. S., 47 App. D. C. 498.

The government, in absence of any showing to the contrary, will be presumed to be in possession of the records required to be made by the Chinese inspector before permission will be given for Chinese laborers to land. Id.

After sufficient evidence has been given in a deportation case to make a prima facie case establishing the citizenship of a person of Chinese descent, the burden shifts to the government. Id.

The responsibility for failure to in-

terrogate a Chinese witness as to knowledge of the residence of the parents at the time of the birth of a son who claims to be a native-born citizen cannot be cast on him, where counsel for the government and the presiding justice did not interrogate the witness. Id.

§ 4319. (Act May 5, 1892, c. 60, § 5.) Habeas corpus proceedings by Chinese denied landing; bail.

Petition.—A judgment overruling demurrer to petition of a Chinese person for habeas corpus to obtain release from imprisonment under Secretary of Labor's order of deportation held not subject to attack on the ground that order of deportation was found invalid solely under the Chinese Exclusion Act and not Immigration Act. Backus v. Owe Sam Goon, 235 F. 847, 149 C. C. A. 159, affirming order Ex parte Owe Sam Goon (D. C.) 230 F. 654.

Petition for second writ of habeas corpus by a Chinese woman, who sought admission as the wife of a Chinese merchant, held not subject to demurrer; it appearing that appeal on the original writ had been dismissed to seek a reopening of case under a misapprehension of avowed action of Immigration Bureau. Ex parte Chan Shee (D. C.) 236 F. 579.

Evidence.—On habeas corpus by Chinese person, who applied for admission to United States as a minor son of a merchant, evidence held to show hearing before immigration authorities was unfair, and exclusion on ground applicant was not a minor was error. Woo Hoo v. White, 243 F. 541, 156 C. C. A. 239.

On habeas corpus by Chinese person ordered deported to China, evidence not offered to immigration authorities as to residence in Canada held not available. Chin Teung v. Skeffington (D. C.) 229 F. 859.

Admission to bail pending habeas corpus proceedings.—Pending appeal from order remanding Chinese persons to custody of immigration authorities, release on bail held to be denied, in view of this section and rule 33 of the Ninth Circuit (208 Fed. xvii, 124 C. C. A. xvii). In re Chin Own (D. C.) 242 F. 996.

Conditional discharge.—Where a Chinese person, applying for entrance into the United States, was ordered deported without a fair hearing, he should not, on writ of habeas corpus, be unconditionally discharged from custody; but such discharge should be conditional, to be effective only in case immigration authorities should fail to give applicant a fair hearing within a reasonable period, as a month. White v. Wong Quen Luck, 243 F. 547, 156 C. C. A. 245.

§ 4320. (Act May 5, 1892, c. 60, § 6, as amended, Act Nov. 3, 1893, c. 14, § 1.) Certificates of residence; arrest and deportation of laborers not having.

II. REGISTRATION AND CERTIFICATE

10. Certificate—Evidentiary effect and rights conferred.—A certificate issued to a Chinese person, showing his right to enter and remain in the United States, is prima facie evidence of his right, and he cannot be deported by immigration authorities without substantial evidence showing that he was not entitled to enter and remain. Wong Yee Toon v. Stump, 233 F. 194, 147 C. C. A. 200, reversing judgment Ex parte Wong Yee Toon (D. C.) 227 F. 247.

III. DEPORTATION PROCEEDINGS

17. Grounds—Change of occupation.—See U. S. v. Fong Hong (D. C.) 233 F. 168.

19. Evidence.—In deportation proceeding under Chinese Exclusion Act, held, there was no evidence to show that one ordered deported was not member of exempt class. Wong Yee Toon v. Stump, 233 F. 194, 147 C. C. A. 200, reversing judgment Ex parte Wong Yee Toon (D. C.) 227 F. 247.

Under Comp. St. 1916, § 4317, one claiming to have been a Chinese merchant during the registration period may prove that fact by Chinese witnesses, notwithstanding the provision of this section, relating to laborers. Louie Dai v. U. S., 238 F. 68, 151 C. C. A. 144.

22. Bail.—See note under § 4319, ante.

24. Review.—The rule that in a deportation case the appellate court will not review the evidence, where the commissioner and the trial judge are in agreement, does not prevent the appellate court from determining the sufficiency of the evidence to prove the claim of a Chinese person that he was born in this country, where there is no conflict in the evidence. Moy Jik v. U. S., 47 App. D. C. 498.

CITED WITHOUT DEFINITE APPLICATION

Chin Hung v. U. S. (C. C. A.) 240 F. 341; Yee Ling v. U. S., 242 F. 628, 155 C. C. A. 318, reversing order Ex parte Lee Ying (D. C.) 225 F. 335; In re Chan Foo Lin (C. C. A.) 243 F. 137; U. S. v. Fong On (D. C.) 240 F. 234.

§ 4321. (Act May 5, 1892, c. 60, § 7.) Regulations for execution of act.

Cited without definite application,
Yee Ling v. U. S. (C. C. A.) 242 F. 628.

§ 4324. (Act Nov. 3, 1893, c. 14, § 2.) "Laborer" and "merchant" defined; proof for entrance of merchant.

"Laborer."—A Chinese contractor is a Chinese laborer within the Exclusion Acts, and not entitled to enter. U. S. v. Jew Sung Gwong (D. C.) 232 F. 279.

"Merchant."—The contention on habeas corpus that immigration officers, in denying admission to a Chinaman as a returning merchant, superadded qualifications to this section, and hence infringed the treaty of November 17, 1880, does not involve the construction of a treaty within Judicial Code, § 238 (Comp. St. 1916, § 1245), authorizing direct appeal from the District Courts to the federal Supreme Court. Chin Fong v. Backus, 36 S. Ct. 490, 241 U. S. 1, 60 L. Ed. 859, dismissing appeal Ex parte Chin Fong (D. C.) 213 F. 288.

A Chinese person, engaged solely in conducting a factory for the manufacture of materials furnished by others, is not a merchant, unless, in addition to the work, he buys and sells goods. Ong Chew Lung v. Burnett, 232 F. 853, 147 C. C. A. 47.

That a Chinese person sought to be deported was a merchant did not entitle him to remain, where his status as such was acquired subsequent to his entry into the country surreptitiously, by escaping from detention quarters after he had been denied permission to land. Gin Dock Sue v. U. S., 245 F. 308, 157 C. C. A. 500, affirming order U. S. v. Gin Dock Sue (D. C.) 230 F. 657.

Chinese person, escaping from detention quarters, instead of establishing mercantile status before immigration officers or on appeal to courts, held subject to deportation. U. S. v. Gin Dock Sue (D. C.) 230 F. 657.

Regulations of Department of Labor.—A regulation of the Department of Labor, adopted under the Chinese exclusion laws, excluding from admission persons of Chinese birth, although their fathers are or were citizens of the United States, unless they are dependent members of the father's household, is without warrant of law. Quan Hing Sun v. White (C. C. A.) 254 F. 402.

Where Chinese person, before returning to China for visit, presented himself to Bureau of Immigration for preinvestigation as to status as merchant, and Bureau found that he had for required time been engaged as merchant, and gave him a certificate, government is, after his return from China, estopped from questioning his status as merchant, where there was no competent proof of fraud on his part in obtaining re-entry into United States. U. S. v. Moy Nom (D. C.) 249 F. 772.

An indictment alleging that defendants conspired to secure the approval of the application of a Chinese person desiring to go abroad for preinvestigation of his claimed mercantile status held, in view of the requirement of the rule of the Department of Labor that application should be made 30 days before proposed departure and this section, to be insufficient, as it merely alleged defendants knew the applicant had not been a merchant for one year before his application. U. S. v. Fung Sam Wing (D. C.) 254 F. 500.

Under this section, the Department of Labor was authorized to promulgate its rule for the investigation, in advance of his departure, of the claimed mercantile status of a Chinese person desiring to go abroad temporarily, and to require such person to furnish with his application the names of two witnesses able to testify that for one year preceding proposed departure the applicant had been engaged in mercantile pursuit named, so the securing of approval of the application of one not entitled would work a fraud on the government. Id.

Deportation proceedings.—In deportation proceeding under Chinese Exclusion Act, held, there was no evidence to show that one ordered deported was not member of exempt class. Wong Yee Toon v. Stump, 233 F. 194, 147 C. C. A. 200, reversing judgment Ex parte Wong Yee Toon (D. C.) 227 F. 247.

§ 4328. (Convention with China, Dec. 8, 1894, Art. III.) Classes of Chinese permitted to enter; transit of laborers.

Privileged classes—Merchant or attaché of consular office.—That a Chinese person sought to be deported was a merchant did not entitle him to remain, where his status as such was acquired subsequent to his entry into the country surreptitiously by escaping from detention quarters after he had been denied permission to land. Gin Dock Sue v. U. S., 245 F. 308, 157 C. C. A. 500, affirming order U. S. v. Gin Dock Sue (D. C.) 230 F. 657.

Chinese person, escaping from detention quarters, held deportable, though subsequently acquiring status of merchant or attaché of Chinese consular office. U. S. v. Gin Dock Sue (D. C.) 230 F. 657.

§ 4338. (Act April 29, 1902, c. 641, § 2, as amended, Res. April 28, 1904, No. 34.) Regulations for execution of acts and of treaty.

Regulations.—Under this section, Secretary of Commerce and Labor held authorized to require bond as condition of admission of Chinese sailors on shore leave. U. S. v. Vaccaro Bros. & Co. (D. C.) 230 F. 943.

Suit for penalty of bond given on account of shore leave granted Chinese sailors, who deserted and failed to leave the country, held not oppressive and inequitable. Id.

See, also, notes under § 4324, ante.

TITLE XXX—NATURALIZATION

Sec.
4351. Jurisdiction of naturalization; forms.
4352. Proceedings for naturalization.
(1) Declaration of intention.
(2) Petition for admission to citizenship; certificate of arrival and declaration of intention.
(3) Declaration to support constitution and laws.
(4) Evidence of residence and character.
(5) Renunciation of title or order.
(6) Naturalization of widows and minor children of aliens dying after declaration of intention.
(7) Filipinos, Porto Ricans or aliens in service of Army, Navy, Marine Corps, Coast Guard, or merchant marine.
(8) Alien seamen deemed citizens.
(9) Reimbursement for printing and binding.
(10) Aliens erroneously exercising privileges of citizens.
(11) Alien enemies.
(12) Repatriation of expatriated citizens.
(13) Proof of continuous residence.
4352a. Validation of certificates of naturalization.
4352aa. Acts repealed.
4353. Notice of filing of petition; hearing thereon.
4354. Time for filing petition and for final action; change of name.
4355. [Repealed.]
4356. [Repealed.]
4356a. [Repealed.]
4357. [Repealed.]
4358. Aliens of African nativity and descent.
4359. Chinese not to be naturalized.
4360. Residence of five years in United States.
4362. [Repealed.]
4364. Persons not speaking English not to be naturalized; physical inability.
4366. Persons not citizens who owe permanent allegiance to United States.
4367. Citizenship of children of naturalized persons.
4368. Final hearing on petition; record of final order.
4369. Evidence of residence.
4370. Appearance by United States and proceedings in opposition.
4371. Duties of clerks of courts.
4372. Fees.
4372a. Fees.
4374. Cancellation of certificates.
4377. Demand, or receipt by clerk, of fees or moneys other than those specified in act.
4379. Procuring naturalization illegally; aiding unauthorized proceedings; false testimony.
4382. Forms.
4383. Regulations for execution of law; certified copies of papers as evidence.

§ 4351. (Act June 29, 1906, c. 3592, § 3.) Jurisdiction of naturalization; forms.

Jurisdiction.—Under this and the following section, absence of certificate from Department of Commerce and Labor as to applicant's arrival in the country held to deprive court of jurisdiction to admit applicant to citizenship. U. S. v. Ness, 230 F. 950, 145 C. C. A. 144, affirming decree (D. C.) 217 F. 169.

As state court issuing certificate of naturalization received its authority from Act June 29, 1906, a certificate issued by such state court may be attacked in federal court on ground that requirements of resident had not been met, and attack cannot be defeated because of exclusive jurisdiction of state court. U. S. v. Griminger (D. C.) 236 F. 285.

Under Rev. St. U. S. § 2165, prior to amendment in 1906, the probate courts of Ohio were authorized to grant naturalization to aliens. Bill v. State, 7 Ohio App. 185.

Residence of aliens.—See In re Von Bernhardi (D. C.) 247 F. 129.

Although deceased became a naturalized citizen of the United States by claiming a residence in New York, where he thereafter returned to his original domicile in Cuba and remained there for a number of years, he became in law and in fact a resident of Cuba. In re Mesa's Estate (Sup.) 159 N. Y. S. 59, 172 App. Div. 467.

Cited without definite application, U. S. v. Mueller (C. C. A.) 246 F. 679; In re Cook (D. C.) 239 F. 782.

§ 4352. (Act June 29, 1906, c. 3592, § 4, as amended, Act June 25, 1910, c. 401, § 3, and Act May 9, 1918, c. 69, §§ 1-3.) Proceedings for naturalization.

An alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

(1) Declaration of intention.

First. He shall declare on oath before the clerk of any court authorized by this Act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: Provided, however, That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

(2) Petition for admission to citizenship; certificate of arrival and declaration of intention.

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: Provided, That if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to

his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or the District of Columbia in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrives in the United States after the passage of this Act, stating the date, place, and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

(3) Declaration to support constitution and laws.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

(4) Evidence of residence and character.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

(5) Renunciation of title or order.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

(6) Naturalization of widows and minor children of aliens dying after declaration of intention.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying

with the other provisions of this Act, be naturalized without making any declaration of intention.

(7) Filipinos, Porto Ricans or aliens in service of Army, Navy, Marine Corps, Coast Guard, or merchant marine.

Seventh. Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; or any alien, or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, either the Regular or the Volunteer Forces, or the National Army, the National Guard or Naval Militia of any State, Territory, or the District of Columbia, or the State militia in Federal service, or in the United States Navy or Marine Corps, or in the United States Coast Guard, or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the Army Reserve or Regular Army Reserve after honorable service, may, on presentation of the required declaration of intention petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance with the requirements of this subdivision it is shown that such residence can not be established; any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States; any alien declarant who has served in the United States Army or Navy, or the Philippine Constabulary, and has been honorably discharged therefrom, and has been accepted for service in either the military or naval service of the United States on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, by two witnesses, citizens of the United States, and in these cases only residence in the Philippine Islands and the Panama Canal Zone by aliens may be considered residence within the United States, and the place of such military service shall be construed as the place of residence required to be established for purposes of naturalization; and any alien, or any person owing permanent allegiance to the United States embraced within this subdivision, may file his petition for naturalization in the most convenient court without proof of residence within its jurisdiction, notwithstanding the limitation upon the jurisdiction of the courts specified in section three of the Act of June twenty-ninth, nineteen hundred and six, provided he appears with his two witnesses before the appropriate representative of the Bureau of Naturalization and passes the preliminary examination hereby required before filing his petition for naturalization in the office of the clerk of the court, and in each case the record of this examination shall be offered in evidence by the representative of

the Government from the Bureau of Naturalization and made a part of the record at the original and any subsequent hearings; and, except as otherwise herein provided, the honorable discharge certificate of such alien, or person owing permanent allegiance to the United States, or the certificate of service showing good conduct, signed by a duly authorized officer, or by the masters of said vessels, shall be deemed prima facie evidence to satisfy all of the requirements of residence within the United States and within the State, Territory, or the District of Columbia, and good moral character required by law, when supported by the affidavits of two witnesses, citizens of the United States, identifying the applicant as the person named in the certificate or honorable discharge, and in those cases only where the alien is actually in the military or naval service of the United States, the certificate of arrival shall not be filed with the petition for naturalization in the manner prescribed; and any petition for naturalization filed under the provisions of this subdivision may be heard immediately, notwithstanding the law prohibits the hearing of a petition for naturalization during thirty days preceding any election in the jurisdiction of the court. Any alien, who, at the time of the passage of this Act, is in the military service of the United States, who may not be within the jurisdiction of any court authorized to naturalize aliens, may file his petition for naturalization without appearing in person in the office of the clerk of the court and shall not be required to take the prescribed oath of allegiance in open court. The petition shall be verified by the affidavits of at least two credible witnesses who are citizens of the United States, and who shall prove in their affidavits the portion of the residence that they have personally known the applicant to have resided within the United States. The time of military service may be established by the affidavits of at least two other citizens of the United States, which, together with the oath of allegiance, may be taken in accordance with the terms of section seventeen hundred and fifty of the Revised Statutes of the United States after notice from and under regulations of the Bureau of Naturalization. Such affidavits and oath of allegiance shall be admitted in evidence in any original or appellate naturalization proceeding without proof of the genuineness of the seal or signature or of the official character of the officer before whom the affidavits and oath of allegiance were taken, and shall be filed by the representative of the Government from the Bureau of Naturalization at the hearing as provided by section eleven of the Act of June twenty-ninth, nineteen hundred and six. Members of the Naturalization Bureau and Service may be designated by the Secretary of Labor to administer oaths relating to the administration of the naturalization law; and the requirement of section ten of notice to take depositions to the United States attorneys is repealed, and the duty they perform under section fifteen of the Act of June twenty-ninth, nineteen hundred and six (Thirty-fourth Statutes at Large, part one, page five hundred and ninety-six), may also be performed by the Commissioner or Deputy Commissioner of Naturalization: Provided, That it shall not be lawful to make a declaration of intention before the clerk of any court on election day or during the period of thirty days preceding the day of holding any election in the jurisdiction of the court: Provided further, That service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens can not secure residence for nat-

uralization purposes during service upon vessels of foreign registry.

During the time when the United States is at war no clerk of a United States court shall charge or collect a naturalization fee from an alien in the military service of the United States for filing his petition or issuing the certificate of naturalization upon admission to citizenship, and no clerk of any State court shall charge or collect any fee for this service unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A full accounting for all of these transactions shall be made to the Bureau of Naturalization in the manner provided by section thirteen of the Act of June twenty-ninth, nineteen hundred and six.

Sections 3, 10, 11, 13, 15, of Act June 29, 1906, c. 3592, mentioned in this subdivision, are §§ 4351, 4369, 4370, 4372, 4374, of U. S. Comp. St. 1916. R. S. § 1750, also mentioned in this subdivision, is § 3211 of U. S. Comp. St. 1916.

(8) Alien seamen deemed citizens.

Eighth. Every seaman, being an alien, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any Act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen: Provided, That nothing contained in this Act shall be taken or construed to repeal or modify any portion of the Act approved March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, part one, page eleven hundred and sixty-four, chapter one hundred and fifty-three), being an Act to promote the welfare of American seamen.

Act March 4, 1915, c. 153, mentioned in this subdivision, is set forth in U. S. Comp. St. 1916, as §§ 7734, 7978a, 8225, 8258, 8306, 8320, 8322, 8323, 8325a, 8337a, 8348, 8363a, 8363b, 8372, 8380, 8382, 8382a–8382c, 8391, 8392a, thereof.

(9) Reimbursement for printing and binding.

Ninth. For the purpose of carrying on the work of the Bureau of Naturalization of sending the names of the candidates for citizenship to the public schools and otherwise promoting instruction and training in citizenship responsibilities of applicants for naturalization, as provided in this subdivision, authority is hereby given for the reimbursement of the printing and binding appropriation of the Department of Labor upon the records of the Treasury Department from the naturalization fees deposited in the Treasury through the Bureau of Naturalization for the cost of publishing the citizenship textbook prepared and to be distributed by the Bureau of Naturalization to those candidates for citizenship only who are in attendance upon the public schools, such reimbursement to be made upon statements by the Commissioner of Naturalization of books actually delivered to such student candidates for citizenship, and a monthly naturalization bulletin, and in this duty to secure the aid of and cooperate with the official State and national organizations, including those concerned with vocational education and including personal services in the District of Columbia, and to aid the local Army exemption boards and cooperate with the War Department in locating declarants subject to the Army draft and expenses incidental thereto.

(10) Aliens erroneously exercising privileges of citizens.

Tenth. Any person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July first, nineteen hundred and fourteen, and was on that date otherwise qualified to become a citizen of the United States, except that he had not made the declaration of intention required by law and who during or prior to that time, because of misinformation regarding his citizenship status erroneously exercised the rights and performed the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention required of other aliens, and upon satisfactory proof to the court that he has so acted may be admitted as a citizen of the United States upon complying in all respects with the other requirements of the naturalization law.

(11) Alien enemies.

Eleventh. No alien who is a native, citizen, subject, or denizen of any country, State, or sovereignty with which the United States is at war shall be admitted to become a citizen of the United States unless he made his declaration of intention not less than two nor more than seven years prior to the existence of the state of war, or was at that time entitled to become a citizen of the United States, without making a declaration of intention, or unless his petition for naturalization shall then be pending and is otherwise entitled to admission, notwithstanding he shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject: Provided, That no alien embraced within this subdivision shall have his petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Commissioner or Deputy Commissioner of Naturalization to be present, and the petition shall be given no final hearing except in open court and after such notice to the representative of the Government from the Bureau of Naturalization, whose objection shall cause the petition to be continued from time to time for so long as the Government may require: Provided, however, That nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien; and section twenty-one hundred and seventy-one of the Revised Statutes of the United States is hereby repealed: Provided further, That the President of the United States may, in his discretion, upon investigation and report by the Department of Justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thereupon he shall have the privilege of applying for naturalization; and for the purposes of carrying into effect the provisions of this section, including personal services in the District of Columbia, the sum of $400,000 is hereby appropriated, to be available until June thirtieth, nineteen hundred and nineteen, including travel expenses for members of the Bureau of Naturalization and its field service only, and the provisions of section thirty-six hundred and seventy-nine of the Revised Statutes shall not be applicable in any way to this appropriation.

R. S. § 2171, repealed by this subdivision, was § 4362 of U. S. Comp. St 1916. R. S. § 3679, also mentioned in this subdivision, is set forth in U. S. Comp. St. 1916, as § 6778 thereof.

(12) Repatriation of expatriated citizens.

Twelfth. Any person who, while a citizen of the United States and during the existing war in Europe, entered the military or naval service of any country at war with a country with which the United States is now at war, who shall be deemed to have lost his citizenship by reason of any oath or obligation taken by him for the purpose of entering such service, may resume his citizenship by taking the oath of allegiance to the United States prescribed by the naturalization law and regulations, and such oath may be taken before any court of the United States or of any State authorized by law to naturalize aliens or before any consul of the United States, and certified copies thereof shall be sent by such court or consul to the Department of State and the Bureau of Naturalization, and the Act (Public fifty-five, Sixty-fifth Congress, approved October fifth, nineteen hundred and seventeen), is hereby repealed.

Act Oct. 5, 1917, c. 68, repealed by this subdivision, was an act relating to the repatriation of citizens expatriated by reason of service in the armies of Great Britain, France, etc.

(13) Proof of continuous residence.

Thirteenth. Any person who is serving in the military or naval forces of the United States at the termination of the existing war, and any person who before the termination of the existing war may have been honorably discharged from the military or naval services of the United States on account of disability incurred in line of duty, shall, if he applies to the proper court for admission as a citizen of the United States, be relieved from the necessity of proving that immediately preceding the date of his application he has resided continuously within the United States the time required by law of other aliens, or within the State, Territory, or the District of Columbia for the year immediately preceding the date of his petition for naturalization, but his petition for naturalization shall be supported by the affidavits of two credible witnesses, citizens of the United States, identifying the petitioner as the person named in the certificate of honorable discharge, which said certificate may be accepted as evidence of good moral character required by law, and he shall comply with the other requirements of the naturalization law. (34 Stat. 596, 36 Stat. 830, 40 Stat. 542–546, 548.)

This section was also amended by Act May 9, 1918, c. 69, § 1, cited above, by adding thereto subdivisions 7–13, as set forth above. It was further amended by § 3 of said Act May 9, 1918, c. 69, also cited above, by changing the word "district," wherever it appeared therein, to read "the District of Columbia."

This section was also repealed in part by Act May 9, 1918, c. 69, § 2, also cited above, by striking from subdivision 2 thereof the second paragraph, which reads as follows: "Provided further, That any person belonging to the class of persons authorized and qualified under existing law to become a citizen of the United States who has resided constantly in the United States during a period of five years next preceding May first, nineteen hundred and ten, who, because of misinformation in regard to his citizenship or the requirements of the law governing the naturalization of citizens has labored and acted under the impression that he was or could become a citizen of the United States and has in good faith exercised the rights or duties of a citizen or intended citizen of the United States because of such wrongful information and belief may, upon making a showing of such facts satisfactory to a court having jurisdiction to issue papers of naturalization to an alien, and the court in its judgment believes that such person has been for a period of more than five years entitled upon proper proceedings to be naturalized as a citizen of the United States, receive from the said court a final certificate of naturalization, and said court may issue such certificate without requiring proof of former declaration by or on the part of such person of their intention to become a citizen of the United States, but such applicant for

naturalization shall comply in all other respects with the law relative to the issuance of final papers of naturalization to aliens."

Section 2 of said last amendatory act, Act May 9, 1918, c. 69, repealed the following laws and parts of laws: R. S. §§ 2166, 2174 (see post, §§ 4355, 4357); a part of Act July 26, 1894, c. 165 (see post, § 4356); a part of Act June 30, 1914, c. 130 (see post, § 4356a); a part of subdivision 2 of Act June 29, 1906, c. 3592, § 4, as amended, Act June 25, 1910, c. 401, § 3 (see notes above).

Said section 2 of said last amendatory act, Act May 9, 1918, c. 69, also repealed all acts or parts of acts inconsistent with or repugnant to the provisions of the act. Said section is set forth post as § 4352aa.

Section 3 of said last amendatory act, Act May 9, 1918, c. 69, is set forth post, as § 4352a.

Notes of Decisions

1. Procedure and requirements in general.—The privilege of naturalization ripens into a right when the alien has complied with the conditions prescribed by Congress. U. S. v. Shanahan (D. C.) 232 F. 169.

In naturalization proceeding application and proofs must conform to clear mandate of law. U. S. v. Ginsberg (D. C.) 244 F. 209, decree reversed (C. C. A.) 247 F. 1006.

Public policy requires that no one should be naturalized, except he exercise utmost good faith in all of essentials required of him. U. S. v. Wursterbarth (D. C.) 249 F. 908.

2. Declaration of intention.—Declarations of intention to became citizens, filed prior to the Act of June 29, 1906, were not rendered nugatory by that act. U. S. v. Morena, 38 S. Ct. 151, 245 U. S. 392, 62 L. Ed. 359, certified question conformed to 247 F. 484, 159 C. C. A. 538.

Under this and the preceding section fact that alien, under a bona fide mistake, gave as his residence, in his declaration of intention filed in a district other than that of his own residence, the residence of his brother-in-law, with whom he was temporarily sojourning, does not warrant rejection of declaration and preclude admission to citizenship. In re Von Bernhardi (D. C.) 247 F. 129.

A bona fide declaration of intention cannot be rejected because of admission of petitioner for naturalization that his actual domicile was in adjoining district of United States to that in which his declaration of intention stated he was a resident, it appearing that error resulted solely from act of clerk of court, who took the declaration. U. S. v. Smith (D. C.) 247 F. 131.

Foreigner, holding only declaration of intention, is still subject of foreign country. U. S. v. Bell (D. C.) 248 F. 992.

6. —— Renunciation of allegiance.—An alien, who had been naturalized in another country, and who by mistake in his declaration of intention named the sovereign of his birth, can be admitted to citizenship on abjuring allegiance to the sovereign of his naturalization, notwithstanding this section. In re Denny (D. C.) 240 F. 845.

An applicant for naturalization must without reservation absolutely and forever renounce allegiance to his former government, and no divided allegiance is tolerated by the law. In re Haas (D. C.) 242 F. 739.

7. —— Amendment.—Though the declaration of intention of one seeking naturalization is not filed with the clerk of the District Court as clerk, nevertheless the declaration, where it erroneously stated the applicant's nationality, may be amended on application to the court. In re Markowitz (D. C.) 233 F. 715.

Declarations of intention to become a citizen, being confided by act of Congress to the custody of the clerk of the District Court, are part of the records of the court and may, as other such records, be amended. In re Schwan (D. C.) 236 F. 146.

An alien's declaration of intention to become a citizen cannot be amended merely on his testimony that owing to his lack of knowledge of English his name was not correctly written and that he did not discover the mistake. Id.

8. Petition for admission to citizenship.—See U. S. v. Meyer (C. C. A.) 241 F. 305.

9. —— Minors.—Petition for naturalization, filed by infant alien, is void. In re Cordaro (D. C.) 246 F. 735.

10. —— Signature.—Under Act June 29, 1906, § 4 (Comp. Ct. 1916, § 4352), held, in view of sections 1, 2, 8, 28, 29, 31 (Comp. St. 1916, §§ 963, 4364, 4383), that alien, who made declaration of intention before section 4 became effective, falls within proviso, and need not sign his application for admission to citizenship in his own handwriting. In re Famolaro (D. C.) 247 F. 596.

11. —— Time for petition.—Under this section aliens who prior thereto had declared intention of becoming citizens were required to file petition for citizenship within seven years after the date of the act, but not necessarily within seven years after the declaration. U. S. v. Morena, 38 S. Ct. 151, 245 U. S. 392, 62 L. Ed. 359, certified questions conformed to 247 F. 484, 159 C. C. A. 538.

Congress could limit the time within

which aliens who had declared their intention of becoming citizens prior to Act June 29, 1906, should petition for citizenship, though there was no limitation of time when the declaration was made. Id.

The provision requiring petition to be filed within seven years after the declaration of intention is to be strictly enforced by the courts. U. S. v. Mueller, 246 F. 679, 158 C. C. A. 635.

Where declaration of intention was dated October 16, 1912, and petition for citizenship was dated October 15, 1914, jurisdiction held to be entertained. In re Puglisi (D. C.) 230 F. 188.

Proviso to this section held merely to make sufficient a declaration of intention to become a citizen, filed before passage of the act, and not to exempt such a declaration from the seven-year limitation for filing petition. In re Lee (D. C.) 236 F. 987.

This section as to time of filing petition to become a citizen, held not retroactive in any proper sense as to declarations of intention previously filed; seven years from time the act became effective being allowed as to them. Id.

Under this section, in view of its practical construction and to avoid subjecting certificates to attack under section 15 (Comp. St. 1916, § 4374), an applicant who had filed a valid declaration under the old law can be naturalized thereunder more than seven years after the new law took effect. In re Valhoff (D. C.) 238 F. 405.

Act June 29, 1906, limiting time for application for admission to full citizenship, held applicable, though declaration of intention was filed prior to the statute. In re Bourke (D. C.) 243 F. 794.

Under this section, declaration of intention filed by foreign seaman expires after seven years, notwithstanding § 4357, in force at time of passage of Naturalization Act, allows such a seaman, who has declared his intention, to be naturalized on proof of three years' service in merchant vessel of United States. In re Britton (D. C.) 248 F. 607.

While alien, to take advantage of declaration of intention, must file his petition for naturalization within seven years, yet failure to file petition within such period does not, unless alien leaves country, raise presumption that he has resumed his old and interrupted allegiance to foreign power. U. S. v. Mitchell (D. C.) 248 F. 997.

14. —— **Subsequent applications.**—Though petition for admission to citizenship was rejected on account of error of clerk of another court, petitioner, a subject of German Empire, is not, under Rev. St. § 2171 (Comp. St. 1916, § 4362), after declaration of war with such empire, entitled to have his application received and to be admitted to citizenship. In re Lindner (D. C.) 247 F. 138.

While admission to citizenship may be denied, if applicant does not show that he has behaved as person of good moral character and attached to principles of United States for more than five years preceding his application, denial of applicant's petition for admission to citizenship on ground of illegal sale of intoxicating liquor does not preclude him from thereafter reapplying for admission. Gazzola v. Commanding Officer of Ft. Totten, Bayside, Long Island, N. Y. (D. C.) 248 F. 1001.

15. —— **Certificate from department of commerce and labor.**—Under Act June 29, 1906, §§ 1, 4, 5, 6, and 27 (Comp. St. 1916, §§ 963, 4352–4354, 4382), filing by petitioner of certificate of Department of Labor, is a matter of substance, and cannot be dispensed with by the court. U. S. v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321, reversing decree 230 F. 950, 145 C. C. A. 144, Ann. Cas. 1917C, 41, which affirmed (D. C.) 217 F. 169.

Though under Comp. St. 1916, § 4370, government appears and opposes petition for failure to file certificate required by this section, order of naturalization does not preclude suit to cancel the certificate under section 4374, post. Id.

Naturalization granted without filing certificate of Department of Labor required by this section is illegally procured, so as to be subject to cancellation under section 4374, post. Id.

Under this and the preceding section absence of certificate from Department of Commerce and Labor as to applicant's arrival in the country held to deprive court of jurisdiction to admit applicant to citizenship. U. S. v. Ness, 230 F. 950, 145 C. C. A. 144, affirming decree (D. C.) 217 F. 169.

Under this section and section 4374, post, certificate of citizenship held not subject to cancellation because certificate of Department of Commerce and Labor, required by this section, was not filed. Id.

Alien entering country from Canada without usual formalities, and therefore unable to obtain required certificate of Department of Commerce and Labor, held properly admitted to citizenship. Id.

Under Act June 29, 1906, § 1 (Comp. St. 1916, § 963), § 31, and this section an immigrant, though he did not file with his declaration of intention a certificate of landing, but erroneously stated that he landed before the law went into effect, will not, seven years afterward, be denied citizenship on that ground; a certificate of landing being filed before application for final papers. In re Titone (D. C.) 233 F. 175.

16. —— **Witnesses.**—Under this and the following section, substitution of

witness whose affidavit was not attached to petition for naturalization in place of one of those verifying the petition held to render the certificate illegal and subject to cancellation. U. S. v. Gulliksen, 244 F. 727, 157 C. C. A. 175.

Under this section and sections 4353 and 4354, held, that names of witnesses on application for naturalization, substituted for those verifying the petition, must be posted for 90 days. In re Giaquinto (D. C.) 230 F. 1004.

In proceeding under Comp. St. 1916, § 4374, to cancel naturalization certificate, respondent's affidavits held to show that his witnesses did not possess qualifications prescribed by subdivision 2 of this section. U. S. v. Ginsberg (D. C.) 244 F. 209, decree reversed (C. C. A.) 247 F. 1006.

19. Evidence of residence, character, etc.—Residence.—Whether absences from the country within five years prior to application for citizenship broke the continuity of the alien's residence under subdivision 4 held a question of fact for the court to determine. U. S. v. Deans, 230 F. 957, 145 C. C. A. 151, affirming decree In re Deans (D. C.) 208 F. 1018.

An application for citizenship by an alien who resided in the United States for some years before removing to British Columbia, where he lived for 21 years before return must be denied, despite the alien's prior filing of declaration of intention, the alien not having resided in the United States for 5 years next before application. In re Brash (D. C.) 235 F. 1003.

An alien who after declaring his intention to become a citizen returned to his native country, remaining there for 2½ years, and having returned to the United States, held, under subdivision 4, not entitled to admission of citizenship 5 years after his declaration. U. S. v. Griminger (D. C.) 236 F. 285.

Under subdivision 4 requiring an alien to have resided within the United States for five years immediately preceding his petition for final papers, the term "resided" means "lived." Id.

The knowledge of witnesses to show continuous residence in the country, for five years, of applicant for naturalization, notwithstanding business trips abroad, need be only appropriate to the possibilities of the case. In re Reichenburg (D. C.) 238 F. 859.

That an alien, after establishing a residence in the country, is temporarily absent on business trips as a traveling salesman, does not prevent his residence being continuous, necessary, under subdivision 4, for naturalization. Id.

Merely temporary absence from the United States or a state will not prevent an alien who has actually resided here from securing naturalization; but the absence in each case must be examined, to determine whether it has broken the continuity of the residence. In re Cook (D. C.) 239 F. 782, appeal dismissed Appeal of Cook, 242 F. 932, 155 C. C. A. 520.

An alien who had been for several years employed on a pleasure yacht belonging to a citizen, and had been in the United States occasionally on the yacht prior to the outbreak of the war, but had never lived ashore in the United States, and had never brought his family to this country, and who had not been in the country during the last three years, except to file a petition for naturalization and to attend the hearing, has not "resided continuously within the United States" for five years, or within the state for one year, as required by subdivision 4. Id.

Continuity of residence once established within naturalization statute, held not interrupted by temporary absences without intention to change or abandon domicile. U. S. v. Jorgenson (D. C.) 241 F. 412.

Whether alien has resided continuously in the United States for necessary period is question of fact dependent upon facts and circumstances. Id.

Facts held to show that alien, though absent from United States in the Canal Zone, did not intend to change or abandon domicile and was entitled to naturalization. Id.

Law requiring aliens to reside within United States for period of five years preceding filing of petition for citizenship is intended to allow observation of applicant, etc., to whom no certificate can be granted unless he complies with residence requirement. In re Di Giovine (D. C.) 242 F. 741.

In proceeding under Comp. St. 1916, § 4374, to cancel naturalization certificate, respondent's affidavits held to show that he did not possess qualifications required by subdivision 4 of this section. U. S. v. Ginsberg (D. C.) 244 F. 209, decree reversed (C. C. A.) 247 F. 1006.

Subdivision 4, contemplates actual and substantial residence which must be coincident with intent Id.

See, also, section 4360, post, and notes thereunder.

20. —— Moral character and attachment to principles of constitution.—Under subdivision 4, an alien applying for naturalization, who had been conducting an immoral resort, is not entitled to citizenship, for the act not only requires that the alien conduct himself as a person of good moral character, but that he be such in fact. U. S. v. Leles (D. C.) 236 F. 784.

Alien, who had filed declaration of intention more than seven years ago, and whose petition for admission to citizenship was denied on ground that he illegally sold intoxicating liquor, is

still a declarant, within Selective Draft Act. Gazzola v. Commanding Officer of Ft. Totten, Bayside, Long Island, N. Y. (D. C.) 248 F. 1001.

An application for citizenship by one who within a year has pleaded guilty to a charge of conspiring to hire others to enlist in the service of a foreign king, in violation of Criminal Code, § 10 (Comp. St. 1916, § 10174), and has been sentenced to pay a fine therefor, although subsequently pardoned by the President, will be denied naturalization, as not having fulfilled the statutory requirement of behaving as a man well disposed to the good order and happiness of the United States. In re Addis (D. C.) 252 F. 886.

Application for citizenship will be denied to saloon keeper who habitually violated the Sunday closing law by keeping his saloon open on Sundays until three months before he filed his petition for naturalization and two years before the hearing, when, being notified by the municipal authorities that they would thereafter enforce the law, he ceased volating the law. U. S. v. Gerstein, 119 N. E. 922, 284 Ill. 174.

21. Persons erroneously believing themselves citizens.—Under Act June 29, 1906, § 6 (Comp. St. 1916, § 4354), and the amendment of 1910 to section 4 as to naturalization of persons exercising the rights and duties of citizens under the impression that they are citizens, held, that naturalization of applicant without posting of notice for 90 days was discretionary with the court. U. S. v. Salomon (D. C.) 231 F. 461, decree affirmed 231 F. 928, 146 C. C. A. 124.

Under Act June 25, 1910, § 3, amending Act June 29, 1906, § 4 (Comp. St. 1916, § 4352), the belief of an applicant for naturalization that he could become a citizen and action thereunder must have continued during the five years preceding May 1, 1910, not the years preceding the application. In re Horecsny (D. C.) 238 F. 446.

23. Appeal.—A decision denying an application for naturalization cannot be reviewed by the Circuit Court of Appeals on writ of error or on appeal, there being no provisions for such review. Appeal of Cook, 242 F. 932, 155 C. C. A. 520, dismissing appeal In re Cook (D. C.) 239 F. 782.

24. Seamen.—Under this section declaration of intention filed by foreign seaman expires after seven years, notwithstanding Rev. St. § 2174 (Comp. St. 1916, § 4357), in force at time of passage of Naturalization Act, allows such a seaman, who has declared his intention, to be naturalized on proof of three years' service in merchant vessel of United States. In re Britton (D. C.) 248 F. 607.

A master mariner is a seaman, within Rev. St. § 2174 (Comp. St. 1916, § 4357), declaring that every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any court of competent jurisdiction, and shall have served three years on board of a merchant vessel of the United States subsequent to the declaration, may be admitted to citizenship, etc. In re Scott (D. C.) 250 F. 647.

25. Alien enemies.—See § 4362, post, and notes thereunder.

As bearing on the right to naturalization, a person born in Schleswig after its annexation by Prussia is a German subject and an alien enemy, though of Swedish and Danish descent. In re Jonasson (D. C.) 241 F. 723.

Any doubt as to right of German citizens to naturalization during the war will be construed against admission, in view of German statute authorizing double citizenship. In re Haas (D. C.) 242 F. 739.

Under the proviso in Naturalization Act June 29, 1906, § 4, par. 11, as added and amended by Act May 9, 1918, § 1, that aliens classed therein as alien enemies may be admitted to citizenship by consent of the President, where such consent is procured, no notice of the application is required to be given to the Department of Labor. In re Pfleiger (D. C.) 254 F. 511.

An Alsatian, born before the cession of Alsace to Germany, but who was a child at that time, and whose parents remained, and hence became German subjects, is not entitled to admission to citizenship under subdivision 11, except by consent of the President as therein provided. Id.

26. Aliens in military or naval service.—Certificate of furlough granted to applicant for citizenship after three years' service with army, pursuant to Act Aug. 24, 1912, § 2 (§ 1892, ante), held not honorable discharge, within Rev. St. § 1342, Articles of War, art. 4 (Comp. St. 1916, § 2313), and so applicant could not be admitted to citizenship under section 2166 (Comp. St. 1916, § 4355). In re Markun (D. C.) 232 F. 1018.

A citizen of the Philippines honorably discharged from the navy must comply with Naturalization Law, § 30 (Act June 29, 1906, as amended [Comp. St. 1916, § 4366]), and cannot be admitted without declaration of intention or residence under Act July 26, 1894 (Comp. St. 1916, § 4356), relating to admission to citizenship of aliens honorably discharged from the navy. In re Mallari (D. C.) 239 F. 416.

Native Filipino held an alien within Act June 30, 1914 (Comp. St. 1916, § 4356a), as to naturalization of aliens without previous declaration of intention who have served an enlistment in the navy and been honorably discharged. In re Bautista (D. C.) 245 F. 765.

In view of Act March 2, 1907, § 2 (Comp. St. 1916, § 3959), aliens in service of army or navy, whose inten-

tion it is, upon discharge from service, to return to their native countries and remain there permanently, are not entitled to naturalization, either under general statutes or this section, for such a temporary naturalization would be a fraud on the nation, and clearly in conflict with oath of allegiance. In re Naturalization of Aliens in Service of Army or Navy of United States (D. C.) 250 F. 316.

Cited without definite application, In re Cook (D. C.) 239 F. 782; *In re* Addis (D. C.) 252 F. 886.

§ 4352a. (Act May 9, 1918, c. 69, § 3.) Validation of certificates of naturalization.

All certificates of naturalization granted by courts of competent jurisdiction prior to December thirty-first, nineteen hundred and eighteen, upon petitions for naturalization filed prior to January thirty-first, nineteen hundred and eighteen, upon declarations of intention filed prior to September twenty-seventh, nineteen hundred and six, are hereby declared to be valid in so far as the declaration of intention is concerned, but shall not be by this Act further validated or legalized. (40 Stat. 548.)

This section was a part of § 3 of Act May 9, 1918, c. 69, cited above. Section 1 of said act amended § 4352. Section 2 of said act repealed certain acts. See ante, § 4352, and notes thereunder. The remainder of said section 3 amended §§ 4352, 4369, 4382, which see.

§ 4352aa. (Act May 9, 1918, c. 69, § 2.) Acts repealed.

All acts or parts of acts inconsistent with or repugnant to the provisions of this Act are hereby repealed; but nothing in this Act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh subdivision of this Act and under the limitation therein defined: Provided, That for the purposes of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to this Act the statutes and laws hereby repealed shall remain in full force and effect: Provided further, That as to all aliens who, prior to January first, nineteen hundred, served in the Armies of the United States and were honorably discharged therefrom, section twenty-one hundred and sixty-six of the Revised Statutes of the United States shall be and remain in full force and effect, anything in this Act to the contrary notwithstanding. (40 Stat. 547.)

This was a part of section 2 of Act May 9, 1918, c. 69, 40 Stat. 542. The remainder of the section repealed R. S. §§ 2166, 2174 (§§ 4355, 4357), a part of Act July 26, 1894, c. 165 (§ 4356), a part of Act June 30, 1914, c. 130 (§ 4356a), and a part of subdivision 2 of Act June 29, 1906, c. 3592, § 4, as amended, Act June 25, 1910, c. 401, § 3 (§ 4352). R. S. § 2169, mentioned in this section, is § 4358. R. S. § 2166, mentioned in this section, was § 4355.

§ 4353. (Act June 29, 1906, c. 3592, § 5.) Notice of filing of petition; hearing thereon.

Posting of notice of petition, names of witnesses, etc.—See U. S. v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321, reversing decree 230 F. 950, 145 C. C. A. 144, Ann. Cas. 1917C, 41, which affirmed (D. C.) 217 F. 169.

Under this and the preceding section, substitution of witness whose affidavit was not attached to the petition for naturalization in place of one of those verifying the petition held to render the certificate illegal and subject to cancellation. U. S. v. Gulliksen, 244 F. 727, 157 C. C. A. 175.

Under this section and Comp. St. 1916, §§ 4352, 4354, held, that names of witnesses on application for naturalization, substituted for those verifying the petition, must be posted for 90 days. In re Giaquinto (D. C.) 230 F. 1004.

Under Act June 29, 1906, § 6 (Comp. St. 1916, § 4354), and the amendment of 1910 to section 4, ante, § 4352, as to naturalization of persons exercising the rights and duties of citizens under the impression that they are citizens, held, that naturalization of applicant

without posting of notice for 90 days was discretionary with the court. U. S. v. Salomon (D. C.) 231 F. 461, decree affirmed 231 F. 928, 146 C. C. A. 124.

Error, if any, in naturalizing applicant, notice of whose petition had not been filed for 90 days, held not to authorize cancellation of certificate, under Comp. St. 1916, § 4374. Id.

Act June 29, 1906, as to notice of application for naturalization, and Rev. St. § 2171 (Comp. St. 1916, § 4362), as to naturalization of alien enemies, must be construed together. In re Duus (D. C.) 245 F. 813.

§ 4354. (Act June 29, 1906, c. 3592, § 6.) Time for filing petition and for final action; change of name.

Amendments.—A court held without authority to subsequently amend its record in a naturalization proceeding, by changing the name under which the alien was naturalized, where there was neither accident nor mistake. In re Holland (D. C.) 237 F. 735.

Time for final action on petition.—See U. S. v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321, reversing decree 230 F. 950, 145 C. C. A. 144, Ann. Cas. 1917C, 41, which affirmed (D. C.) 217 F. 169.

Under this section and sections 4352 and 4362, held, that the application is complete when the petition is filed, and the time of filing the petition is the "time of his application," and that a German subject filing his petition in January, 1917, was entitled to naturalization, though the hearing was not had until April 6th, at which time a state of war existed. U. S. v. Meyer (C. C. A.) 241 F. 305.

Under this section and sections 4352 and 4353, held, that names of witnesses on application for naturalization, substituted for those verifying the petition, must be posted for 90 days. In re Giaquinto (D. C.) 230 F. 1004.

Under Act June 29, 1906, § 6, and the amendment of 1910, to section 4, as to naturalization of persons exercising the rights and duties of citizens under the impression that they are citizens, held, that naturalization of applicant without posting of notice for 90 days was discretionary with the court. U. S. v. Salomon (D. C.) 231 F. 461, decree affirmed 231 F. 928, 146 C. C. A. 124.

See, also, § 4352, subd. 11, ante, and § 4362, post, and notes thereunder.

Cancellation of certificate.—An affidavit for cancellation of a certificate of citizenship, under Comp. St. 1916, § 4374, which merely shows that the certificate was granted the same day the petition was filed, contrary to this section, is insufficient. U. S. v. Salomon, 231 F. 928, 146 C. C. A. 124, affirming decree (D. C.) 231 F. 461.

Where respondent, a native of Germany, was admitted to citizenship under Rev. St. § 2165, proof that, when the United States and Germany engaged in war, many years later, respondent desired a German success, and recognized allegiance to Germany superior to that due the United States, warrants cancellation of his certificate of citizenship, on ground that it was procured by fraud, in that his oath to renounce allegiance to any foreign sovereignty was false. U. S. v. Wursterbarth (D. C.) 249 F. 908.

A petition for cancellation of the certificate of citizenship of a former German subject, on the ground that he made a false oath of allegiance, and of renunciation of all allegiance to Germany and the German emperor, held sufficient on motion to dismiss. U. S. v. Darmer (D. C.) 249 F. 989.

§ 4355. (R. S. § 2166.) [Repealed.]

This section, relating to the naturalization of aliens honorably discharged from the military service of the United States, was repealed by Act May 9, 1918, c. 69, § 2. See ante, §§ 4352, 4352a, and notes thereunder.

Cited without definite application,
Ex parte Dostal (D. C.) 243 F. 664.

§ 4356. [Repealed.]

This section, relating to the naturalization of aliens honorably discharged from service in the Navy or the Marine Corps of the United States, was repealed by Act May 9, 1918, c. 69, § 2. See ante, §§ 4352, 4352a, and notes thereunder.

Cited without definite application,
In re Bautista (D. C.) 245 F. 765.

§ 4356a. [Repealed.]

This section, relating to the naturalization of aliens honorably discharged from service in the Navy or Marine Corps or in the Revenue-Cutter Service, was repealed by Act May 9, 1918, c. 69, § 2. See ante, §§ 4352, 4352a, and notes thereunder.

§ 4357. (R. S. § 2174.) [Repealed.]

This section, relating to the naturalization of alien seamen, was repealed by Act May 9, 1918, c. 69, § 2. See ante, §§ 4352, 4352a, and notes thereunder.

Cited without definite application,
In re Cook (D. C.) 239 F. 782.

§ 4358. (R. S. § 2169, as amended, Act Feb. 18, 1875, c. 80, § 1.) Aliens of African nativity and descent.

Act May 9, 1918, c. 69, § 2, provides that nothing in said act shall repeal or in any way enlarge this section except as specified in the seventh subdivision of § 1 thereof, under the limitations therein defined. See ante, §§ 4352, 4352a, and notes thereunder.

Notes of Decisions

1. **In general.**—Under Comp. St. 1916, § 4366, and despite this section which was part of Naturalization Act of 1870, as amended in 1875, persons not citizens owing permanent allegiance to United States may become citizens pursuant to section 4366 on becoming residents of organized territory, though they be not white persons, nor of African nativity or descent. In re Mallari (D. C.) 239 F. 416.

Though Comp. St. 1916, § 4366, provides that the applicable provisions of the naturalization laws shall apply to and be held to authorize the admission to citizenship of "all persons," not citizens, who owe permanent allegiance to the United States and become residents of any state or organized territory, it is limited by this section, and Act May 6, 1882, c. 126, § 14, 22 Stat. 61 (Comp. St. 1916, § 4359), restricting naturalization to free white persons and persons of African nativity or descent, these being "applicable provisions of the naturalization laws." In re Rallos (D. C.) 241 F. 686.

3. **Free white persons.**—The son of a Filipino mother and a father who was half Filipino and half Spanish is not a white person, and is not entitled to naturalization. In re Lampitoe (D. C.) 232 F. 382.

6. —— **Hindus.**—In view of historical significance of term, and its subsequent development, member of Hindu race cannot be admitted to citizenship under statute which from 1790 to 1875 without change has provided for naturalization of free white persons; term "white person" as used in statute not necessarily including all Caucasians. In re Sadar Bhagwab Singh (D. C.) 246 F. 496.

8. —— **Malays.**—Native Filipino of the Malay race held entitled to be naturalized under Naturalization Act June 29, 1906, § 30 (Comp. St. 1916, § 4366), notwithstanding this section. In re Bautista (D. C.) 245 F. 765.

§ 4359. (Act May 6, 1882, c. 126, § 14.) Chinese not to be naturalized.

Cited without definite application,
In re Rallos (D. C.) 241 F. 686.

§ 4360. (R. S. § 2170.) Residence of five years in United States.

See § 4352, subd. 4, and notes under that section.

Nature and purpose of residence required.—The requirement of naturalization laws that the applicant shall have resided continuously in the United States for the prescribed time means only that he has maintained a bona fide residence and domicile here. U. S. v. Shanahan (D. C.) 232 F. 169.

Law requiring aliens to reside within United States for period of five years preceding filing of petition for citizenship is intended to allow observation of applicant, etc., to whom no certificate can be granted unless he complies with residence requirement. In re Di Giovine (D. C.) 242 F. 741.

Effect of absence during period.—Where an alien left the United States, and was away over two years, he is not, under this section, and in view of Act March 26, 1790, Act Jan. 29, 1795, Act April 14, 1802, Act March 3, 1813, and Act June 26, 1848, entitled to naturalization upon his return, having been without the United States for practically half of the five-year period. U. S. v. Mulvey, 232 F. 513, 146 C. C. A. 471.

Temporary absence.—Under this section held, that an alien's temporary absence from the United States during the five-year period will not necessarily preclude naturalization. U. S. v. Mulvey, 232 F. 513, 146 C. C. A. 471.

Service on foreign vessel.—Time served aboard vessel of foreign registry, flying foreign flag cannot be considered in making up five years' continuous residence in United States for naturalization, though applicant spent eight weeks a year ashore; his wife not being in country. In re Willis (Sup.) 169 N. Y. S. 261, 102 Misc. Rep. 447.

§ 4362. (R. S. § 2171.) [Repealed.]

This section, prohibiting the naturalization of alien enemies, was repealed by Act May 9, 1918, c. 69, § 2. See ante, §§ 4352, 4352a, and notes thereunder.

Notes of Decisions

Statute construed and applied.—See U. S. v. Meyer (C. C. A.) 241 F. 305; In re Jonasson (D. C.) 241 F. 723; In re Kreuter (D. C.) 241 F. 985; In re Nannanga (D. C.) 242 F. 737; In re Haas (D. C.) 242 F. 739; In re Naturalization of Subjects of Germany (D. C.) 242 F. 971; Ex parte Borchardt (D. C.) 242 F. 1006; In re Duus (D. C.) 245 F. 813; In re Lindner (D. C.) 247 F. 138; U. S. v. Kamm (D. C.) 247 F. 968; In re Weisz (D. C.) 250 F. 1008; State v. Covell (Kan.) 175 P. 989; In re Meyer (Sup.) 166 N. Y. S. 505, 100 Misc. Rep. 587.

§ 4364. (Act June 29, 1906, c. 3592, § 8.) Persons not speaking English not to be naturalized.

Cited without definite application,
In re Famolaro (D. C.) 247 F. 596.

§ 4366. (Act June 29, 1906, c. 3592, § 30.) Persons not citizens who owe permanent allegiance to United States.

Persons entitled.—Under this section, and despite Rev. St. § 2169 (Comp. St. 1916, § 4358), which was part of Naturalization Act of 1870, as amended in 1875, persons not citizens owing permanent allegiance to United States may become citizens pursuant to section 30 on becoming residents of organized territory, though they be not white persons, nor of African nativity or descent. In re Mallari (D. C.) 239 F. 416.

A citizen of the Philippines honorably discharged from the navy must comply with this section, and cannot be admitted without declaration of intention or residence under Act July 26, 1894, relating to admission to citizenship of aliens honorably discharged from the navy. Id.

This section is limited by sections 4358, 4359, restricting naturalization to free white persons and persons of African nativity or descent, these being "applicable provisions of the naturalization laws." In re Rallos (D. C.) 241 F. 686.

Native Filipino of the Malay race held entitled to be naturalized under this section, notwithstanding Rev. St. § 2169 (Comp. St. 1916, § 4358). In re Bautista (D. C.) 245 F. 765.

Unnaturalized aliens residing in Philippine Islands at date of treaty of December 10, 1898, held not entitled to be naturalized under this section. Id.

§ 4367. (R. S. § 2172.) Citizenship of children of naturalized persons.

Naturalization of parents during minority of children dwelling in United States.—On naturalization of a foreign subject, an infant child of such subject, though it was born in a foreign country, becomes a citizen of the United States. Delaware, L. & W. R. Co. v. Petrowsky (C. C. A.) 250 F. 554.

On habeas corpus to obtain discharge from compulsory military service, on ground that relator was enemy alien, evidence held to support finding by local and district draft boards that relator, by reason of naturalization of his father, had become citizen, and hence question cannot be reviewed. U. S. v. Kinkead (D. C.) 248 F. 141, order affirmed 250 F. 692, 162 C. C. A. 654.

Under this section, where alien father, on naturalization, omitted name of minor child residing in United States from his papers, such child, though his name did not appear on certificate, became citizen, for omission of his name did not affect validity of his father's naturalization. In re Hennig (D. C.) 248 F. 990.

Where alien father, on naturalization, omitted name of minor child, and such child became citizen under this section, additional papers showing existence of child can thereafter be ordered filed, and new certificate of naturalization, showing true facts, issued on surrender of old. Id.

Children reaching majority before naturalization of parent.—Under this section, the foreign-born son of foreign-born father, who had reached his majority before his father was naturalized, did not become a citizen through his father. In re Slobody (Sup.) 173 N. Y. S. 514.

Adopted children.—Adoption by citizen of United States of minor child born in Italy, whose father had never been naturalized, did not naturalize child. Powers v. Harten (Iowa) 167 N. W. 693.

Cited without definite application,
U. S. v. Meyer (C. C. A.) 241 F. 305.

§ 4368. (Act June 29, 1906, c. 3592, § 9.) Final hearing on petition; record of final order.

Validity.—See U. S. v. Ginsberg (D. C.) 244 F. 209.

Hearing in open court.—Final hearing of petition for naturalization is not had in open court as required by this section, where finally held in chambers adjoining the courtroom on a subsequent day. U. S. v. Ginsberg, 37 S. Ct. 422, 243 U. S. 472, 61 L. Ed. 853.

Proceeding for naturalization in judge's chambers adjoining courtroom on due notice held to sufficiently comply with this section and Comp. St. 1916, § 4370, providing that United States shall have right to appear. U. S. v. Ginsberg (D. C.) 244 F. 209, decree reversed (C. C. A.) 247 F. 1006.

Examination of witnesses.—Under this section a state court hearing petition for naturalization cannot appoint its stenographer a commissioner to take depositions of absent witnesses as to applicant's good character; the proceeding not falling within exception of this section. U. S. v. Leles (D. C.) 236 F. 784.

Where state court, hearing application for naturalization, accepted depositions of witnesses as to applicant's good moral character, contrary to this section, testimony by judge that he did not consider such evidence in making his finding as to applicant's character would not cure error. Id.

Though agent of Naturalization Bureau appeared and questioned witnesses pursuant to this section, held, that the government did not have its day in court, and was not precluded from subsequently attacking the certificate of naturalization. Id.

Judgment or order.—An order of naturalization cannot be treated as a judgment precluding the government from questioning it under Comp. St. 1916, § 4374, because under section 4370 the government can appear in opposition. U. S. v. Mulvey, 232 F. 513, 146 C. C. A. 471.

Denial of a petition for naturalization on the ground that applicant was not a person of good moral character, being a "case" within Const. art. 3, § 2, held an adjudication of that fact, which barred a second application within five years thereafter. In re Hartman (D. C.) 232 F. 797.

—— **Record.**—The best evidence of naturalization of an alien is the original papers or certified copies of the record. State v. Chamberlin (Iowa) 163 N. W. 428.

—— **Modification or correction.**—While order admitting person to citizenship is treated as judgment, and cannot be subsequently changed or amended at later term, purely clerical mistakes can be corrected, hence additional paper may be ordered filed to show correct age of alien, misstated in his declaration of intention and petition. In re Hennig (D. C.) 248 F. 990.

—— **Collateral attack.**—The state courts must assume the validity of naturalization proceedings when attacked only collaterally at a date some years after they were had. In re Mesa's Estate (Sup.) 159 N. Y. S. 59, 172 App. Div. 467.

Cited without definite application, U. S. v. Gulliksen (C. C. A.) 244 F. 727.

§ 4369. (Act June 29, 1906, c. 3592, § 10, as amended, Act May 9, 1918, c. 69, § 3.) Evidence of residence.

In case the petitioner has not resided in the State, Territory, or the District of Columbia for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the State, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Immigration and Naturalization and the United States attorney for the district in which said witnesses may reside. (34 Stat. 599. 40 Stat. 548.)

This section was amended by Act May 9, 1918, c. 69, § 3, cited above, by changing the word "district," wherever it appeared therein, to read "The District of Columbia." See ante, § 4352a, and note thereunder.

The requirement of this section of notice to take depositions to the United States attorneys was repealed by Act May 9, 1918, c. 69, § 1. See ante, § 4352, and notes thereunder.

Notes of Decisions

Sufficiency of evidence of residence.—On application for citizenship, evidence held sufficient to sustain finding of applicant's residence and good moral

character for the whole of the five years preceding the filing of the petition under this section. U. S. v. Deans, 230 F. 957, 145 C. C. A. 151, affirming decree In re Deans (D. C.) 208 F. 1018.

§ 4370. (Act June 29, 1906, c. 3592, § 11.) Appearance by United States and proceedings in opposition.

Appearance in general.—An order of naturalization cannot be treated as a judgment precluding the government from questioning it under Comp. St. 1916, § 4374, because under this section the government can appear in opposition. U. S. v. Mulvey, 232 F. 513, 146 C. C. A. 471.

Where, in a naturalization proceeding, a representative of the Bureau of Naturalization presents to the District Court personal history of applicant, he should not be considered as representing the government adversely to the applicant. Id.

Proceedings in judge's chambers.—Proceeding for naturalization in judge's chambers adjoining courtroom on due notice held to sufficiently comply with this section, providing that United States shall have right to appear. U. S. v. Ginsberg (D. C.) 244 F. 209, decree reversed (C. C. A.) 247 F. 1006.

Effect as to cancellation of certificate.—Though, under this section, government appears and opposes petition for failure to file certificate required by section 4352, ante, order of naturalization does not preclude suit to cancel the certificate under section 4374, post. U. S. v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321, reversing decree 230 F. 950, 145 C. C. A. 144, Ann. Cas. 1917C, 41, which affirmed (D. C.) 217 F. 169.

§ 4371. (Act June 29, 1906, c. 3592, § 12.) Duties of clerks of courts.

Charge for triplicate copies of declarations.—Charge by clerk of District Court for triplicate copies of declarations of intent for naturalization is not authorized by Comp. St. 1916, § 1383, as, if authorized by this section, it would be forbidden by section 4377, the services not having been included in fees named in section 4372, and, if the duty arose under this section, prohibition of section 4377, would be applicable. Cross v. U. S., 37 S. Ct. 5, 242 U. S. 4, 61 L. Ed. 114.

§ 4372. (Act June 29, 1906, c. 3592, § 13, as amended, Act June 25, 1910, c. 401, § 1.) Fees.

Fees of clerk.—Charge by clerk of District Court for triplicate copies of declarations of intent for naturalization is not authorized by Comp. St. 1916, § 1383, as, if authorized by section 4371, it would be forbidden by section 4377, the services not having been included in fees named in this section, and, if the duty arose under section 4371, prohibition of section 4377, would be applicable. Cross v. U. S., 37 S. Ct. 5, 242 U. S. 4, 61 L. Ed. 114.

Under this section and section 5394, held, that the clerk of the Circuit Court during the last half year, which the office existed, could not retain more than $1,500 of fees received in naturalization cases, though one-half of the fees exceeded that sum. Robb v. U. S., 233 F. 525, 147 C. C. A. 411.

Under Comp. St. 1916, § 5394, and this section, a clerk of a court is not entitled to the full maximum sum allowed for fees collected in naturalization proceedings in any one fiscal year received during six months of such year, but is only entitled to retain his pro rata share of said maximum sum for the period during which said fees were collected. Darling v. U. S., 51 Ct. Cl. 100.

Under Pol. Code Cal. §§ 4152, 4232, 4290, 4292, and this section, held, that county clerk, collecting fees in naturalization proceedings, could not retain them for his personal use. Alameda County v. Cook (Cal. App.) 162 P. 405.

Amendment of Pol. Code Cal. § 4233, requiring Santa Clara county clerk to pay to the treasury all fees, by St. Cal. 1911, p. 1282, to read including fees in naturalization proceedings, held not authority for retention of such fees by county clerks in all other counties, in view of Pol. Code Cal. §§ 4152, 4232, 4290, 4292, and this section. Id.

This section leaves the ownership and disposition of fees retained to the control of the state law. Price v. Erie County, 116 N. E. 988, 221 N. Y. 260, reversing judgment 148 N. Y. S. 864, 163 App. Div. 437.

§ 4372a. (Act June 12, 1917, c. 27, § 1.) Fees.

The whole amount allowed for a fiscal year to the clerk of a court and his assistants from naturalization fees and this appropriation or any similar appropriation made hereafter shall be based upon and not exceed the one-half of the gross receipts of said clerk from naturalization fees during the fiscal year immediately preceding,

unless the naturalization business of the clerk of any court during the year shall be in excess of the naturalization business of the preceding year, in which event the amount allowed may be increased to an amount equal to one-half the estimated gross receipts of the said clerk from naturalization fees during the current fiscal year. (40 Stat. 171.)

This was part of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 4374. (Act June 29, 1906, c. 3592, § 15.) Cancellation of certificates.

1. In general.—An order of naturalization cannot be treated as a judgment precluding the government from questioning it under this section, because under section 4370 the government can appear in opposition. U. S. v. Mulvey, 232 F. 513, 146 C. C. A. 471.

The court hearing petition to cancel a naturalization certificate will not review the finding of the court which granted the certificate as to the residence for the prescribed time. U. S. v. Shanahan (D. C.) 232 F. 169.

As the laws of the United States afford very reasonable terms of admission to citizenship, doubts as to whether an alien has performed the conditions precedent required by statute should be resolved in favor of the government. U. S. v. Griminger (D. C.) 236 F. 285.

Under section 4352, ante, in view of its practical construction and to avoid subjecting certificates to attack under this section, an applicant who had filed a valid declaration under the old law can be naturalized thereunder more than seven years after the new law took effect. In re Valhoff (D. C.) 238 F. 405.

3. Certificates fraudulently or illegally procured.—A certificate may be canceled under this section, where petitioner was not qualified by residence and the judge hearing the petition misapplied the law and the facts. U. S. v. Ginsberg, 37 S. Ct. 422, 243 U. S. 472, 61 L. Ed. 853.

Naturalization granted without filing certificate of Department of Labor required by section 4252, ante, is illegally procured so as to be subject to cancellation under this section. U. S. v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321, reversing decree 230 F. 950, 145 C. C. A. 144, Ann. Cas. 1917C, 41, which affirmed (D. C.) 217 F. 169.

Under this section and section 4352, ante, certificate of citizenship held not subject to cancellation because certificate of Department of Commerce and Labor, required by section 4352, was not filed. U. S. v. Ness, 230 F. 950, 145 C. C. A. 144, affirming decree (D. C.) 217 F. 169.

Error, if any, in naturalizing applicant, notice of whose petition had not been filed for 90 days, held not to authorize cancellation of certificate, under this section. U. S. v. Salomon (D. C.) 231 F. 461, decree affirmed (C. C. A.) 231 F. 928, 146 C. C. A. 124.

Where applicant was not entitled to naturalization, issuance of certificate was illegal and may be attacked by district attorney under this section. U. S. v. Mulvey, 232 F. 513, 146 C. C. A. 471.

Under sections 4352, 4353, ante, substitution of witness whose affidavit was not attached to petition for naturalization in place of one of those verifying the petition held to render the certificate illegal and subject to cancellation. U. S. v. Gulliksen, 244 F. 727, 157 C. C. A. 175.

Certificate of naturalization, issued to alien, who made declaration of intention prior to Act June 29, 1906, on petition filed more than seven years after the act was passed, held subject to cancellation. U. S. v. Morena, 247 F. 484, 159 C. C. A. 538, conforming to certified questions 38 S. Ct. 151, 245 U. S. 392, 62 L. Ed. 359.

A naturalization certificate can be canceled, because illegally procured, where any of the jurisdictional facts necessary to the granting of the certificate are absent from the record. U. S. v. Shanahan (D. C.) 232 F. 169.

Under this section, certificate of an alien who had not resided in the United States for 5 years before final application may be attacked, though he made a complete disclosure to the court granting the certificate. U. S. v. Griminger (D. C.) 236 F. 285.

Irregularities or errors of law or fact do not authorize cancellation of certificate if applicant was on facts entitled thereto. U. S. v. Jorgenson (D. C.) 241 F. 412.

Certificate of naturalization is not subject to cancellation because applicant, in his declaration of intention and petition, misstated year of his birth; there being nothing to indicate that such misstatement was intended as willful misstatement of material fact. In re Hennig (D. C.) 248 F. 990.

Where respondent, a native of Germany, was admitted to citizenship under Rev. St. § 2165, proof that, when the United States and Germany engaged in war, many years later, respondent desired a German success, and recognized allegiance to Germany superior to that due the United States, warrants cancellation of his certificate of citizenship, on ground that it was pro-

cured by fraud, in that his oath to renounce allegiance to any foreign sovereignty was false. U. S. v. Wursterbarth (D. C.) 249 F. 908.

6. Nature of proceeding.—Proceeding to cancel certificate under this section held a suit in equity in which decision must not be reversed, except for obvious error of law or serious mistake of fact. U. S. v. Ness, 230 F. 950, 145 C. C. A. 144, affirming decree (D. C.) 217 F. 169.

7. Right to institute proceedings.—Though under Comp. St. 1916, § 4370, government appears and opposes petition for failure to file certificate required by section 4352, ante, order of naturalization does not preclude suit to cancel the certificate under this section. U. S. v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321, reversing decree 230 F. 950, 145 C. C. A. 144, Ann. Cas. 1917C, 41, which affirmed (D. C.) 217 F. 169.

8. Jurisdiction.—As state court issuing certificate of naturalization received its authority from Act June 29, 1906 (Comp. St. 1916, § 4351, ante), a certificate issued by such state court may be attacked in federal court on ground that requirements of residence had not been met, and attack cannot be defeated because of exclusive jurisdiction of state court. U. S. v. Grininger (D. C.) 236 F. 285.

Under this section, federal District Court has jurisdiction of proceeding to cancel certificate of naturalization issued by state Circuit Court on ground that state court was without authority, under Rev. St. § 2171 (Comp. St. 1916, § 4362), to admit alien to citizenship, because he was enemy alien and state of war had been declared between United States and the government of which he was a subject, before hearing on petition. U. S. v. Kamm (D. C.) 247 F. 968.

10. Affidavit.—An affidavit for cancellation of a certificate of citizenship, under this section, which merely shows that the certificate was granted the same day the petition was filed, contrary to section 4354, is insufficient. U. S. v. Salomon, 231 F. 928, 146 C. C. A. 124, affirming decree (D. C.) 231 F. 461.

12. Pleading.—A petition for cancellation of the certificate of citizenship of a former German subject, on the ground that he made a false oath of allegiance, and of renunciation of all allegiance to Germany and the German emperor, held sufficient on motion to dismiss. U. S. v. Darmer (D. C.) 249 F. 989.

13. Evidence.—In proceeding to cancel certificate of citizenship, evidence held to show that applicant had not resided in United States continuously for five years preceding his application. In re Di Giovine (D. C.) 242 F. 741.

In proceeding under this section, to cancel a certificate, respondent's affidavits held to show that he did not possess qualifications required by section 4352, subd. 4. U. S. v. Ginsberg (D. C.) 244 F. 209, decree reversed (C. C. A.) 247 F. 1006.

Where respondent to petition to cancel naturalization certificate failed to deny testimony as to his remarks, such testimony may be accepted as true, though witnesses thereto testified from their unaided recollection. U. S. v. Wursterbarth (D. C.) 249 F. 908.

Where government, in proceeding to cancel certificate of citizenship, has shown that good faith in any of essentials is highly questionable, burden is on respondent to dispel doubt. Id.

15. Appeal.—Proceeding to cancel certificate of citizenship under this section, held a suit in equity in which decision must not be reversed, except for obvious error of law or serious mistake of fact. U. S. v. Ness, 230 F. 950, 145 C. C. A. 144, affirming decree (D. C.) 217 F. 169.

Where result would be same in any event, question whether a suit to cancel a certificate of naturalization will lie, or whether a writ of error in naturalization proceedings was only remedy, need not be determined. U. S. v. Smith (D. C.) 247 F. 131.

Cited without definite application, Appeal of Cook (C. C. A.) 242 F. 932; U. S. v. Mueller (C. C. A.) 246 F 679; U. S. v. Ginsberg (C. C. A.) 247 F. 1006.

§ 4377. (Act June 29, 1906, c. 3592, § 21.) Demand or receipt by clerk of fees or moneys other than those specified in act.

Charge for triplicate copies of declarations.—Charge by clerk of court for triplicate copies of declarations of intent for naturalization is not authorized by Comp. St. 1916, § 1383, as if authorized by section 4371, it would be forbidden by this section; the services not having been included in fees named in section 4372, and if the duty arose under section 12, prohibition of section 4377 would be applicable. Cross v. U. S., 37 S. Ct. 5, 242 U. S. 4, 61 L. Ed. 114.

§ 4379. (Act June 29, 1906, c. 3592, § 23.) Procuring naturalization illegally; aiding unauthorized proceedings; false testimony.

Indictment.—Under this section, indictment charging that defendant in a naturalization proceeding knowingly gave false testimony as to a material

fact need not aver that the fact was one required to be proven in such proceeding, that requirement being applicable only to affidavits. Gregorat v. U. S., 249 F. 470, 161 C. C. A. 428.

An indictment charging that, in violation of this section defendant falsely testified in naturalization proceedings that he had never operated a saloon, etc., held to sufficiently aver falsity of defendant's testimony. Id.

Under this section punishing one who knowingly gives false testimony in a naturalization proceeding, an indictment alleging that defendant did unlawfully, willfully, and knowingly give false testimony is sufficient. Id.

§ 4382. (Act June 29, 1906, c. 3592, § 27, as amended, Act May 9, 1918, c. 69, § 3.) Forms.

Substantially the following forms shall be used in the proceedings to which they relate:

Declaration of Intention.

(Invalid for all purposes seven years after the date hereof.)

———, ss:

I, ———, aged ——— years, occupation ———, do declare on oath (affirm) that my personal description is: Color ———, complexion ———, height ———, weight ———, color of hair ———, color of eyes ———, other visible distinctive marks ———; I was born in ——— on the ——— day of ———, anno Domini ———; I now reside at ———; I emigrated to the United States of America from ——— on the vessel ———; my last foreign residence was ———. It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to ———, of which I am now a citizen (subject); I arrived at the (port) of ———, in the State (Territory or the District of Columbia) of ——— on or about the ——— day of ——— anno Domini ———; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me God.

(Original signature of declarant) ———.

Subscribed and sworn to (affirmed) before me this ——— day of ———, anno Domini ———.

[L. S.] ———.

(Official character of attestor.)

Petition for Naturalization.

——— Court of ———.

In the matter of the petition of ——— to be admitted as a citizen of the United States of America.

To the ——— Court:

The petition of ——— respectfully shows:

First. My full name is ———.

Second. My place of residence is number ——— street, city of ———, State (Territory or the District of Columbia) of ———.

Third. My occupation is ———.

Fourth. I was born on the ——— day of ——— at ———.

Fifth. I emigrated to the United States from ———, on or about the ——— day of ———, anno Domini ———, and arrived at the port of ———, in the United States, on the vessel ———.

Sixth. I declared my intention to become a citizen of the United States on the ——— day of ——— at ———, in the ——— court of ———.

Seventh. I am — married. My wife's name is ————. She was born in ——— and now resides at ———. I have ——— children, and the name, date, and place of birth and place of residence of each of said children is as follows: ————; ————; ————.

Eighth. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to ———, of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to wit, since ———, anno Domini ———, and in the State (Territory or the District of Columbia) of ——— for one year at least next preceding the date of this petition, to wit, since ——— day of ———, anno Domini ———.

Eleventh. I have not heretofore made petition for citizenship to any court. (I made petition for citizenship to the ——— court of ——— at ———, and the said petition was denied by the said court for the following reasons and causes, to wit, ————, and the cause of such denial has since been cured or removed.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of [Commerce and] Labor required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Dated ———.

(Signature of petitioner) ————.

————, ss:

————, being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this ——— day of ———, anno Domini ———.

[L. S.]

————,
Clerk of the ——— Court.

Affidavit of Witnesses.

——— Court of ———.

In the matter of the petition of ———— to be admitted a citizen of the United States of America.

————, ss:

————, occupation ———, residing at ———, and ——— ———, occupation ———, residing at ———, each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known ————, the petitioner above mentioned, to be a resident of the United States for a period of at least five years continuously

immediately preceding the date of filing his petition, and of the State (Territory or the District of Columbia) in which the above-entitled application is made for a period of ——— years immediately preceding the date of filing his petition; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted as a citizen of the United States.

———.

———.

Subscribed and sworn to before me this ——— day of ———, nineteen hundred and ———.

[L. S.] ———,

(Official character of attestor).

Certificate of Naturalization.

Number ———.

Petition, volume ———, page ———.

Stub, volume ———, page ———.

(Signature of holder) ———.

Description of holder: Age, ———; height, ———; color, ———; complexion, ———; color of eyes, ———; color of hair, ———; visible distinguishing marks, ———. Name, age, and place of residence of wife, ———, ———, ———. Names, ages, and places of residence of minor children, ———, ———, ———; ———, ———, ———; ———, ———, ———.

———, ss:

Be it remembered, that at a ——— term of the ——— court of ———, held at ——— on the ——— day of ———, in the year of our Lord nineteen hundred and ———, ———, who previous to his (her) naturalization was a citizen or subject of ———, at present residing at number ——— street, ——— city (town), ——— State (Territory or the District of Columbia), having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this State for one year immediately preceding the date of the hearing of his (her) petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that —he was entitled to be so admitted, it was thereupon ordered by the said court that —he be admitted as a citizen of the United States of America.

In testimony whereof the seal of said court is hereunto affixed on the ——— day of ———, in the year of our Lord nineteen hundred and ———, and of our independence the ———.

[L. S.] ———,

(Official character of attestor).

Stub of Certificate of Naturalization.

No. of certificate, ———.
Name ————; age, ———.
Declaration of intention, volume ———, page ———.
Petition, volume ———, page ———.
Name, age, and place of residence of wife, ———, ———, ———.
Names, ages, and places of residence of minor children, ———, ———, ———; ———, ———, ———, ———, ———, ———.

Date of order, volume ———, page ———.
(Signature of holder) ————.

(34 Stat. 603. 40 Stat. 548.)

This section was amended by Act May 9, 1918, c. 69, § 3, cited above, by changing the word "district," wherever it appeared therein, to read "The District of Columbia." See ante, § 4352a, and note thereunder.

Notes of Decisions

Filing certificate of Department of Labor.—See U. S. v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321, reversing decree 230 F. 950, 145 C. C. A. 144, Ann. Cas. 1917C, 41, which affirmed (D. C.) 217 F. 169.

Cited without definite application, U. S. v. Mueller (C. C. A.) 246 F. 679; In re Famolaro (D. C.) 247 F. 596.

§ 4383. (Act June 29, 1906, c. 3592, § 28.) Regulations for execution of law; certified copies of papers as evidence.

Records and certified copies as evidence.—The best evidence of naturalization of an alien is the original papers or certified copies of the record. State v. Chamberlin (Iowa) 163 N. W. 428.

In the absence of a certified copy of the record of naturalization of an alien or of competent testimony that no such record exists, secondary evidence is inadmissible. Id.

Cited without definite application, U. S. v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321; In re Famolaro (D. C.) 247 F. 596.

TITLE XXXI—THE CENSUS

Sec.
4385–4388. [Repealed.]
4388a. Times for taking census; places included.
4388aa. Decennial census period.
4388b. Scope of Fourteenth Census; schedules; statistics.
4388bb. Supervisors of census; number; appointment.
4388c. Same; duties.
4388cc. Same; compensation.
4388d. Enumerators; duties.
4388dd. Enumeration districts; assignment of enumerators.
4388e. Enumerators; removal; incomplete or erroneous enumeration.
4388ee. Interpreters.
4388f. Enumerators; compensation; residence of supervisors and enumerators.
4388ff. Death of supervisor or enumerator.
4388g. Special agents; appointment; authority; compensation.
4388gg. Oath of supervisors and other employees; qualifications of employees.
4388h. Date for taking enumeration; commencement and completion.
4388hh. Receiving compensation for appointment or employment of supervisor or other employé.
4388i. Offenses by census officials.
4388ii. Answering questions; causing inaccurate enumeration.
4388j. Same; owners or officers of companies.
4388jj. Information used only for statistical purposes.
4388k. Enforcement of fines and penalties.
4388kk. Expenditures; authority of Director.
4388l. Printing for census.
4388ll. Information from other Departments or offices.
4388m. Census of agriculture and live stock.
4388mm. Statistics of products of manufacturing establishments.
4388n. Copies of returns for States, courts, or certain individuals.
4388nn. Repeal.
4393–4402. [Repealed.]
4404–4413. [Repealed.]
4415, 4416. [Repealed.]
4418, 4419. [Repealed.]

§§ 4385–4388. [Repealed.]

These sections, which were sections 1, 2, and 8 of Act July 2, 1909, c. 2, 36 Stat. 1–3, and Res. March 24, 1910, No. 17, 36 Stat. 877, were repealed by Act March 3, 1919, c. 97, § 34, post, § 4388nn.

§ 4388a. (Act March 3, 1919, c. 97, § 1.) Times for taking census; places included.

A census of the population, agriculture, manufactures, forestry and forest products, and mines and quarries of the United States shall be taken by the Director of the Census in the year nineteen hundred and twenty and every ten years thereafter. The census herein provided for shall include each State, the District of Columbia, Alaska, Hawaii, and Porto Rico. A census of Guam and Samoa shall be taken in the same year by the respective governors of said islands and a census of the Panama Canal Zone by the governor of the Canal Zone in accordance with plans prescribed or approved by the Director of the Census. (40 Stat. 1291.)

This section, and the twenty-seven sections next following, are §§ 1, 2, 8–28, 30–34 of an act entitled "An act to provide for the fourteenth and subsequent decennial censuses," cited above.

Section 3 of said act is set forth ante, § 915; section 4 is set forth ante, § 916; section 5 is set forth ante, § 917; section 6 is set forth ante, §§ 918, 3214a; section 7 is set forth ante, §§ 919, 3284; and § 29 is set forth post, § 7376.

§ 4388aa. (Act March 3, 1919, c. 97, § 2.) Decennial census period.

The period of three years beginning the first day of July next preceding the census provided for in section one of this Act shall be known as the decennial census period, and the reports upon the inquiries provided for in said section shall be completed and published within such period. (40 Stat. 1292.)

See notes to § 4388a, ante.

§ 4388b. (Act March 3, 1919, c. 97, § 8.) Scope of Fourteenth Census; schedules; statistics.

The Fourteenth Census shall be restricted to inquiries relating to population, to agriculture, to manufactures, to forestry and forest products, and to mines and quarries. The schedules relating to population shall include for each inhabitant the name, place of abode, relationship to head of family, color, sex, age, conjugal condition, place of birth, place of birth of parents, nationality or mother tongue of all persons born in foreign countries, nationality or mother tongue of parents of foreign birth, number of years in the United States, citizenship, occupation, whether or not employer or employee, whether or not engaged in agriculture, school attendance, literacy, tenure of home and the encumbrance thereon, and the name and address of each blind or deaf and dumb person.

The schedules relating to agriculture shall include name, color, sex, and country of birth of occupant of each farm, tenure, acreage of farm, acreage of woodland, value of farm and improvements, and the encumbrance thereon, value of farm implements, number of live stock on farms, ranges, and elsewhere, and the acreage of crops and the quantities of crops and other farm products for the year ending December thirty-first next preceding the enumeration. Inquiries shall be made as to the quantity of land reclaimed by irrigation and drainage and the crops produced; also as to the location and character of irrigation and drainage enterprises, and the capital invested in such enterprises.

The schedules of inquiries relating to manufactures, to forestry and forest products, and to mines and quarries shall include the name and location of each establishment; character of organization, whether individual, corporate, or other form; character of business or kind of goods manufactured; amount of capital actually invested; number of proprietors, firm members, copartners and officers, and the amount of their salaries; number of employees and the amount of their wages; quantity and cost of materials used in manufactures; principal miscellaneous expenses; quantity and value of products; time in operation during the year; character and quantity of power used; and character and number of machines employed.

The census of manufactures, of forestry and forest products, and of mines and quarries shall relate to the year ending December thirty-first, next preceding the enumeration of population, and shall be confined to manufacturing establishments and mines and quarries which were in active operation during all or a portion of that year. The census of manufactures shall furthermore be confined to manufacturing establishments conducted under what is known as the factory system, exclusive of the so-called neighborhood, household, and hand industries.

Whenever he shall deem it expedient, the Director of the Census may charge the collection of these statistics upon special agents or upon detailed employees, to be employed without respect to locality.

The number, form, and subdivision of inquiries provided for in section eight shall be determined by the Director of the Census. (40 Stat. 1294.)

See notes to § 4388a, ante.

§ 4388bb. (Act March 3, 1919, c. 97, § 9.) Supervisors of census; number; appointment.

The Director of the Census shall, at least six months prior to the date fixed for commencing the enumeration at the fourteenth and each succeeding decennial census, designate the number,

whether one or more, of supervisors of census for each State, the District of Columbia, Alaska, Hawaii, and Porto Rico, and shall define the districts within which they are to act; except that the Director of the Census, in his discretion, need not designate supervisors for Alaska, Hawaii, and Porto Rico, but in lieu thereof may employ special agents as hereinafter provided. The supervisors shall be appointed by the Secretary of Commerce upon the recommendation of the Director of the Census: Provided, That the whole number of supervisors shall not exceed four hundred: Provided further, That so far as practicable and desirable the boundaries of the supervisors' districts shall conform to the boundaries of the congressional districts: And provided further, That if in any supervisor's district the supervisor has not been appointed and qualified ninety days preceding the date fixed for the commencement of the enumeration, or if any vacancy shall occur thereafter, either through death, removal, or resignation of a supervisor, or from any other cause, the Director of the Census may appoint a temporary supervisor or detail an employee of the Census Office to act as supervisor for that district. (40 Stat. 1295.)

See notes to § 4388a, ante.

§ 4388c. (Act March 3, 1919, c. 97, § 10.) Same; duties.

Each supervisor of census shall be charged with the performance within his own district of the following duties: To consult with the Director of Census in regard to the division of his district into subdivisions most convenient for the purpose of the enumeration, which subdivisions or enumeration districts shall be defined and the boundaries thereof fixed by the Director of the Census; to designate to the director suitable persons and with his consent to employ such persons as enumerators, one or more for each subdivision; to communicate to enumerators the necessary instructions and directions relating to their duties; to examine and scrutinize the returns of the enumerators, and in the event of discrepancies or deficiencies appearing in any of the said returns, to use all diligence in causing the same to be corrected or supplied; to forward the completed returns of the enumerators to the director at such time and in such manner as shall be prescribed, and to make up and forward to the director the accounts of each enumerator in his district for service rendered, which accounts shall be duly certified to by the enumerator, and the same shall be certified as true and correct if so found by the supervisor, and said accounts so certified shall be accepted and paid by the director. The duties imposed upon the supervisor by this Act shall be performed in any and all particulars in accordance with the orders and instructions of the Director of the Census. (40 Stat. 1295.)

See notes to § 4388a, ante.

§ 4388cc. (Act March 3, 1919, c. 97, § 11.) Same; compensation.

Each supervisor of the census shall, upon the completion of his duties to the satisfaction of the Director of the Census, receive the sum of $1,500, and in addition thereto $1 for each thousand or major fraction of a thousand of population enumerated in his district, such sums to be in full compensation for all services rendered and expenses incurred by him: Provided, That of the above-named compensation a sum not to exceed $600, in the discretion of the Director of the Census, may be paid to any supervisor prior to the completion of his duties in one or more payments, as the Director of the Census may determine: Provided further, That in emergencies arising in connection with the work of preparation for or during the progress of the enumeration in his district, or in connection with the reenumeration of any subdivision, a supervisor may, in

the discretion of the Director of the Census, be allowed actual and necessary traveling expenses and an allowance in lieu of subsistence not exceeding $4 per day during his necessary absence from his usual place of residence: And provided further, That an appropriate allowance to supervisors for clerk hire may be made when deemed necessary by the Director of the Census. (40 Stat. 1296.)

See notes to § 4388a, ante.

§ 4388d. (Act March 3, 1919, c. 97, § 12.) Enumerators; duties.

Each enumerator shall be charged with the collection in his subdivision of the facts and statistics required by the population and agricultural schedules and such other schedules as the Director of the Census may determine shall be used by him in connection with the census, as provided in section eight of this Act. It shall be the duty of each enumerator to visit personally each dwelling house in his subdivision, and each family therein, and each individual living out of a family in any place of abode, and by inquiry made of the head of each family, or of the member thereof deemed most competent and trustworthy, or of such individual living out of a family, to obtain each and every item of information and all particulars required by this Act, as of date January first of the year in which the enumeration shall be made; and in case no person shall be found at the usual place of abode of such family, or individual living out of a family, competent to answer the inquiries made in compliance with the requirements of this Act, then it shall be lawful for the enumerator to obtain the required information as nearly as may be practicable from the family or families or person or persons living nearest to such place of abode who may be competent to answer such inquiries. It shall be the duty also of each enumerator to forward the original schedules, properly filled out and duly certified, to the supervisor of his district as his returns under the provisions of this Act; and in the event of discrepancies or deficiencies being discovered in these schedules he shall use all diligence in correcting or supplying the same. In case an enumeration district embraces all or any part of any incorporated borough, village, town, or city, and also other territory not included within the limits of such incorporated borough, village, town, or city, it shall be the duty of the enumerator to clearly and plainly distinguish and separate, upon the population schedules, the inhabitants of such borough, village, town, or city from the inhabitants of the territory not included therein. No enumerator shall be deemed qualified to enter upon his duties until he has received from the supervisor of the district to which he belongs a commission, signed by the supervisor, authorizing him to perform the duties of enumerator, and setting forth the boundaries of the subdivision within which such duties are to be performed. (40 Stat. 1296.)

See notes to § 4388a, ante.

§ 4388dd. (Act March 3, 1919, c. 97, § 13.) Enumeration districts; assignment of enumerators.

The territory assigned to each supervisor shall be divided into as many enumeration districts as may be necessary to carry out the purposes of this Act, and, in the discretion of the Director of the Census, two or more enumeration districts may be given to one enumerator, and the boundaries of all the enumeration districts shall be clearly described by civil divisions, rivers, roads, public surveys, or other easily distinguishable lines: Provided, That enumerators may be assigned for the special enumeration of institutions, when desirable, without reference to the number of inmates. (40 Stat. 1296.)

See notes to § 4388a, ante.

§ 4388e. (Act March 3, 1919, c. 97, § 14.) Enumerators; removal; incomplete or erroneous enumeration.

Any supervisor of census may, with the approval of the Director of the Census, remove any enumerator in his district and fill the vacancy thus caused or otherwise occurring. Whenever it shall appear that any portion of the census provided for in this Act has been negligently or improperly taken, and is by reason thereof incomplete or erroneous, the Director of the Census may cause such incomplete and unsatisfactory enumeration and census to be amended or made anew. (40 Stat. 1297.)

See notes to § 4388a, ante.

§ 4388ee. (Act March 3, 1919, c. 97, § 15.) Interpreters.

The Director of the Census may authorize and direct supervisors of census to employ interpreters to assist the enumerators of their respective districts in the enumeration of persons not speaking the English language, but no authorizations shall be given for such employment in any district until due and proper effort has been made to employ an enumerator who can speak the language or languages for which the services of an interpreter would otherwise be required. It shall be the duty of such interpreters to accompany the enumerators and faithfully translate the latter's inquiries and the replies thereto, but in no case shall any such interpreter perform the duties of the enumerator unless commissioned as such by the Director of the Census. The compensation of such interpreters shall be fixed by the Director of the Census in advance, and shall not exceed $5 per day for each day actually and necessarily employed. (40 Stat. 1297.)

See notes to § 4388a, ante.

§ 4388f. (Act March 3, 1919, c. 97, § 16.) Enumerators; compensation; residence of supervisors and enumerators.

The compensation of enumerators shall be determined by the Director of the Census as follows: In subdivisions where he shall deem such remuneration sufficient, an allowance of not less than 2 nor more than 4 cents for each inhabitant; not less than 20 nor more than 30 cents for each establishment of productive industry reported; not less than 20 nor more than 30 cents for each farm reported; not less than 20 nor more than 50 cents for each irrigation or drainage enterprise reported; and 10 cents for each barn and inclosure containing live stock not on farms. In other subdivisions the Director of the Census may fix a mixed rate of not less than $1 nor more than $2 per day and, in addition, an allowance of not less than 1 nor more than 3 cents for each inhabitant enumerated, and not less than 15 nor more than 20 cents for each farm and each establishment of productive industry reported. In other subdivisions per diem rates shall be fixed by the director according to the difficulty of enumeration, having special reference to the regions to be canvassed and the sparsity of settlement or other considerations pertinent thereto. The compensation allowed to an enumerator in any such district shall not be less than $3 nor more than $6 per day of eight hours' actual field work, and no payment shall be made for time in excess of eight hours for any one day. The subdivisions or enumeration districts to which the several rates of compensation shall apply shall be designated by the Director of the Census at least two weeks in advance of the enumeration. No claim for mileage or traveling expenses shall be allowed any enumerator in either class of subdivisions, except in extreme cases, and then only when authority has been previously granted by the Director of the Census; and the decision of the director as to the amount due any enumerator shall be final: Pro-

vided, That within the limits of continental United States each supervisor to be appointed or selected under this Act shall be an actual resident of the district, and each enumerator to be appointed or selected under this Act shall, so far as practicable, be an actual resident of the subdivision within which his duties are to be performed; but an enumerator may be appointed if he be an actual resident of the city, township, or other civil division of which the subdivision in which his duties are to be performed is a part. (40 Stat. 1297.)

See notes to § 4388a, ante.

§ 4388ff. (Act March 3, 1919, c. 97, § 17.) Death of supervisor or enumerator.

In the event of the death of any supervisor or enumerator after his appointment and entrance on his duties, the Director of the Census is authorized to pay to the widow or legal representative of such supervisor or enumerator such sum as he may deem just and fair for the services rendered by such supervisor or enumerator. (40 Stat. 1298.)

See notes to § 4388a, ante.

§ 4388g. (Act March 3, 1919, c. 97, § 18.) Special agents; appointment; authority; compensation.

Special agents may be appointed by the Director of the Census to carry out the provisions of this Act and of the Act to provide for a permanent Census Office, approved March sixth, nineteen hundred and two, and Acts amendatory thereof or supplemental thereto; and such special agents shall perform such duties in connection with the enforcement of said Acts as may be required of them by the Director of the Census. The special agents thus appointed shall receive compensation at rates to be fixed by the Director of the Census, such compensation, however, not to exceed $6 per diem except as hereinafter provided: Provided, That during the decennial census period the Director of the Census may fix the compensation of not to exceed twenty-five special agents, who shall be persons of known and tried experience in statistical work, at an amount not to exceed $10 per diem: Provided further, That the Director of the Census may, in his discretion, fix the compensation of special agents on a piece-price basis without limitation as to the amount earned per diem: And provided further, That the special agents appointed under this section shall be entitled to necessary traveling expenses and an allowance in lieu of subsistence not to exceed $4 per diem during necessary absence from their usual places of residence; but no pay or allowance in lieu of subsistence shall be allowed special agents when employed in the Census Office on other than the special work committed to them, and no appointments of special agents shall be made for clerical work: And provided further, That the Director of the Census shall have power, and is hereby authorized, to appoint special agents to assist the supervisors whenever he may deem it proper, in connection with the work of preparation for, or during the progress of, the enumeration or in connection with the reenumeration of any district or a part thereof; or he may, in his discretion, employ for this purpose any of the permanent or temporary employees of the Census Office; and the special agents and employees of the Census Office so appointed or employed shall perform such duties in connection with the enforcement of this Act as may be required of them by the Director of the Census or by the supervisors of the districts to which they are assigned, and when engaged in the work of enumeration or reenumeration shall have like authority

with and perform the same duties as the enumerators in respect to the subjects committed to them under this Act. (40 Stat. 1298.)

See notes to § 4388a, ante.

§ 4388gg. (Act March 3, 1919, c. 97, § 19.) Oath of supervisors and other employees; qualifications of employees.

Every supervisor, supervisor's clerk, enumerator, interpreter, special agent, or other employee shall take and subscribe to an oath or affirmation, to be prescribed by the Director of the Census. All appointees and employees provided for in this Act shall be appointed or employed and examined, if examination is required by this Act, solely with reference to their fitness to perform the duties required of them by the provisions of this Act and without reference to their political party affiliations. (40 Stat. 1298.)

See notes to § 4388a, ante.

§ 4388h. (Act March 3, 1919, c. 97, § 20.) Date for taking enumeration; commencement and completion.

The enumeration of the population required by section one of this Act shall be taken as of the first day of January, and it shall be the duty of each enumerator to commence the enumeration of his district on the day following, unless the Director of the Census in his discretion shall defer the enumeration in said district by reason of climatic or other conditions which would materially interfere with the proper conduct of the work; but in any event it shall be the duty of each enumerator to prepare the returns hereinbefore required to be made and to forward the same to the supervisor of his district within thirty days from the commencement of the enumeration of his district: Provided, That in any city having two thousand five hundred inhabitants or more under the preceding census the enumeration of the population shall be completed within two weeks from the commencement thereof. (40 Stat. 1298.)

See notes to § 4388a, ante.

§ 4388hh. (Act March 3, 1919, c. 97, § 21.) Receiving compensation for appointment or employment of supervisor or other employé.

If any person shall receive or secure to himself any fee, reward, or compensation as a consideration for the appointment or employment of any person as supervisor, enumerator, or clerk, or other employee, or shall in any way receive or secure to himself any part of the compensation paid to any supervisor, enumerator, clerk, or other employee, he shall be deemed guilty of a felony, and upon conviction thereof shall be fined not more than $3,000 and be imprisoned not more than five years. (40 Stat. 1299.)

See notes to § 4388a, ante.

§ 4388i. (Act March 3, 1919, c. 97, § 22.) Offenses by census officials.

Any supervisor, supervisor's clerk, enumerator, interpreter, special agent, or other employee who, having taken and subscribed the oath of office required by this Act, shall, without justifiable cause, neglect or refuse to perform the duties enjoined on him by this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding $500; or if he shall, without the authority of the Director of the Census, publish or communicate any information coming into his possession by reason of his employment under the provisions of this Act, or the Act to provide for a permanent Census Office or Acts amendatory thereof or supplemental thereto, he shall be guilty of a felony and shall upon conviction thereof be fined not to exceed $1,000 or be imprisoned not to exceed two years, or both so fined and imprisoned in

the discretion of the court; or if he shall willfully and knowingly swear or affirm falsely as to the truth of any statement required to be made or subscribed by him under oath by or under authority of this Act or of the Act to provide for a permanent Census Office or Acts amendatory thereof or supplemental thereto, he shall be deemed guilty of perjury, and upon conviction thereof shall be fined not exceeding $2,000 or imprisoned not exceeding five years, or both; or if he shall willfully and knowingly make a false certificate or a fictitious return he shall be guilty of a felony, and upon conviction of either of the last-named offenses he shall be fined not exceeding $2,000 or be imprisoned not exceeding five years, or both; or if any person who is or has been an enumerator shall knowingly or willfully furnish or cause to be furnished, directly or indirectly, to the Director of the Census or to any supervisor of the census any false statement or false information with reference to any inquiry for which he was authorized and required to collect information he shall be guilty of a felony, and upon conviction thereof shall be fined not exceeding $2,000 or be imprisoned not exceeding five years, or both. (40 Stat. 1299.)

See notes to § 4388a, ante.

§ 4388ii. (Act March 3, 1919, c. 97, § 23.) Answering questions; causing inaccurate enumeration.

It shall be the duty of all persons over eighteen years of age when requested by the Director of the Census, or by any supervisor, enumerator, or special agent, or other employee of the Census Office, acting under the instructions of the said director, to answer correctly, to the best of their knowledge, all questions on the census schedules applying to themselves and to the families to which they belong or are related, and to the farm or farms of which they or their families are the occupants; and any person over eighteen years of age who, under the conditions hereinbefore stated, shall refuse or willfully neglect to answer any of these questions, or shall willfully give answers that are false, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding $100.

And it is hereby made unlawful for any individual, committee, or other organization of any kind whatsoever, to offer or render to any supervisor, supervisor's clerk, enumerator, interpreter, special agent, or other officer or employee of the Census Office engaged in making an enumeration of population, either directly or indirectly, any suggestion, advice, or assistance of any kind, with the intent or purpose of causing an inaccurate enumeration of population to be made, either as to the number of persons resident in any district or community, or in any other respect; and any individual, or any officer or member of any committee or other organization of any kind whatsoever, who directly or indirectly offers or renders any such suggestion, advice, information, or assistance, with such unlawful intent or purpose, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding $5,000.

And it shall be the duty of every owner, proprietor, manager, superintendent, or agent of a hotel, apartment house, boarding or lodging house, tenement, or other building, when requested by the Director of the Census, or by any supervisor, enumerator, special agent, or other employee of the Census Office, acting under the instructions of the said director, to furnish the names of the occupants of said hotel, apartment house, boarding or lodging house, tenement, or other building, and to give thereto free ingress and egress to any duly accredited representative of the Census Office,

so as to permit of the collection of statistics for census purposes, including the proper and correct enumeration of all persons having their usual place of abode in said hotel, apartment house, boarding or lodging house, tenement, or other building; and any owner, proprietor, manager, superintendent, or agent of a hotel, apartment house, boarding or lodging house, tenement, or other building who shall refuse or willfully neglect to give such information or assistance under the conditions hereinbefore stated shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding $500. (40 Stat. 1299.)

See notes to § 4388a, ante.

§ 4388j. (Act March 3, 1919, c. 97, § 24.) Same; owners or officers of companies.

It shall be the duty of every owner, official, agent, person in charge, or assistant to the person in charge, of any company, business, institution, establishment, religious body, or organization of any nature whatsoever, to answer completely and correctly to the best of his knowledge all questions relating to his respective company, business, institution, establishment, religious body, or other organization, or to records or statistics in his official custody, contained on any census schedule prepared by the Director of the Census under the authority of this Act, or of the Act to provide for a permanent Census Office, approved March sixth, nineteen hundred and two, or of Acts amendatory thereof or supplemental thereto; and any person violating the provisions of this section by refusing or willfully neglecting to answer any of said questions, or by willfully giving answers that are false, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding $10,000, or imprisoned for a period not exceeding one year, or both so fined and imprisoned. (40 Stat. 1300.)

See notes to § 4388a, ante.

§ 4388jj. (Act March 3, 1919, c. 97, § 25.) Information used only for statistical purposes.

The information furnished under the provisions of the next preceding section shall be used only for the statistical purposes for which it is supplied. No publication shall be made by the Census Office whereby the data furnished by any particular establishment can be identified, nor shall the Director of the Census permit anyone other than the sworn employees of the Census Office to examine the individual reports. (40 Stat. 1300.)

See notes to § 4388a, ante.

§ 4388k. (Act March 3, 1919, c. 97, § 26.) Enforcement of fines and penalties.

All fines and penalties imposed by this Act may be enforced by indictment or information in any court of competent jurisdiction. (40 Stat. 1300.)

See notes to § 4388a, ante.

§ 4388kk. (Act March 3, 1919, c. 97, § 27.) Expenditures; authority of Director.

The Director of the Census may authorize the expenditure of necessary sums for the actual and necessary traveling expenses of the officers and employees of the Census Office, including an allowance in lieu of subsistence not exceeding $4 per day during their necessary absence from the Census Office, or, instead of such an allowance, their actual subsistence expenses, not to exceed $5 per day; and he may authorize the incidental, miscellaneous, and contingent expenses necessary for the carrying out of this Act, as herein provided, and not otherwise, including advertising in news-

papers, the purchase of manuscripts, books of reference, and periodicals, the rental of sufficient quarters in the District of Columbia and elsewhere and the furnishing thereof, and expenditures necessary for compiling, printing, publishing, and distributing the results of the census, the purchase of necessary paper and other supplies, the purchase, rental, exchange, construction, and repair of mechanical appliances, the compensation of such permanent and temporary clerks as may be employed under the provisions of this Act and the Act establishing the permanent Census Office and Acts amendatory thereof or supplemental thereto, and all other expenses incurred under authority conveyed in this Act. (40 Stat. 1300.)

See notes to § 4388a, ante.

§ 4388*l*. (Act March 3, 1919, c. 97, § 28.) Printing for census.

The Director of the Census is hereby authorized to make requisition upon the Public Printer for such printing as may be necessary to carry out the provisions of this Act, to wit: Blanks, schedules, circulars, pamphlets, envelopes, work sheets, and other items of miscellaneous printing; that he is further authorized to have printed by the Public Printer, in such editions as the director may deem necessary, preliminary and other census bulletins, and final reports of the results of the several investigations authorized by this Act or by the Act to establish a permanent Census Office and Acts amendatory thereof or supplemental thereto, and to publish and distribute said bulletins and reports. (40 Stat. 1301.)

See notes to § 4388a, ante.

§ 4388*ll*. (Act March 3, 1919, c. 97, § 30.) Information from other Departments or offices.

The Secretary of Commerce, whenever he may deem it advisable, on request of the Director of the Census, is hereby authorized to call upon any other department or office of the Government for information pertinent to the work herein provided for. (40 Stat. 1301.)

See notes to § 4388a, ante.

§ 4388m. (Act March 3, 1919, c. 97, § 31.) Census of agriculture and live stock.

There shall be in the year nineteen hundred and twenty-five, and once every ten years thereafter, a census of agriculture and live stock, which shall show the acreage of farm land, the acreage of the principal crops, and the number and value of domestic animals on the farms and ranges of the country. The schedule employed in this census shall be prepared by the Director of the Census. Such census shall be taken as of the first day of January and shall relate to the preceding calendar year. The Director of the Census may appoint enumerators or special agents for the purpose of this census in accordance with the provisions of the permanent census Act. (40 Stat. 1301.)

See notes to § 4388a, ante.

§ 4388mm. (Act March 3, 1919, c. 97, § 32.) Statistics of products of manufacturing establishments.

That the Director of the Census be, and he is hereby, authorized and directed to collect and publish, for the years nineteen hundred and twenty-one, nineteen hundred and twenty-three, nineteen hundred and twenty-five, and nineteen hundred and twenty-seven, and for every tenth year after each of said years, statistics of the products of manufacturing industries; and the director is hereby authorized to prepare such schedules as in his judgment may be necessary. (40 Stat. 1301.)

See notes to § 4388a, ante.

§ 4388n. (Act March 3, 1919, c. 97, § 33.) Copies of returns for States, courts, or certain individuals.

That the Director of the Census be, and he is hereby, authorized, at his discretion, upon the written request of the governor of any State or Territory or of a court of record, to furnish such governor or court of record with certified copies of so much of the population or agricultural returns as may be requested, upon the payment of the actual cost of making such copies and $1 additional for certification; and that the Director of the Census is further authorized, in his discretion, to furnish to individuals such data from the population schedules as may be desired for genealogical or other proper purposes, upon payment of the actual cost of searching the records and $1 for supplying a certificate; and that the Director of the Census is authorized to furnish transcripts of tables and other records and to prepare special statistical compilations for State or local officials, private concerns, or individuals upon the payment of the actual cost of such work: Provided, however, That in no case shall information furnished under the authority of this Act be used to the detriment of the person or persons to whom such information relates. All moneys hereafter received by the Bureau of the Census in payment for labor and materials used in furnishing transcripts of census records or special statistical compilations from such records shall be deposited to the credit of the appropriation for collecting statistics. (40 Stat. 1301.)

See notes to § 4388a, ante.

§ 4388nn. (Act March 3, 1919, c. 97, § 34.) Repeal.

The Act establishing the permanent Census Office, approved March sixth, nineteen hundred and two, and Acts amendatory thereof and supplemental thereto, except as are herein amended, shall remain in full force. That the Act entitled "An Act to provide for the thirteenth and subsequent decennial censuses," approved July second, nineteen hundred and nine, and Acts amendatory thereof, and all other laws and parts of laws inconsistent with the provisions of this Act, are hereby repealed. (40 Stat. 1302.)

See notes to § 4388a, ante.

§§ 4393–4402. [Repealed.]

These sections, which were §§ 9–18 of Act July 2, 1909, c. 2, 36 Stat. 4–7, were repealed by Act March 3, 1919, c. 97, § 34, ante, § 4388nn.

§§ 4404–4413. [Repealed.]

These sections, which were Act Aug. 5, 1909, c. 7, 36 Stat. 126, and §§ 19–27 of Act July 2, 1909, c. 2, 36 Stat. 7–9, were repealed by Act March 3, 1919, c. 97, § 34, ante, § 4388nn.

§§ 4415, 4416. [Repealed.]

These sections, which were §§ 28, 30, of Act July 2, 1909, c. 2, 36 Stat. 10, were repealed by Act March 3, 1919, c. 97, § 34, ante, § 4388nn.

§§ 4418, 4419. [Repealed.]

These sections, which were §§ 32, 33, of Act July 2, 1909, c. 2, 36 Stat. 10, were repealed by Act March 3, 1919, c. 97, § 34, ante, § 4388nn.

TITLE XXXII—THE PUBLIC LANDS

Chap.		Sec.
1.	Surveyors and deputy surveyors	4435
2.	Registers and receivers	4469
3A.	Withdrawal from settlement, location, sale, or entry	4523
4.	Pre-emptions	
5.	Homesteads	4530
6.	Mineral lands and mining resources	4613
6A.	Timber and stone lands	4671
6B.	Desert and arid lands, and irrigation and reclamation	4674
7.	Sale and disposal of the public lands	4756
8.	Reservation and sale of town-sites on the public lands	4784
9.	Survey of the public lands	4803
10A.	Reservations and grants to states for public purposes	4860
10B.	Grants in aid of railroads and wagon roads	4882
10C.	Rights of way and other easements in public lands	4918
10D.	Grants of swamp and overflowed lands	4958
10E.	Drainage under state laws	4976a
10F.	Protection of timber, and depredations	4980
10G.	Unlawful inclosures or occupancy; obstructing settlement or transit	4997
10H.	Abandoned military reservations	5012
10I.	Ceded Indian reservations	5014
10J.	Public lands in Oklahoma	5025
10K.	Public lands in Alaska	5046
11.	Miscellaneous provisions relating to the public lands	5097

CHAPTER ONE—SURVEYORS AND DEPUTY SURVEYORS

Sec.
4435. Surveyors-general; appointment.
4451. Completion of surveys.
4454. Conditions of delivery of field-notes to the States.
4456. Continuation of duties after expiration of commission.
4459. Transcripts from records of Louisiana.
4460a. Surveyors-general; detail of clerks from and to offices.

§ 4435. (R. S. § 2207.) Surveyors-general; appointment.

Louisiana.—The specific appropriation in Sundry Civil Appropriation Act March 4, 1909, for completion of field notes relating to surveys in Minnesota, North Dakota, and Louisiana, held a repeal of Act March 3, 1831, creating the office of surveyor general of Louisiana. Lewis v. U. S., 37 S. Ct. 570, 244 U. S. 134, 61 L. Ed. 1039, affirming judgment 50 Ct. Cl. 226.

§ 4451. (R. S. § 2218.) Completion of surveys.

Abolition of surveyor-general's office.—Office of surveyor general of Louisiana was effectually, though impliedly, abolished by Act March 4, 1909, 35 Stat. 945, 987, so that incumbent did not hold over, under Comp. St. 1916, § 4456, authorizing holding over until appointment of successor, and section 4454, prohibiting turning over records of office until state by law provides for their reception, and this section, providing for turning over records on completion of the survey. Lewis v. U. S., 50 Ct. Cl. 226.

§ 4454. (R. S. § 2221.) Conditions of delivery of field-notes to States.

Abolition of surveyor-general's office.—Office of surveyor-general of Louisiana was effectually, though impliedly, abolished by Act March 4, 1909, 35 Stat. 945, 987, so that incumbent did not hold over under Comp. St. 1916, § 4456, authorizing holding over until appointment of successor, and this section, prohibiting turning over records of office until state by law provides for their reception, and section 4451, providing for turning over records on completion of the survey. Lewis v. U. S., 50 Ct. Cl. 226.

§ 4456. (R. S. § 2222.) Continuation of duties after expiration of commission.

Abolition of surveyor-general's office.—Office of surveyor-general of Louisiana was effectually, though impliedly, abolished by Act March 4, 1909, 35 Stat. 945, 987, so that incumbent did not hold over under this section, authorizing holding over until appointment of successor, and section 4454, prohibiting turning over records of office until state by law provides for their reception, and section 4451, providing for turning over records on completion of the survey. Lewis v. U. S., 50 Ct. Cl. 226.

§ 4459. (R. S. § 2225.) Transcripts from records of Louisiana.

Fees.—Surveyor general of Louisiana held not entitled to fees under Act March 3, 1831, § 5 (this section), for furnishing copies of surveys from records of his office; Rev. St. § 1765 (Comp. St. 1916, § 3234), for bidding public officers to receive additional pay, unless authorized by law, not being inapplicable, because of Act April 21, 1806, giving surveyor general of Louisiana the same authority as the principal deputy surveyors. Lewis v. U. S., 37 S. Ct. 570, 244 U. S. 134, 61 L. Ed. 1039, affirming judgment 50 Ct. Cl. 226.

§ 4460a. (Act March 1, 1919, c. 86, § 1.) Surveyors-general; detail of clerks from and to offices.

The Secretary of the Interior is authorized to detail temporarily clerks from the office of one surveyor general to another as the necessities of the service may require and to pay their actual necessary traveling expenses in going to and returning from such office out of the appropriation for surveying the public lands. A detailed statement of traveling expenses incurred hereunder shall be made to Congress at the beginning of each regular session thereof. (40 Stat. 1251.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

CHAPTER TWO—REGISTERS AND RECEIVERS

Sec.
4469. Appointment; duties; bonds.
4473. Fees and commissions.
4475a. Fees for depositions.
4480a. Expenses incurred.
4491. Repayment of purchase moneys paid under applications rejected.
4492. Repayment of excess payments.
4493. Certification of amount of excess moneys, and repayment.

§ 4469. (R. S. § 2234, as amended, Act Jan. 27, 1898, c. 10.) Appointment; duties; bonds.

4. **Duties and powers.**—A receiver's receipt from the United States government for land, offered by plaintiff as a foundation for his title in an action to quiet title, without being otherwise certified or shown to be genuine, was inadmissible for any purpose. Olson v. Kelsey (Colo.) 157 P. 194.

§ 4473. (R. S. § 2238, as amended, Act Dec. 17, 1880, c. 2, and Act May 29, 1908, c. 220, § 14.) Fees and commissions.

Cited without definite application,
Maginnis v. U. S., 52 Ct. Cl. 271.

§ 4475a. (Act July 1, 1918, c. 113, § 1.) Fees for depositions.

Hearings in land entries: For hearings or other proceedings held by order of the Commissioner of the General Land Office to determine the character of lands; whether alleged fraudulent entries are of that character or have been made in compliance with law; and of hearings in disbarment proceedings * * : Provided, That where depositions are taken for use in such hearings the fees of the officer taking them shall be 20 cents per folio for taking and certi-

fying same and 10 cents per folio for each copy furnished to a party on request. (40 Stat. 668.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 4480a. (Act July 1, 1918, c. 113, § 1.) Expenses incurred.

No expenses chargeable to the Government shall be incurred by registers and receivers in the conduct of local land offices except upon previous specific authorization by the Commissioner of the General Land Office. (40 Stat. 667.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of Act June 12, 1917, c. 27, § 1, 40 Stat. 142.

§ 4491. (Act March 26, 1908, c. 102, § 1.) Repayment of purchase moneys paid under applications rejected.

Enforcement of claims.—See Laughlin v. U. S., 52 Ct. Cl. 292.

When the government has observed its obligations and the claimant has not, a legislative intention to refund money paid in strict accord with beneficial legislation cannot be assumed. Billings v. U. S., 50 Ct. Cl. 328.

Where a refundment under this and the two following sections for excess fees collected is denied through error or neglect on the part of the Secretary of the Interior, an action will lie in the court under its general jurisdiction of "all claims founded upon any law of Congress." Maginnis v. U. S., 52 Ct. Cl. 271.

Where a recovery of purchase money, is sought under this and the two following sections, a finding by the Commissioner of the General Land Office that plaintiff's application was tainted with fraud, defeating recovery, is binding upon the court. Quinn v. U. S., 52 Ct. Cl. 496.

§ 4492. (Act March 26, 1908, c. 102, § 2.) Repayment of excess payments.

See note under section 4491, ante.

§ 4493. (Act March 26, 1908, c. 102, § 3.) Certification of amount of excess moneys, and repayment.

See note under section 4491, ante.

CHAPTER THREE A—WITHDRAWAL FROM SETTLEMENT, LOCATION, SALE, OR ENTRY

§ 4523. (Act June 25, 1910, c. 421, § 1.) Withdrawal and reservation of lands for water-power sites, or other purposes.

Withdrawals or reservations.—In a suit to oust defendants from possession of land, which had been withdrawn from entry under Pickett Act June 25, 1910 (Comp. St. 1916, §§ 4523, 4524), evidence held to warrant a finding that at the time of the withdrawal defendants were in possession of the land. U. S. v. Grass Creek Oil & Gas Co., 236 F. 481, 149 C. C. A. 533.

A claim initiated by a location made while an executive order withdrawing lands from entry was in force can be the basis of no right as against the United States as the owner of the title, but the claimant is a mere trespasser. U. S. v. McCutchen (D. C.) 234 F. 702.

A suit to enjoin the Secretary of the Interior from canceling a list of railroad indemnity lands selected under Act July 25, 1866, and subsequently included in a water-power site reserve by executive order under this and the two following sections, is not a suit against the United States. Central Pac. Ry. Co. v. Lane, 46 App. D. C. 374.

—— **Validity of withdrawal.**—An interest in the indemnity lands selected under Act July 25, 1866, vested in the railroad company as of the date of selection, and not as of the date of the approval of the list by the Secretary of the Interior, of which vested interest the company could not be deprived by Act June 25, 1910 (Comp. St. 1916, §§ 4523–4525), or the executive order made thereunder. Central Pac. Ry. Co. v. Lane, 46 App. D. C. 374.

—— **Effect of withdrawal.**—Presidential order of Sept. 27, 1909, temporarily withdrawing certain public

lands in California from entry under the mineral laws did not become inoperative by Act Cong. June 25, 1910 (Comp. St. 1916, §§ 4523–4525), but continued in force until superseded by order of July 2, 1910, and its effect was to withdraw the lands from exploration as well as entry. U. S. v. Midway Northern Oil Co. (D. C.) 232 F. 619.

— Effect on oil or gas location.—Presidential order of September 27, 1909, withdrawing certain lands from entry, construed with respect to oil mining claims thereon at the date of the order. U. S. v. McCutchen (D. C.) 234 F. 702.

See, also, note under section 4524, post.

§ 4524. (Act June 25, 1910, c. 421, § 2, as amended, Act Aug. 24, 1912, c. 369.) Lands withdrawn open to exploration under mining laws; rights of occupants or claimants of oil or gas bearing lands; forest reserves.

See notes under § 4523, ante.

Occupants or claimants of land doing development work.—Persons in actual occupancy of public oil lands, who were assembling equipment so as to drill wells to produce oil at the time an order of withdrawal under this act, held bona fide occupants diligently prosecuting the work of discovery, and so their rights are unaffected by the order of withdrawal. U. S. v. Grass Creek Oil & Gas Co., 236 F. 481, 149 C. C. A. 533.

The United States held, on the evidence, not entitled to recover oil placer mining claims located under Rev. St. §§ 2329–2333 (Comp. St. 1916, §§ 4628–4632), and Act Feb. 12, 1903, c. 548 (Comp. St. 1916, § 4636), on which development work was being diligently prosecuted at the time of the withdrawal proclamation of September 27, 1909, and this section although no discovery had at that time been made. Consolidated Mut. Oil Co. v. U. S., 245 F. 521, 157 C. C. A. 633.

Where it was questionable whether defendant, claimant of oil-bearing lands, was in diligent prosecution of discovery under this Act at time of withdrawal, held that, under circumstances, drilling of further wells should be enjoined, and receiver appointed to take charge of proceeds of oil from wells already drilled. U. S. v. Honolulu Consol. Oil Co. (C. C. A.) 249 F. 167.

Proviso to this section relating to the rights of occupants or claimants of oil lands when withdrawn from entry construed. U. S. v. Midway Northern Oil Co. (D. C.) 232 F. 619.

Under this section, labor performed at a distance from a claim on oil-bearing lands withdrawn from appropriation, and intended to facilitate development of claim, though not performed immediately thereupon, will not hold a location. U. S. v. Ohio Oil Co. (D. C.) 240 F. 996.

In a proceeding to forfeit locations on mineral land withdrawn from appropriation, evidence held to show performance of labor and making of improvements sufficient within this section, to hold claim. Id.

Under Pickett Act, locators are, on withdrawal of lands from appropriation, even as against government, entitled to be uninterrupted in their prosecution of work for the discovery of oil and gas. U. S. v. Stockton Midway Oil Co. (D. C.) 240 F. 1006.

Where, at the time of withdrawal of public lands, defendant was doing no work on several of group of claims, though engaged in discovery work as to one, held that, under Pickett Act, and despite Rev. St. §§ 2324, 2325 (Comp. St. 1916, §§ 4620, 4622), such work could not be applied to all of group under group development theory. Id.

Where an oil company entered and began development work as agent and for benefit of locator, held that, after withdrawal, it could not assert any rights under Pickett Act; location being invalid, because fraudulent. U. S. v. Brookshire Oil Co. (D. C.) 242 F. 718.

Occupant of oil and gas lands, who at date of withdrawal from entry is making reasonable effort to complete work of discovery, manifested by physical acts having a direct tendency to facilitate exploration and discovery, held within the protection of the Pickett Act. U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

After occupant of oil land, diligently prosecuting work when the land was withdrawn, had made discoveries, held, that government could not question its rights because at some time during the work it was not as diligent as it could have been. Id.

Occupant of oil and gas land withdrawn from entry held not required to make unusual or extraordinary effort to obtain water, to be entitled to protection on ground that it was diligently prosecuting the work on such land. Id.

Under Pickett Act, rights of occupants prosecuting work on oil lands when withdrawn do not cease upon discovery, and the occupant is entitled to the benefits of the discovery. Id.

Oil company held diligently prosecuting work at date of withdrawal of land from entry, so as to be within the protection of the Pickett Act, though delaying drilling and installation of machinery until assured a supply of water. Id.

The Pickett Act relieves oil land within its terms from the effect of a with-

drawal order, and leaves it subject to the disposition of the land department. U. S. v. Record Oil Co. (D. C.) 242 F. 746.

Under Pickett Act, held, that an occupant or claimant engaged in diligent prosecution of work of discovery on oil or gas bearing lands is, if he continues and makes discovery, entitled to the same rights under the placer mining law (Rev. St. §§ 2329, 2330 [Comp. St. 1916, §§ 4628, 4629]) as if such withdrawal had not occurred. U. S. v. Thirty-Two Oil Co. (D. C.) 242 F. 730.

Discovery work, to protect rights of occupant or claimant of oil and gas lands under Pickett Act after withdrawal by presidential order, cannot be by group, as in case of group assessment work authorized by sections 4620, 4622. Id.

Under Pickett Act, rights of claimant under location on oil or gas lands withdrawn are not protected by the prosecution of discovery work on adjacent claims. Id.

Preference right of locators on oil and gas lands, who marked boundaries prior to withdrawal in 1909, was good against all but the United States, and was protected by Pickett Act. Id.

Work leading to discovery of oil and gas, though it be extraterritorial, as building of roads, etc., will constitute diligent prosecution of discovery work, sufficient to protect rights of claimant or occupant under Pickett Act after withdrawal. Id.

Whether occupant or claimant of oil or gas bearing land was, on withdrawal by presidential order, engaged in diligent prosecution of work leading to discovery, within Pickett Act, is a question of fact, dependent upon circumstances of each particular case. Id.

Under this act, declaring that rights of any person who at date of any withdrawal order is bona fide occupant or claimant of oil or gas bearing land, and who is in diligent prosecution of work leading to discovery, shall not be affected by order, drilling of oil well on one location cannot, where group theory was inapplicable to several locations, be treated as work leading to discovery on another. U. S. v. Honolulu Consol. Oil Co. (D. C.) 249 F. 167.

§ 4525. (Act June 25, 1910, c. 421, § 3.) Reports of withdrawals to Congress.

See notes under § 4523, ante.

§ 4528. (Act Sept. 30, 1913, c. 15, § 1.) Opening of lands restored to entry after withdrawals.

Proclamations issued under this section:

March 21, 1917, lands in Crook National Forest, Arizona.

June 30, 1917, lands in Palisades National Forest, Idaho and Wyoming.

August 3, 1917, Dakota National Forest, North Dakota; Wasatch National Forest, Utah.

Sept. 27, 1917, Fremont National Forest, Oregon; Wallowa National Forest, Oregon.

Oct. 9, 1917, Cache National Forest, Idaho and Utah.

CHAPTER FOUR—PRE-EMPTIONS

(R. S. § 2258. Repealed.)

Statute construed and applied.—See Salt Lake Inv. Co. v. Oregon Short Line R. Co., 38 S. Ct. 348, 246 U. S. 446, 62 L. Ed. 823, affirming judgment, 148 P. 439, 46 Utah, 203.

CHAPTER FIVE—HOMESTEADS

Sec.
4530. Who may enter certain unappropriated public lands.
4531. Mode of procedure.
4532. Certificate and patent; leaves of absence; commutation proofs; enlarged entries and arid land.
4532a. Leaves of absence; proof on commutation.
4532c. Same; existing war.
4535. Right of transfer of settlers under homestead or pre-emption laws.
4536. Relinquishment of claim; land open to entry.
4537. Cancellation of claim; notice.
4538. Time for filing application and perfecting entry; marriage of entrywoman; homesteads.
4543. Rights inuring to infant children.
4545. Persons in military or naval service; affidavits.
4545a. Same.
4546. Officers before whom affidavits or proofs may be made; perjury; fees.
4548. Administration of oaths.
4551. Homestead lands exempt from prior debts.

Sec.
4552. Reversion of lands entered to Government.
4563–4568. Enlarged homestead entries of certain nonmineral, nonirrigable, lands, in certain States.
4574. Enlarged entries of certain nonmineral, nonirrigable lands in Idaho; lands without domestic water supply designated; residence and cultivation.
4574b. Enlarged entries; amount of land; soldiers' additional homesteads.
4587a. Stock-raising homestead entries; persons entitled to; numbers of acres.
4587b. Same; designation of lands; applications.
4587c. Same; persons entitled to; effect of entries under § 2.
4587d. Same; additional entries; amount.
4587e. Same; additional entries.
4587f. Same; additional entries; persons entitled to.
4587g. Same; commutation.
4587h. Same; additional entries; preferential rights.
4587i. Same; reservation of coal and mineral rights.
4587j. Same; reservation of land containing water holes.
4587k. Same; rules and regulations.
4588a. Rights of minors to privileges of homestead, other land and mineral entry laws.
4588b. Relinquishment of entries under Act Aug. 31, 1918, c. 166, § 8.
4589. Payment before expiration of five years; rights of applicant.
4591. No distinction on account of race or color; mineral lands not subject to entry.
4591a. Rights of former entrants on ceded Indian reservations.
4592. Soldiers' and sailors' homestead.
4593. Same; deduction of military and naval service from time.
4593a. Same; application of R. S. §§ 2304, 2305, to military and naval service on Mexican border or in war with Germany.
4594. Persons who have entered less than 160 acres.
4595. Same; entries canceled; repayment of fees.
4596. Entries canceled or not confirmed; repayment of fees and purchase-money.
4597. Appropriation.
4598. Rules by Commissioner of General Land Office.
4601. Soldiers' additional homestead certificates; sale.
4602. Widows and minor children of persons entitled to homestead.
4602a. Widows and minor children of applicants for homesteads dying in military or naval service.
4603. Actual service in the Army or Navy equivalent to residence.
4604b. Service in Army or Navy in time of war equivalent to actual residence; contests.
4605. Entry by agent.
4611. Indians abandoning tribal relations.
4612. Indians located on public lands; patents.

§ 4530. (R. S. § 2289, as amended, Act March 3, 1891, c. 561, § 5.) Who may enter certain unappropriated public lands.

4. Unappropriated public lands defined.—The terms "public lands" and "public domain" are used in United States statutes and decisions to designate lands subject to sale or disposal under the general laws of the United States or the states. Northern Pac. Ry. Co. v. Hirzel, 161 P. 854, 29 Idaho, 438.

By Act Cong. Jan. 14, 1889, and acceptance thereof by the Chippewa Indians, lands within the Red Lake Indian Reservation were appropriated to the purposes of an express trust, and were to be disposed of as therein expressly provided to carry out such trust, and hence were not "unappropriated public lands," subject to entry under this section. Cathcart v. Minnesota & M. R. Co. (Minn.) 157 N. W. 719.

The words "public lands" are not always used in the same sense, and their true meaning is to be determined by the context, and it is court's duty not to give such a meaning as would destroy the purpose of law or lead to absurd results. Jackman v. Atchison, T. & S. F. R. Co. (N. M.) 170 P. 1036.

The words "public lands," when a different intention is not clearly expressed, are used in legislation of Congress to designate such land as is subject to sale or other disposal under general laws, but not such as is reserved by competent authority for any purpose or in any manner, although no exception of it is made. Id.

6. Lands not open to homestead entry.—Where the statute opening an Indian reservation to settlement authorized the Secretary of the Interior to reserve land for town sites, and the proclamation issued pursuant thereto in terms applied only to unreserved land, no rights on a tract reserved for a town site can be acquired by a homestead application. Cooper v. U. S. (C. C. A.) 253 F. 360.

9. Possessory rights in public lands.—Rem. & Bal. Code Wash. §§ 811 and 825, making possession for five days preceding unlawful entry sufficient ba-

sis for forcible entry and detainer action, etc., does not unconstitutionally conflict with U. S. Rev. St. § 2289 et seq. (Comp. St. 1916, § 4530 et seq.) relating to homestead entries. Denee v. Ankeny, 38 S. Ct. 226, 246 U. S. 208, 62 L. Ed. 669, affirming judgments Morrison v. Gunning, 157 P. 1199, 91 Wash. 693, and Ridpath v. Denee, 148 P. 15, 85 Wash. 322.

Plaintiff's settlement on land, in contravention of an order of the Secretary of the Interior to preserve the status quo pending final action on defendant's entry, is a trespass, initiating no adverse claim, and giving no right under the public land laws. Fisher v. Rule, 39 S. Ct. 122, 63 L. Ed. —.

Adverse possession for 10 years under the limitation statutes of the state of Washington confers no right, where the legal title to the land is in the United States. Reed v. St. Paul, M. & M. Ry. Co. (D. C.) 234 F. 123.

As to tract of land granted to town by Congress in trust for specified uses, a disseisor as against the public, could not acquire title thereto by adverse possession. Hughes v. City of Tuscaloosa (Ala.) 73 So. 90.

Neither party who agreed to homestead land, and, after securing patent, to give deed to defendant, nor his vendee, could defeat title of defendant in possession by showing it was acquired by fraud on federal government, in obtaining patent, under this section. McDougald v. Childs (Ark.) 189 S. W. 659.

Introduction by claimant through a railroad grant, of official maps of the Department of the Interior showing the lands in question to be public lands, and also showing the outlines of the Mexican grants in their vicinity, were sufficient to show prima facie that the land was public land. People's Water Co. v. Perkins (Cal. App.) 168 P. 154.

One who accepts the government's offer to convey lands to him on the performance of prescribed conditions has the same right to improvements on the lands as one who accepts the government's offer to sell for cash. Scott v. Buchanan (Colo.) 174 P. 1123.

Homestead entryman has from the first a possessory right to improvements upon government lands, including everything classed as part of realty, good against every one except the United States. Id.

In action for maliciously destroying improvements which were upon government lands at time plaintiffs' son made entry, if defendants had grounds upon which to justify carrying away of materials, they should have set up such fact in answers, as no presumption to that effect will be indulged. Id.

Improvements on government lands to which plaintiffs procured patent, having been on premises for at least four years, and all that time in possession of plaintiffs or their son, entryman, plaintiffs had a right of action against any one disturbing their possession to their damage. Id.

If it be considered that those employed to work on and improve government lands to which plaintiffs had procured patent were in actual possession, plaintiffs, since they had full title to the fee, could bring an action for injury to the reversion. Id.

Where defendant's predecessor made homestead entry in 1858 and conveyed to one who continued possession, but the entry was canceled in 1897 by the federal government, confirming a selection of swamp lands made by the state, pursuant to congressional donation of 1850, approved in 1900 to perfect title in the state, defendant did not have title by adverse possession against the state's patentee. Willoughby v. Caston (Miss.) 72 So. 129.

Defendant's predecessor in title held not to have acquired good title against the state by adverse possession prior to 1877 on ground that when federal Land Department in 1900 approved selection by state of lands in question as swamp or overflowed, inchoate title of state was perfected as of date of congressional donation of the lands in 1850, so that the doctrine of relation back applied. Id.

Statute of limitations does not begin to run as to lands donated to state by federal government until the sovereign power has conveyed title by proper patent, as until title to swamp lands, selected by state pursuant to Act Cong. Sept. 28, 1850, was confirmed in state by approval of selection by Secretary of Interior, the title remained subject to the United States Land Department. Id.

In view of Act Cong. Feb. 14, 1859, admitting Oregon into Union, section 4 of which provides that state shall not interfere with primary disposal of soil by United States, when United States issued patents to land, it made a primary disposal of soil, and title so transferred could be defeated by showing of title by adverse possession. McComas v. Northern Pac. Ry. Co. (Or.) 162 P. 862, modifying opinion on rehearing 161 P. 562.

Government land cannot be acquired by adverse possession. Schmitz v. Klee (Wash.) 173 P. 1026.

9½. Sufficiency of residence by one commuting entry.—Under Act Aug. 15, 1894, c. 290, and Rev. St. § 2289 and § 2301, as amended by Act March 3, 1891, c. 561 (Comp. St. 1916, §§ 4530, 4589), sufficiency of residence by one commuting entry under the act of 1894 held governed by section 2301. U. S. v. Jones, 242 F. 609, 155 C. C. A. 299, reversing judgment (D. C.) 232 F. 218.

Cited without definite application, Union Naval Stores Co. v. U. S., 36 S. Ct. 308, 60 L. Ed. 644; U. S. v. Beaman (C. C. A.) 242 F. 876.

§ 4531. (R. S. § 2290, as amended, Act March 3, 1891, c. 561, § 5.) Mode of procedure.

1. Mode of acquiring title in general.—Where plaintiff did not appeal from an order requiring him to furnish proof showing he was head of a family, and failed to furnish such proof within time fixed, he cannot, the land having been patented to another, object. Fisher v. Rule, 232 F. 861, 147 C. C. A. 55.

7½. Application as evidence as to claim of ownership.—Application of occupant of land confirmed to railroad company by Act Feb. 8, 1887, to make homestead entry thereof, held evidence that his possession was not under a claim of ownership. U. S. v. New Orleans Pac. Ry. Co., 235 F. 833, 149 C. C. A. 145.

13. Entry for use of another.—An entryman's agreement that title shall inure to the benefit of another disqualifies him from securing title under the commutation provision by substituting the minimum price of the land for the required residence and cultivation. Causey v. U. S., 36 S. Ct. 365, 240 U. S. 399, 60 L. Ed. 711, affirming decree 203 F. 1022, 121 C. C. A. 663.

Offer to return land scrip certificates received when commutation homestead entry was made held not prerequisite to suit to annul patent because of entryman's agreement that title, when acquired, should inure to another's benefit. Id.

13½. Entry for speculation.—Where an entryman on public lands, who secured a patent, was not actuated by speculative purpose at the time of his entry, he may, despite this and the following section, declaring that a patent shall not be issued to one entering for speculative purpose, dispose of the land after acquiring his patent. U. S. v. Albright, 234 F. 202.

Under this and the following section the fact that an entryman on public lands, who filed for speculative purposes, asked one who subsequently purchased if he would buy the land when patented, does not deprive purchaser of the benefit of his good faith, or establish that he knew the land was patented for speculative purposes. Id.

See, also, note under § 4532, post.

14. Agreements or contracts forbidden.—Under Homestead law the entryman must claim the land for his own benefit and can make no agreement for alienation. U. S. v. Jones, 242 F. 609, 155 C. C. A. 299, reversing judgment (D. C.) 232 F. 218.

Where arrangement whereby certain persons were to obtain title from the government under the homestead act to certain premises occupied by one of their number and thereafter convey to him was illegal, as contrary to public policy, the proposed grantee acquired thereby no legal or equitable rights of any kind which he could transfer. Nilson v. Hamilton (Utah) 174 P. 624.

14½. Mortgage.—Mortgage by one who had not perfected his homestead rights, having no patent, certificate, or final receipt, and not having furnished sufficient proof to acquire a certificate, was absolutely void under this and the following section. Hale v. McGraw (Ala.) 78 So. 214.

17. Sale and relinquishment by entryman.—Occupant of land confirmed to railroad by Act Feb. 8, 1887, held to relinquish rights by homesteading other land, and he could convey no rights to another. U. S. v. New Orleans Pac. Ry. Co., 235 F. 833, 149 C. C. A. 145.

Warranty deed by one who had not perfected his homestead rights, having no patent, certificate, or final receipt, and not having furnished sufficient proof to acquire a certificate, was absolutely void, under this and the following section.—Hale v. McGraw (Ala.) 78 So. 214.

20. Recovery of payment.—When the government has observed its obligations and the claimant has not, a legislative intention to refund money paid in strict accord with beneficial legislation cannot be assumed. Billings v. U. S., 50 Ct. Cl. 328.

21. Right acquired by entry or application.—Pendency of application of occupant to make homestead entry subsequent to patent to another held without effect on the title passing by the patent. U. S. v. New Orleans Pac. Ry. Co., 235 F. 833, 149 C. C. A. 145.

An entryman, having made proper entry, has an equitable interest in the land prior to issuance of patents vesting legal title therein. Miller v. Lloyd (Mo.) 204 S. W. 257.

Claim of adverse possession by defendant or his predecessor holding under a pre-emption or homestead claim subsequent to Act Cong. March 21, 1864, held unavailing against right of way granted to Northern Pacific Railroad Company by Act Cong. July 2, 1864. Northern Pac. Ry. Co. v. McDonald, 157 P. 222, 91 Wash. 113.

Cited without definite application. U. S. v. Morehead, 37 S. Ct. 458, 61 L. Ed. 926; Maginnis v. U. S., 52 Ct. Cl. 271.

§ 4532. (R. S. § 2291, as amended, Act June 6, 1912, c. 153.) Certificate and patent; leaves of absence; commutation proofs; enlarged entries and arid land.

1. Alienations by entryman.—Occupant of land confirmed to railroad by Act Feb. 8, 1887, held to relinquish rights by homesteading other land, and

he could convey no rights to another. U. S. v. New Orleans Pac. Ry. Co., 235 F. 833, 149 C. C. A. 145.

Where an entryman on public lands, who secured a patent, was not actuated by speculative purpose at the time of his entry, he may, despite this and the preceding section, declaring that a patent shall not be issued to one entering for speculative purpose, dispose of the land after acquiring his patent. U. S. v. Albright (D. C.) 234 F. 202.

Under this and the preceding section, the fact that an entryman on public lands, who filed for speculative purposes, asked one who subsequently purchased if he would buy the land when patented, does not deprive purchaser of the benefit of his good faith, or establish that he knew the land was patented for speculative purposes. Id.

Warranty deed by one who had not perfected his homestead rights, having no patent, certificate, or final receipt, and not having furnished sufficient proof to acquire a certificate, was absolutely void under this and the preceding section. Hale v. McGraw (Ala.) 78 So. 214.

2. —— Mortgage as alienation.—One having an inchoate interest in public lands may mortgage it, although the statute under which he claims prohibits an alienation of his rights as such a prohibition refers only to attempted conveyances of title and not to mortgages. Worthington v. Tipton (N. M.) 172 P. 1048.

Where a mortgage on government land entered was given before issuance of receiver's certificate and later became fully executed by foreclosure, the defense is not available to mortgagor's heirs or vendees, that such mortgage was void as being contrary to public policy, because of the oath required under this section. Quinn v. Tennessee Coal, Iron & R. Co. (Ala.) 77 So. 340.

Mortgage by one who had not perfected his homestead rights, having no patent, certificate, or final receipt, and not having furnished sufficient proof to acquire a certificate, was absolutely void, under this and the preceding section. Hale v. McGraw (Ala.) 78 So. 214.

6. Devise by and inheritance from entryman.—Under this section where wife survives entryman she acquires a right to land, whether entry was made before or after her marriage to entryman. Ford v. Edenborn, 77 So. 851, 142 La. 927.

Where widow of entryman complies with provisions of United States homestead law, and submits proof thereof at local offices, she acquires vested interest in land to exclusion of entryman's heirs. Id.

Under this section and section 4543, no rights accrue to entryman dying before entry is perfected, and nothing passes under inheritance law of state. Id.

Under this section, where it appears that homestead entry was speculative, heirs of entryman are not entitled to recover the land. Jones v. Fearnow (Okl.) 156 P. 309.

Under Const. U. S. Amend. 14, § 1, one born in the country of foreign unnaturalized parents held a citizen within this section and section 4543, granting rights to citizen heirs of a homestead entryman dying before final proof. Nyman v. Erickson (Wash.) 170 P. 546.

Heirs of a deceased homestead entryman becoming citizens after final proof and final certificate to "heirs" of entryman, but before patent was ordered to issue thereon, final proof and certificate having been suspended in the meantime by land department, held within the patent. Id.

9. Title acquired by entryman on compliance with law.—Enlarged homesteads under Act Feb. 19, 1909 (Comp. St. 1916, § 4563), and this section, are exempt from liability for debts contracted prior to the issuance of patent therefor, under Rev. St. § 2296 (Comp. St. 1916, § 4551). In re Auge (D. C.) 238 F. 621.

10. —— Final certificate as conveyance of equitable title.—When an entryman under the homestead laws has fully complied with all legal requirements, has submitted to final proof, and has received a final certificate, he has an equitable title to the land which he may convey, and thereafter the government holds the legal title in trust for him. Thompson v. Thompson, 155 P. 1190, 79 Or. 513.

12. —— Government as trustee for entryman.—Under this section Indians who made application for government homesteads under Comp. St. 1916, § 4611, and made final proof of residence and cultivation in 1897, receiving certificates for patents, took title under section 4612, and subject to the limitation that the land should be held in trust for them by the United States for 25 years. Robinson v. Steele, 157 P. 845, 91 Wash. 268.

14. Patent—Residence and cultivation by entryman.—Under homestead law entryman must reside on land continuously and make it his home for the time required by law. U. S. v. Jones, 242 F. 609, 155 C. C. A. 299, reversing judgment (D. C.) 232 F. 218.

Defendant, who built a house and established a residence on homestead entry and improved and cultivated the land, held to have actually resided therein within Homestead Law despite temporary absences. U. S. v. Anderson (D. C.) 238 F. 648.

16. —— Proof and patent where entryman dies.—Where a woman did not assert right to public land as widow of entryman under this section, but by new entry, refusal of land department to pass on validity of her marriage was

not erroneous. Jones v. Fearnow (Okl.) 156 P. 309.

Claimants of United States public land as heirs of entryman, who did not pursue remedy before land department pursuant to this section are not entitled to relief. Id.

Where entryman under homestead laws died before expiration of time for making final proof for patent, leaving widow who also died before such time, the heirs of entryman, and not the heirs of widow, were entitled to make final proof of performance of conditions precedent, and to patent for land. Robinson v. Phillips (Okl.) 168 P. 1005.

18. —— **Recitals in patent.**—Where a patent conveys land according to the official plat of the survey returned by the surveyor general, the plat becomes an integral part of the description of the land. Sala v. Crane (Idaho) 170 P. 92.

The expression in the patent "according to the official plat of the survey of the land returned to the General Land Office by the surveyor general" refers to the description of the land as well as to the quantity conveyed. Id.

20. —— **Conclusiveness of patent.**—Execution of patent itself raises presumption that all preceding steps were duly observed. U. S. v. Porter Fuel Co., 247 F. 769, 159 C. C. A. 627.

An ex parte affidavit as to publication of notice in proceedings in land department, not a part of the record in that department, cannot overcome presumption of regularity which attends the issuance of patent. Clear Lake Power & Improvement Co. v. Chriswell (Idaho) 173 P. 326.

21. —— **Application of doctrine of relation to patents.**—One who has obtained a patent has a title which relates back to his entry, and may recover for injuries to property upon the premises between the date of entry and the issuance of patent. Scott v. Buchanan (Colo.) 174 P. 1123.

22. —— **Cancellation of patent.**—Offer to return land scrip certificates received when commutation homestead entry was made held not prerequisite to suit to annul patent because of entryman's agreement that title when acquired should inure to another's benefit. Causey v. U. S., 36 S. Ct. 365, 240 U. S. 399, 60 L. Ed. 711, affirming decree 203 F. 1022, 121 C. C. A. 663.

In a suit to cancel a patent to land issued under Homestead Law on the ground of fraud in the final proofs as to the entryman's residence, etc., evidence held to warrant a decree dismissing the bill. U. S. v. Mahaffey, 235 F. 704, 149 C. C. A. 124.

A finding of the trial court on conflicting evidence, on the trial of a suit for the cancellation of a homestead patent that the evidence did not support the allegations of fraud affirmed. U. S. v. Cannon, 244 F. 750, 157 C. C. A. 198.

Where defendant did not actually reside on land during five-year period, and improved it only by erecting wire fences and preparing rude dugout, held that, under Homestead Act, patent granted him should be set aside on ground of fraud. U. S. v. Howard, 247 F. 455, 159 C. C. A. 509.

Under this section, entryman, who obtained patent by fraudulent representations that he had resided on land for five years after entry, cannot avoid cancellation of patent by showing that two years after obtaining patent he raised a crop and resided on land for several years, making improvements and cultivating land. Id.

Where entryman obtains homestead patent by fraudulent representations, he cannot defeat suit for cancellation on ground that government should place him in statu quo and reimburse him for improvements. Id.

23. —— **Cancellation as against bona fide purchasers.**—Purchaser of land patented under fraudulent entry held chargeable with notice of fraud, which entitled United States to cancellation of patent; occupant having, under Act March 3, 1887, c. 376, § 5, preferred right to purchase property. Krueger v. U. S., 38 S. Ct. 262, 246 U. S. 69, 62 L. Ed. 582, affirming decree U. S. v. Krueger, 228 F. 97, 142 C. C. A. 503.

Defense of bona fide purchase of fraudulent patentee is affirmative one, and burden of proof is upon defendant to establish it. Id.

24. **State laws as fixing status of entryman's property.**—Where United States homestead entry was perfected and patent was held up over disputed fraction of an acre, and entryman died before paying for disputed part, which was paid for after his death, and patent issued in his name, homestead did not become separate property of surviving wife, but fell into marital community. Douglas v. Nicholson, 74 So. 566, 140 La. 1098.

Cited without definite application, U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926; U. S. v. Beaman (C. C. A.) 242 F. 876.

§ 4532a. (Act Aug. 22, 1914, c. 270, as amended, Act Feb. 25, 1919, c. 21.) Leaves of absence; proof on commutation.

The entryman mentioned in section twenty-two hundred and ninety-one of Revised Statutes of the United States, as amended by the Act of June sixth, nineteen hundred and twelve, Thirty-

seventh Statutes, one hundred and twenty-three, upon filing in the local land office notice of the beginning of such absence at his option shall be entitled to a leave of absence in one or two continuous periods, not exceeding in the aggregate five months in each year after establishing residence: Provided, That the register and receiver of the local land office under rules and regulations made by the Commissioner of the General Land Office may, upon proper showing, upon application of the homesteader, and only for climatic conditions, which makes residence on the homestead for seven months in each year a hardship, reduce the term of residence to not more than six months in each year, over a period of four years, or to not more than five months each year over a period of five years, but the total residence required shall in no event exceed twenty-five months, not less than five of which shall be in each year; proof to be made within five years after entry; and upon the termination of such absence, in each period, the entryman shall file a notice of such termination in the local land office; but in case of commutation the fourteen months' actual residence, as now required by law, must be shown, and the person commuting be at the time a citizen of the United States. (38 Stat. 704. 40 Stat. 1153.)

This section was amended by Act Feb. 25, 1919, c. 21, cited above, to read as set forth above. This amendment consisted in inserting, after the words "in each year after establishing residence," the proviso beginning "Provided, that the register and receiver of the local land office," etc., down to and including the words "to be made within five years after entry."

§ 4532c. (Act Dec. 20, 1917, c. 6.) Same; existing war.

During the pendency of the existing war any homestead settler or entryman shall be entitled to a leave of absence from his land for the purpose of performing farm labor, and such absence, while actually engaged in farm labor, shall, upon compliance with the terms of this Act, be counted as constructive residence: Provided, That each settler or entryman within fifteen days after leaving his claim for the purpose herein provided shall file notice thereof in the United States Land Office, and at the expiration of the calendar year file in said land office of the district wherein his claim is situated a written statement, under oath and corroborated by two witnesses, giving the date or dates when he left his claim, date or dates of return thereto, and where and for whom he was engaged in farm labor during such period or periods of absence: Provided further, That nothing herein shall excuse any homestead settler or entryman from making improvements or performing the cultivation required by applicable law upon his claim or entry: Provided further, That the provisions of this Act shall apply only to homestead settlers and entrymen who may have filed their application prior to the passage of this Act. The Secretary of the Interior is authorized to provide rules and regulations for carrying this Act into effect. (40 Stat. 430.)

This was an act entitled "An act to authorize absence by homestead settlers and entrymen, and for other purposes," cited above.

§ 4535. (R. S. § 2288, as amended, Act March 3, 1891, c. 561, § 3, and Act March 3, 1905, c. 1424.) Right of transfer of settlers under homestead or pre-emption laws.

Right of way for railroad.—Where the entryman, whose claim plaintiff successfully contested before ousted, granted a right of way to defendant, which filed a map of location which was approved by Secretary of the Interior, and constructed its railroad, held that under Act Cong. March 3, 1875, and this section, the railroad company acquired title to its right of way, good as against plaintiff. Pierce v. Chicago, M. & P. S. Ry. Co. (Mont.) 156 P. 127.

Cited without definite application, U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926.

§ 4536. (Act May 14, 1880, c. 89, § 1.) Relinquishment of claim; land open to entry.

Relinquishment in favor of another claimant.—Plaintiff's predecessor in interest having parted with his title to public land in favor of plaintiff's grantor, was not thereafter in a position to make a valid relinquishment of the lands in favor of another claimant. Hemphill v. Moy (Idaho) 169 P. 288.

Entry by successful contestant after restoration to entry.—Under this and the two following sections, where contest was entertained while land was withdrawn from entry under Reclamation Act June 17, 1902, c. 1093 (Comp. St. 1916, § 4700 et seq.), successful contestant held properly permitted to enter the land within 30 days after its restoration to entry. Edwards v. Bodkin (D. C.) 241 F. 931.

§ 4537. (Act May 14, 1880, c. 89, § 2, as amended, Act July 26, 1892, c. 251.) Cancellation of claim; notice.

2. Notice of charge and hearing.—Notice of contest, in support of which contestant made oath that he did not know and had no means of knowing facts, is insufficient to initiate contest. Edwards v. Bodkin, 249 F. 562, 161 C. C. A. 488.

Where contest against actual entryman under homestead laws was sustained, entryman's protest against contestant's lieu land selection should not be denied, on ground that he had not served contestant with copy of appeal, for, while decision of Land Department on questions of fact is final, it is based on presupposition of hearing in good faith. Id.

4½. Right to take advantage of contest.—Plaintiff, who was not a party to a contest by his father against the entry of defendant on public lands, can take no advantage of his father's contest on claiming the land under a subsequent entry. Fisher v. Rule, 232 F. 861, 147 C. C. A. 55.

8. Preferential right of entry on cancellation of claim.—While Reclamation Act, § 10 (Comp. St. 1916, § 4708), authorizes Secretary of Interior to make such regulations as may be necessary and proper to carry act into full force and effect, he is not authorized to amend, modify, or change this section. Edwards v. Bodkin, 249 F. 562, 161 C. C. A. 488.

Under this section, and sections 4536 and 4538, where contest was entertained while land was withdrawn from entry under Reclamation Act June 17, 1902, c. 1093 (Comp. St. 1916, § 4700 et seq.), successful contestant held properly permitted to enter the land within 30 days after its restoration to entry. Edwards v. Bodkin (D. C.) 241 F. 931.

§ 4538. (Act May 14, 1880, c. 89, § 3, as amended, Act June 6, 1900, c. 821, and Act Aug. 9, 1912, c. 280.) Time for filing application and perfecting entry; marriage of entrywoman; homesteads.

8. Possessory rights of settler.—After all the conditions prescribed by Congress for alienation of public lands had been complied with and before issue of patent, the title is capable of being held adversely to the original entryman, or others claiming through him. Boone v. Gulf, F. & A. Ry. Co. (Ala.) 78 So. 956.

11½. Contest while land is withdrawn from entry.—Under this section and Comp. St. 1916, §§ 4536, 4537, where contest was entertained while land was withdrawn from entry under Reclamation Act June 17, 1902, c. 1093 (Comp. St. 1916, § 4700 et seq.), successful contestant held properly permitted to enter the land within 30 days after its restoration to entry. Edwards v. Bodkin (D. C.) 241 F. 931.

Cited without definite application, U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926.

§ 4543. (R. S. § 2292.) Rights inuring to infant children.

Patent to "heirs or devisees."—Under this section and Comp. St. 1916, § 4532, no rights accrue to entryman dying before entry is perfected, and nothing passes under inheritance law of state. Ford v. Edenborn, 77 So. 851, 142 La. 927.

Under Const. Amend. 14, § 1, one born in the country of foreign unnaturalized parents held a citizen within this section and Comp. St. 1916, § 4532, granting rights to citizen heirs of a homestead entryman dying before final proof. Nyman v. Erickson (Wash.) 170 P. 546.

Heirs of a deceased homestead entryman becoming citizens after final proof and final certificate to "heirs" of entryman, but before patent was ordered to issue thereon, final proof and certificate having been suspended in the meantime by land department, held within the patent. Id.

§ 4545. (R. S. § 2293.) Persons in military or naval service; affidavits.

Departmental regulation as inconsistent with statute.—Departmental regulation that soldier's homestead declaratory statement may be executed before any officer authorized to administer oaths held not inconsistent with act providing for administering of oaths by certain United States official in district in which land is situated, or provision of this section. U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926.

§ 4545a. (Act Oct. 6, 1917, c. 86.) Same.

During the continuance of the present war with Germany, and until his discharge from service, any man serving in the armed forces of the United States, who, prior to the beginning of his services was a settler, an applicant, or entryman under the land laws of the United States, or who has, prior to enlistment, filed a contest, with the view of exercising preference right of entry therefor, may make any affidavit required by law or regulation of the department, affecting such application, entry, or contest, or necessary to the making of entry in the case of the successful termination of such contest awarding him preference right of entry, before his commanding officer as provided in section twenty-two hundred and ninety-three of the Revised Statutes of the United States, which affidavits shall be as binding in law and with like penalties as if taken before the Register of the United States Land Office. (40 Stat. 391.)

This was an act entitled "An act providing for an amendment to section twenty-two hundred and ninety-three of the Revised Statutes, allowing homestead and other public land affidavits to be taken before the military commander of any person engaged in military or naval service of the United States," cited above.

See U. S. Comp. St. 1916, § 4545.

§ 4546. (R. S. § 2294, as amended, Act May 26, 1890, c. 355, Act March 11, 1902, c. 182, and Act March 4, 1904, c. 394.) Officers before whom affidavits or proofs may be made; perjury; fees.

Departmental regulation as inconsistent with statute.—Departmental regulation that soldier's homestead declaratory statement may be executed before any officer authorized to administer oaths held not inconsistent with the statute providing for administering of oaths by certain United States official in district in which land is situated, or provision of Rev. St. § 2293 (Comp. St. 1916, § 4545). U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926.

§ 4548. (Act March 2, 1895, c. 174, § 2.) Administration of oaths.

Departmental regulation as inconsistent with statute.—Departmental regulation that soldier's homestead declaratory statement may be executed before any officer authorized to administer oaths held not inconsistent with the statute providing for administering of oaths by certain United States official in district in which land is situated, or provision of Rev. St. § 2293 (Comp. St. 1916, § 4545). U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed 926.

§ 4551. (R. S. § 2296.) Homestead lands exempt from prior debts.

1. **Validity of statute.**—Under Const. U. S. art. 4, § 3, cl. 2, Congress, in exercise of its discretion in disposal of public lands, had power, by this section, the fourth section of the Homestead Act, to restrict alienation of homestead lands after conveyance by United States in fee simple, by providing no such lands shall become liable to satisfaction of debts contracted prior to issuance of patent. Ruddy v. Rossi, 39 S. Ct. 46, 63 L. Ed. —.

1½. **Power of state.**—It is wholly beyond power of a state to limit or impair the exemption granted by this section as to lands acquired under homestead act in respect to satisfaction of debts contracted prior to issuing of patent. Bovey-Shute Lumber Co. v. Erickson (N. D.) 170 N. W. 628.

2. **Exemption from prior debts.**—Enlarged homesteads under Act Feb. 19, 1909 (Comp. St. 1916, §§ 4563–4568), and Act June 6, 1912 (Comp. St. 1916,

§§ 4532, 4552), are exempt from liability for debts contracted prior to the issuance of patent therefor, under this section. In re Auge (D. C.) 238 F. 621.

Under this section, lands acquired under homestead laws are not liable to satisfaction of any debt contracted prior to issuance of patent. Fidelity State Bank v. Miller, 162 P. 244, 29 Idaho, 777.

Const. art. 22, disclaiming title to unappropriated public lands, and providing that such lands shall remain exempt to extent prescribed by Congress, prohibits state legislation subjecting lands acquired under federal Homestead Act to satisfaction of debts created prior to issuance of patent. Codington County v. Lindner (S. D.) 163 N. W. 573.

2½. —— **Statutory liability.**—The term "debt" includes a statutory as well as a voluntary liability. Codington County v. Lindner (S. D.) 163 N. W. 573.

3. —— **Debts due government.**—Under Const. art. 22, disclaiming title to unappropriated public lands, etc., and this section, making homestead lands not liable for debts contracted prior to issuance of patent, the homestead of a deceased insane person cannot be charged with amounts expended by county for maintaining him under Laws 1913, c. 313, subject to homestead rights. Codington County v. Lindner, (S. D.) 163 N. W. 573.

4. —— **Bankruptcy of homesteader.**—Crop growing on homestead held by bankrupt under laws of United States, upon which final proof had not been made, held exempt. Olmsted-Stevenson Co. v. Miller, 231 F. 69, 145 C. C. A. 257, affirming order In re Miller (D. C.) 221 F. 690.

6½. —— **Liability for alimony.**—The liability for alimony is not contract liability, and government homestead of 640 acres is not exempt by this section, from levy upon judgment for alimony. Miller v. Miller (Neb.) 163 N. W. 335.

7. —— **Time from which land becomes liable for debts.**—Under this section the owner of a government homestead could cancel a sheriff's certificate of sale of the lands based on an execution levied on them under procedure in a law action to recover a debt incurred before the owner made final proof on the land and issuance of patent. Heran v. Elmore (S. D.) 157 N. W. 820.

Debts which cannot be enforced against lands acquired under the homestead laws, are limited by this section to those contracted before final proof not those contracted before patent. In re Auge (D. C.) 238 F. 621.

8. —— **Lien of judgment for prior debts.**—Owner of homestead under land law cannot maintain action to remove lien of judgment based on debt antedating final receipt or patent, though no personal service was made on him, and notwithstanding this section; attention of court not having been called to such indebtedness. White v. Houser, 158 P. 1123, 98 Kan. 645.

Holder of junior judgment, by redeeming from prior judgment on debt antedating final receipt or patent for homestead, could subject land to payment of his lien by subrogation to rights of prior judgment creditor. Id.

10. **Exemption as restriction on power to mortgage land.**—Mortgage by entryman on government land pending proceeding to contest homestead entry, but before final order of General Land Office, and before he has actually filed under preference right, is a valid lien, though he married between execution of mortgage and final order of General Land Office and his filing thereunder. Gunsch v. Urban Mercantile Co. (N. D.) 160 N. W. 69.

This section, not having been intended as avenue for fraud, does not prohibit voluntary good-faith alienation by mortgage. Heran v. Elmore (S. D.) 157 N. W. 820.

One who has given a mortgage on his government homestead before final proof may, after issuance of patent, be estopped to deny the validity of the mortgage. Id.

Under this section, providing that no land acquired under Homestead Act shall become liable to any debt contracted prior to issuance of patent, homestead occupant before issuance of patent can make valid contract to give mortgage. Id.

A mortgage given on government land after final proof and certificate, but before issuance of patent, is valid, notwithstanding this section. Betts Naval Stores Co. v. Whitton (Fla.) 71 So. 281.

A mortgage by a homestead entryman to secure loan to enable entryman to commute his land, executed after final receipt, though the final certificate was canceled and another certificate and patent issued after further proof, is valid. Pittsburg Mortgage Inv. Co. v. Sneed (Okl.) 159 P. 515.

12. **Exemption of buildings from mechanic's lien.**—Under this section a mechanic's lien arising by operation of law upon filing of a lien statement for building materials does not attach to land acquired under homestead laws where debt was contracted and materials furnished before patent was issued. Bovey-Shute Lumber Co. v. Erickson (N. D.) 170 N. W. 628.

20. **Severance of house from realty.**—Negotiations by a homesteader for sale of his improvements together with a relinquishment of his possessory right

to land as homesteader did not constitute a constructive severance of house from realty which would entitle a creditor to replevin house as personal property. Enterprise Mercantile & Milling Co. v. Cunningham, 165 P. 224, 84 Or. 319.

21. Desert land entries.—In view of special statutes relating to other public lands, held that Rev. St. § 2448 (Comp. St. 1916, § 5098), does not indicate an intention on the part of Congress that entries on desert lands shall not be liable for the entryman's debts. In re Evans (D. C.) 235 F. 956.

§ 4552. (R. S. § 2297, as amended, Act March 3, 1881, c. 153, and Act June 6, 1912, c. 153.) Reversion of lands entered to Government.

Exemption from prior debts.—See In re Auge (D. C.) 238 F. 621; note, ante, § 4551.

§§ 4563–4568. (Act Feb. 19, 1909, c. 160, as amended, Act June 13, 1912, c. 166.) Enlarged homestead entries of certain nonmineral, nonirrigable lands, in certain States.

Exemption from prior debts.—See In re Auge (D. C.) 238 F. 621, note, ante, § 4551.

§ 4574. (Act June 17, 1910, c. 298, § 6, as amended, Act Aug. 10, 1917, c. 52, § 10.) Enlarged entries of certain non-mineral, non-irrigable lands in Idaho; lands without domestic water supply designated; residence and cultivation.

Whenever the Secretary of the Interior shall find any tracts of land in the State of Idaho, subject to entry under this Act, do not have upon them such a sufficient supply of water suitable for domestic purposes as would make continuous residence upon the lands possible he may, in his discretion, designate such tracts of land, not to exceed in the aggregate one million acres, and thereafter they shall be subject to entry under this Act without the necessity of residence upon the land entered: Provided, That the entryman shall in good faith cultivate not less than one-sixteenth of the entire area of the entry which is susceptible of cultivation during the first year of the entry, not less than one-eighth during the second year, and not less than one-fourth during the third year of the entry and until final proof: Provided further, That after six months from the date of entry and until final proof the entryman shall be a resident of the State of Idaho. (36 Stat. 532. 40 Stat. 275.)

This section, as originally enacted, read as follows: "Whenever the Secretary of the Interior shall find that any tracts of land in the State of Idaho subject to entry under this Act do not have upon them such a sufficient supply of water suitable for domestic purposes as would make continuous residence upon the lands possible, he may, in his discretion, designate such tracts of land, not to exceed in the aggregate three hundred and twenty thousand acres, and thereafter they shall be subject to entry under this Act without the necessity of residence upon the land entered: Provided, That the entryman shall in good faith cultivate not less than one-eighth of the entire area of the entry during the second year, one-fourth during the third year, and one-half during the fourth and fifth years after the date of said entry, and that after six months from date of entry and until final proof the entryman shall reside not more than twenty miles from said land and be engaged personally in preparing the soil for seed, seeding, cultivating, and harvesting crops upon the land during the usual seasons for such work unless prevented by sickness or other unavoidable cause. Leave of absence from a residence established under this section may, however, be granted upon the same terms and conditions as are required of other homestead entrymen." It was amended by Act Aug. 10, 1917, c. 52, § 10, cited above, to read as set forth here.

§ 4574b. (Act Feb. 20, 1917, c. 98.) Enlarged entries; amount of land; soldiers' additional homesteads.

Any person otherwise qualified who has obtained title under the homestead laws to less than one quarter section of land may make entry and obtain title under the provisions of the Act entitled "An Act to provide for enlarged homesteads," approved February nineteenth, nineteen hundred and nine, and an Act of June seventeenth, nineteen hundred and ten, entitled "An Act to provide for an enlarged homestead," for such an area of public land as will, when one-half of such area is added to the area of the lands to which he has already obtained title, not exceed one quarter section: Provided, That this Act shall not be construed to apply to soldiers' additional homestead entries made under section twenty-three hundred and six, United States Revised Statutes, or Acts amendatory thereof or supplemental thereto. (39 Stat. 925.)

This was an act entitled "An act to allow additional entries under the enlarged homestead act," cited above.

§ 4587a. (Act Dec. 29, 1916, c. 9, § 1.) Stock-raising homestead entries; persons entitled to; number of acres.

From and after the passage of this Act it shall be lawful for any person qualified to make entry under the homestead laws of the United States to make a stock-raising homestead entry for not exceeding six hundred and forty acres of unappropriated unreserved public land in reasonably compact form: Provided, however, That the land so entered shall theretofore have been designated by the Secretary of the Interior as "stock-raising lands." (39 Stat. 862.)

This section and the ten sections next following were an act entitled "An act to provide for stock-raising homesteads, and for other purposes," cited above.

§ 4587b. (Act Dec. 29, 1916, c. 9, § 2.) Same; designation of lands; applications.

The Secretary of the Interior is hereby authorized, on application or otherwise, to designate as stock-raising lands subject to entry under this Act lands the surface of which is, in his opinion, chiefly valuable for grazing and raising forage crops, do not contain merchantable timber, are not susceptible of irrigation from any known source of water supply, and are of such character that six hundred and forty acres are reasonably required for the support of a family: Provided, That where any person qualified to make original or additional entry under the provisions of this Act shall make application to enter any unappropriated public land which has not been designated as subject to entry (provided said application is accompanied and supported by properly corroborated affidavit of the applicant, in duplicate, showing prima facie that the land applied for is of the character contemplated by this Act), such application, together with the regular fees and commissions, shall be received by the register and receiver of the land district in which said land is located and suspended until it shall have been determined by the Secretary of the Interior whether said land is actually of that character. That during such suspension the land described in the application shall not be disposed of; and if the said land shall be designated under this Act, then such application shall be allowed; otherwise it shall be rejected, subject to appeal; but no right to occupy such lands shall be acquired by reason of said application until said lands have been designated as stock-raising lands. (39 Stat. 862.)

See note to § 4587a, ante.

§ 4587c. (Act Dec. 29, 1916, c. 9, § 3, as amended Act Oct. 25, 1918, c. 195.) Same; persons entitled to; effect of entries under § 2.

Any qualified homestead entryman may make entry under the homestead laws of lands so designated by the Secretary of the Interior, according to legal subdivisions, in areas not exceeding six hundred and forty acres, and in compact form so far as may be subject to the provisions of this Act, and secure title thereto by compliance with the terms of the homestead laws: Provided, That a former homestead entry of land of the character described in section two hereof shall not be a bar to the entry of a tract within a radius of twenty miles from such former entry under the provisions of this Act, which, together with the former entry, shall not exceed six hundred and forty acres, subject to the requirements of law as to residence and improvements, except that no residence shall be required on such additional entry if the entryman owns and is residing on his former entry: Provided further, That the entryman shall be required to enter all contiguous areas of the character herein described open to entry prior to the entry of any noncontiguous land: And provided further, That instead of cultivation as required by the homestead laws the entryman shall be required to make permanent improvements upon the land entered before final proof is submitted tending to increase the value of the same for stock-raising purposes, of the value of not less than $1.25 per acre, and at least one-half of such improvements shall be placed upon the land within three years after the date of entry thereof. (39 Stat. 863. 40 Stat. 1016.)

This section was amended by Act Oct. 25, 1918, c. 195, cited above, to read as set forth above. Prior to this amendment this section read as follows: "Any qualified homestead entryman may make entry under the homestead laws of lands so designated by the Secretary of the Interior, according to legal subdivisions, in areas not exceeding six hundred and forty acres, and in compact form so far as may be subject to the provisions of this Act, and secure title thereto by compliance with the terms of the homestead laws: Provided, That a former homestead entry of land of the character described in section two hereof shall not be a bar to the entry of a tract within a radius of twenty miles from such former entry under the provisions of this Act, subject to the requirements of law as to residence and improvements, which, together with the former entry, shall not exceed six hundred and forty acres: Provided further, That the entryman shall be required to enter all contiguous areas of the character herein described open to entry prior to the entry of any noncontiguous land: Provided further, That instead of cultivation as required by the homestead laws the entryman shall be required to make permanent improvements upon the land entered before final proof is submitted tending to increase the value of the same for stock-raising purposes, of the value of not less than $1.25 per acre, and at least one-half of such improvements shall be placed upon the land within three years after the date of entry thereof."

§ 4587d. (Act Dec. 29, 1916, c. 9, § 4.) Same; additional entries; amount.

Any homestead entryman of lands of the character herein described, who has not submitted final proof upon his existing entry, shall have the right to enter, subject to the provisions of this Act, such amount of contiguous lands designated for entry under the provisions of this Act as shall not, together with the amount embraced in his original entry, exceed six hundred and forty acres, and residence upon the original entry shall be credited on both entries, but improvements must be made on the additional entry equal to $1.25 for each acre thereof. (39 Stat. 863.)

See note to § 4587a, ante.

§ 4587e. (Act Dec. 29, 1916, c. 9, § 5.) Same; additional entries.

Persons who have submitted final proof upon, or received patent for, lands of the character herein described under the homestead

laws, and who own and reside upon the land so acquired, may, subject to the provisions of this Act, make additional entry for and obtain patent to contiguous lands designated for entry under the provisions of this Act, which, together with the area theretofore acquired under the homestead law, shall not exceed six hundred and forty acres, on proof of the expenditure required by this Act on account of permanent improvements upon the additional entry. (39 Stat. 863.)

See note to § 4587a, ante.

§ 4587f. (Act Dec. 29, 1916, c. 9, § 6.) Same; additional entries; persons entitled to.

Any person who is the head of a family, or who has arrived at the age of twenty-one years and is a citizen of the United States, who has entered or acquired under the homestead laws, prior to the passage of this Act, lands of the character described in this Act, the area of which is less than six hundred and forty acres, and who is unable to exercise the right of additional entry herein conferred because no lands subject to entry under this Act adjoin the tract so entered or acquired or lie within the twenty mile limit provided for in this Act, may, upon submitting proof that he resides upon and has not sold the land so entered or acquired and against which land there are no encumbrances, relinquish or reconvey to the United States the land so occupied, entered, or acquired, and in lieu thereof, within the same land-office district, may enter and acquire title to six hundred and forty acres of the land subject to entry under this Act, but must show compliance with all the provisions of this Act respecting the new entry and with all the provisions of existing homestead laws except as modified herein. (39 Stat. 863.)

See note to § 4587a, ante.

§ 4587g. (Act Dec. 29, 1916, c. 9, § 7.) Same; commutation.

The commutation provisions of the homestead laws shall not apply to any entries made under this Act. (39 Stat. 864.)

See note to § 4587a, ante.

§ 4587h. (Act Dec. 29, 1916, c. 9, § 8.) Same; additional entries; preferential rights.

Any homestead entrymen or patentees who shall be entitled to additional entry under this Act shall have, for ninety days after the designation of lands subject to entry under the provisions of this Act and contiguous to those entered or owned and occupied by him, the preferential right to make additional entry as provided in this Act: Provided, That where such lands contiguous to the lands of two or more entrymen or patentees entitled to additional entries under this section are not sufficient in area to enable such entrymen to secure by additional entry the maximum amounts to which they are entitled, the Secretary of the Interior is authorized to make an equitable division of the lands among the several entrymen or patentees, applying to exercise preferential rights, such division to be in tracts of not less than forty acres, or other legal subdivision, and so made as to equalize as nearly as possible the area which such entrymen and patentees will acquire by adding the tracts embraced in additional entries to the lands originally held or owned by them: Provided further, That where but one such tract of vacant land may adjoin the lands of two or more entrymen or patentees entitled to exercise preferential right hereunder, the tract in question may be entered by the person who first submits to the local land office his application to exercise said preferential right. (39 Stat. 864.)

See note to § 4587a, ante.

§ 4587i. (Act Dec. 29, 1916, c. 9, § 9.) Same; reservation of coal and mineral rights.

All entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal. Any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented, as provided by this Act, for the purpose of prospecting for coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee, and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on such lands by reason of such prospecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in form and in accordance with rules and regulations prescribed by the Secretary of the Interior and to be filed with and approved by the register and receiver of the local land office of the district wherein the land is situate, subject to appeal to the Commissioner of the General Land Office: Provided, That all patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notations declaring them to be subject to the provisions of this Act with reference to the disposition, occupancy, and use of the land as permitted to an entryman under this Act. (39 Stat. 864.)

See note to § 4587a, ante.

§ 4587j. (Act Dec. 29, 1916, c. 9, § 10.) Same; reservation of land containing water holes.

Lands containing water holes or other bodies of water needed or used by the public for watering purposes shall not be designated under this Act but may be reserved under the provisions of the Act of June twenty-fifth, nineteen hundred and ten, and such lands heretofore or hereafter reserved shall, while so reserved, be kept and held open to the public use for such purposes under such general rules and regulations as the Secretary of the Interior may prescribe: Provided, That the Secretary may, in his discretion, also withdraw from entry lands necessary to insure access by the public to watering places reserved hereunder and needed for use in the movement of stock to summer and winter ranges or to shipping points, and may prescribe such rules and regulations as may be necessary for the proper administration and use of such lands: Provided further,

That such driveways shall not be of greater number or width than shall be clearly necessary for the purpose proposed and in no event shall be more than one mile in width for a driveway less than twenty miles in length, not more than two miles in width for driveways over twenty and not more than thirty-five miles in length and not over five miles in width for driveways over thirty-five miles in length: Provided further, That all stock so transported over such driveways shall be moved an average of not less than three miles per day for sheep and goats and an average of not less than six miles per day for cattle and horses. (39 Stat. 865.)

See note to § 4587a, ante.

§ 4587k. (Act Dec. 29, 1916, c. 9, § 11.) Same; rules and regulations.

The Secretary of the Interior is hereby authorized to make all necessary rules and regulations in harmony with the provisions and purposes of this Act for the purpose of carrying the same into effect. (39 Stat. 865.)

See note to § 4587a, ante.

§ 4588a. (Act Aug. 31, 1918, c. 166, § 8.) Rights of minors to privileges of homestead, other land and mineral entry laws.

Any person, under the age of twenty-one, who has served or shall hereafter serve in the Army of the United States during the present emergency, shall be entitled to the same rights under the homestead and other land and mineral entry laws, general or special, as those over twenty-one years of age now possess under said laws: Provided, That any requirements as to establishment of residence within a limited time shall be suspended as to entry by such person until six months after his discharge from military service: Provided further, That applications for entry may be verified before any officer in the United States, or any foreign country, authorized to administer oaths by the laws of the State or Territory in which the land may be situated. (40 Stat. 957.

This was section 8 of an act entitled "An act amending the act entitled 'An act to authorize the President to increase temporarily the Military Establishment of the United States,' approved May eighteenth, nineteen hundred and seventeen," cited above. See note to § 2044gg, ante.

§ 4588b. (Res. Sept. 13, 1918, c. 173.) Relinquishment of entries under Act Aug. 31, 1918, c. 166, § 8.

No relinquishment of any public land entry made under and by authority of section eight of the Act of Sixty-fifth Congress, second session, entitled "An Act amending the Act entitled 'An Act to authorize the President to increase temporarily the Military Establishment of the United States,' " approved May eighteenth, nineteen hundred and seventeen, shall be valid or effective for any purpose unless executed after the entryman shall have actually resided upon and cultivated the land, in the case of a homestead entry, for at least six months, and in the case of an entry made under other than the homestead laws, after the entryman shall have complied with the provisions of the applicable law for at least one year.

Any person, firm, or corporation soliciting or dealing with the relinquishment of such claim or entry prior to the completion of compliance with the applicable law and with this resolution, and who or which solicits, demands, or receives or accepts any fee or compensation for locating, filing, or securing the claims or entries for persons entitled to the benefits of said section shall, upon conviction, be fined not to exceed $1,000 or imprisoned for not exceeding two years, or both. (40 Stat. 960.)

This was a resolution entitled a "Joint Resolution amending section eight of the amendment to the act entitled 'An act to authorize the President to

increase temporarily the Military Establishment of the United States,' approved May eighteenth, nineteen hundred and seventeen," cited above.

§ 4589. (R. S. § 2301, as amended, Act March 3, 1891, c. 561, § 6.) Payment before expiration of five years; rights of applicant.

Entry for use of another.—Offer to return land scrip certificates received when commutation homestead entry was made held not prerequisite to suit to annul patent because of entryman's agreement that title when acquired, should inure to another's benefit. Causey v. U. S., 36 S. Ct. 365, 240 U. S. 399, 60 L. Ed. 711, affirming decree 203 F. 1022, 121 C. C. A. 633.

An entryman's agreement that title shall inure to the benefit of another disqualifies him from securing title under the commutation provision by substituting the minimum price of the land for the required residence and cultivation. Id.

Heirs making final proof.—Where entryman under homestead laws died before expiration of time for making final proof for patent, leaving widow who also died before such time, the heirs of entryman, and not the heirs of widow, were entitled to make final proof of performance of conditions precedent, and to patent for land. Robinson v. Phillips (Okl.) 168 P. 1005.

Cited without definite application, U. S. v. Beaman (C. C. A.) 242 F. 876.

§ 4591. (R. S. § 2302.) No distinction on account of race or color; mineral lands not subject to entry.

Mineral lands not subject to homestead entry.—Patents to lands executed under Timber and Stone Act June 3, 1878, §§ 1-3 (Comp. St. 1916, §§ 4671-4673), and Act June 6, 1900, relating to forest lieu selections, cannot, in view of this section, be set aside because land was subsequently found to contain minerals, where that fact was not known, etc., at time of execution of patents. U. S. v. Porter Fuel Co., 247 F. 769, 159 C. C. A. 627.

Mineral character of land.—While, under this section and Comp. St. 1916, §§ 4613, 4614, 4659, 4663, mineral lands are not subject to acquisition under Homestead Law, patent under such law for land as agricultural may not be avoided by suit in equity on ground that it was mineral land, unless conditions were such as to make that fact clear to entrymen and others familiar with land. U. S. v. Beaman, 242 F. 876, 155 C. C. A. 464.

§ 4591a. (Act Feb. 20, 1917, c. 101.) Rights of former entrants on ceded Indian reservations.

From and after the passage of this Act any person who has heretofore entered under the homestead laws, and paid a price equivalent to or greater than $4 per acre, lands embraced in a ceded Indian reservation, shall, upon proof of such fact, if otherwise qualified, be entitled to the benefits of the homestead law as though such former entry had not been made: Provided, That the provisions of this Act shall not apply to any person who has failed to pay the full price for his former entry, or whose former entry was canceled for fraud. (39 Stat. 926.)

This was an act entitled "An act to restore homestead rights in certain cases," cited above.

Notes of Decisions

Application of provisions as to residence and cultivation.—Intention of Congress to make the provisions of the Homestead Law as to residence and cultivation applicable to homestead entries under Act April 27, 1904, of lands ceded by the Crow Indians, is not disproved by the additional provisions in this section. Keusch v. Lane, 47 App. D. C. 577.

§ 4592. (R. S. § 2304, as amended, Act March 1, 1901, c. 674.) Soldiers' and sailors' homestead.

Land department regulation as to affidavit.—Regulation requiring affidavit to soldier's homestead declaration giving him preferential right under Homestead Law, Rev. St. §§ 2304-2309 (Comp. St. 1916, §§ 4592-4594, 4602, 4603, 4605), could be adopted by the Land Department under Rev. St. §§ 161, 441, 453, 2478 (Comp. St. 1916, §§ 235, 681, 699, 5120), notwithstanding reference to pre-emption cases in section 2309. U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926.

Fraud and misrepresentation.—Misrepresentations in final proof, under which an entryman, through mistake of law, was allowed to deduct time of military service, under this and the following section, and Act Jan. 26, 1901, section 5014, post, which deduction was

contrary to Act Aug. 15, 1894, c. 290, § 15, was misrepresentation as to an immaterial fact. U. S. v. Jones (D. C.) 232 F. 218.

That an entryman effected his purpose by fraud in final proof, not entitling him to the land, does not estop him from denying the materiality of the misrepresentation. Id.

Fraud in an application for commutation by an entryman not entitled to commute under Rev. St. § 2301 (Comp. St. 1916, § 4589), was not fraud as to a material matter. Id.

The question of the damages recoverable for fraud of a homestead entryman will not be determined on demurrer to an answer relating wholly to the measure of damages. Id.

The question whether fraudulent misrepresentations, by which the entryman obtained patent to homestead, were material, is a question for the court, not the jury. Id.

§ 4593. (R. S. § 2305, as amended, Act March 1, 1901, c. 674.) Same; deduction of military and naval service from time.

Land department regulation as to affidavit.—See U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926; note, ante, § 4592.

Fraud and misrepresentation.—See U. S. v. Jones (D. C.) 232 F. 218; note, ante, § 4592.

§ 4593a. (Act Feb. 25, 1919, c. 37.) Same; application of R. S. §§ 2304, 2305, to military and naval service on Mexican border or in war with Germany.

Subject to the conditions therein expressed, as to length of service and honorable discharge, the provisions of sections twenty-three hundred and four and twenty-three hundred and five, Revised Statutes of the United States, shall be applicable in all cases of military and naval service rendered in connection with the Mexican border operations or during the war with Germany and its allies as defined by public resolution numbered thirty-two, approved August twenty-ninth, nineteen hundred and sixteen (Thirty-ninth Statutes at Large, page six hundred and seventy-one), and the Act approved July twenty-eighth, nineteen hundred and seventeen (Fortieth Statutes at Large, page two hundred and forty-eight). (40 Stat. 1161.)

This section is an act entitled "An Act to extend the provisions of the homestead laws touching credit for period of enlistment to the soldiers, nurses, and officers of the Army and the seamen, marines, nurses, and officers of the Navy and the Marine Corps of the United States who have served or will have served with the Mexican border operations or during the war between the United States and Germany and her allies," cited above.

§ 4594. (R. S. § 2306.) Same; persons who have entered less than 160 acres.

Land department regulation.—See U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926; note, ante, § 4592.

Quieting title to unused portion of scrip.—The holder of a land-scrip certificate for 40 acres on which a patent has been issued for 17 acres and whose title to the unused portion of the certificate has been quieted in a proceeding against the former owners, to which suit the Secretary of the Interior was not a party, is entitled to maintain a proceeding in equity against the former owners and the Secretary to quiet his title to the unused portion of the scrip and to require the Secretary to issue for his use a certified copy of the original certificate upon which he can locate the remaining number of acres of land to which he is entitled; the plaintiff having no adequate remedy at law. Collins v. Jenkins, 44 App. D. C. 182.

Fees and commissions.—This section does not warrant a construction that the entry and perfection of title is to be free from charges of fees and commissions as a homestead entry. Maginnis v. U. S., 52 Ct. Cl. 271.

§ 4595. (Act June 16, 1880, c. 244, § 1.) Same; entries canceled; repayment of fees.

Action for repayment of price of canceled coal entry.—As to a right of action under this section and Comp. St. 1916, §§ 4596–4598, 4771, for repayment of the price of a canceled coal entry, held, that the statute of limitations of six years is jurisdictional and need not be pleaded. Quinn v. U. S., 52 Ct. Cl. 496.

§ 4596. (Act June 16, 1880, c. 244, § 2.) Entries canceled or not confirmed; repayment of fees and purchase-money.

Action for repayment of price of canceled coal entry.—See Quinn v. U. S., 52 Ct. Cl. 496; note, ante, § 4595.

Cited without definite application, Causey v. U. S., 36 S. Ct. 365, 240 U. S. 399, 60 L. Ed. 711.

§ 4597. (Act June 16, 1880, c. 244, § 3.) Appropriation.

Action for repayment of price of canceled coal entry.—See Quinn v. U. S., 52 Ct. Cl. 496; note, ante, § 4595.

§ 4598. (Act June 16, 1880, c. 244, § 4.) Rules by Commissioner of General Land Office.

Action for repayment of price of canceled coal entry.—See Quinn v. U. S., 52 Ct. Cl. 496.

§ 4601. (Act Aug. 18, 1894, c. 301, § 1.) Soldiers' additional homestead certificates; sale.

Preference of actual settler over claimant seeking to assert scrip rights.—Scrip issued under law and regulations relating to soldiers' additional homestead rights is subject to regulations of Land Department, and also to equitable rule that actual settler is to be preferred over claimants who seek to assert scrip rights to public domain. Edwards v. Bodkin, 249 F. 562, 161 C. C. A. 488.

§ 4602. (R. S. § 2307.) Widows and minor children of persons entitled to homestead.

Land department regulation.—See U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926; note, ante, § 4592.

§ 4602a. (Act July 28, 1917, c. 44, § 2.) Widows and minor children of applicants for homesteads dying in military or naval service.

Any settler upon the public lands of the United States; or any entryman whose application has been allowed; or any person who has made application for public lands which thereafter may be allowed under the homestead laws, who dies while actually engaged in the military or naval service of the United States as a private soldier, officer, seaman, marine, national guardsman, or member of any other organization for offense or defense authorized by Congress during any war in which the United States may be engaged, then his widow, if unmarried, or in case of her death or marriage, his minor orphan children, or his or their legal representatives may proceed forthwith to make final proof upon such entry or application thereafter allowed, and shall be entitled to receive Government patent for such land; and that the death of such soldier while so engaged in the service of the United States shall, in the administration of the homestead laws, be construed to be equivalent to a performance of all requirements as to residence and cultivation upon such homestead. (40 Stat. 248.)

This was section 2 of an act entitled "An act for the relief of homestead entrymen or settlers who enter the military or naval service of the United States in time of war," cited above.

§ 4603. (R. S. § 2308.) Actual service in the Army or Navy equivalent to residence.

Land department regulation.—See U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926; note, ante, § 4592.

§ 4604b. (Act July 28, 1917, c. 44, § 1.) Service in Army or Navy in time of war equivalent to actual residence; contests.

That any settler upon the public lands of the United States; or any entryman whose application has been allowed; or any person

who has made application for public lands which thereafter may be allowed under the homestead laws, who, after such settlement, entry, or application, enlists or is actually engaged in the military or naval service of the United States as a private soldier, officer, seaman, marine, national guardsman, or member of any other organization for offense or defense authorized by Congress during any war in which the United States may be engaged, shall, in the administration of the homestead laws, have his services therein construed to be equivalent to all intents and purposes to residence and cultivation for the same length of time upon the tract entered or settled upon; and hereafter no contest shall be initiated on the ground of abandonment, nor allegation of abandonment sustained against any such settler, entryman, or person unless it shall be alleged in the preliminary affidavit or affidavits of contest and proved at the hearing in cases hereinafter initiated that the alleged absence from the land was not due to his employment in such military or naval service; that if he shall be discharged on account of wounds received or disability incurred in the line of duty, then the term of his enlistment shall be deducted from the required length of residence, without reference to the time of actual service: Provided, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year. (40 Stat. 248.)

This was section 1 of an act entitled "An act for the relief of homestead entrymen or settlers who enter the military or naval service of the United States in time of war," cited above.

§ 4605. (R. S. § 2309.) Entry by agent.

Land department regulation.—See U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926; note, ante, § 4592.

§ 4611. (Act March 3, 1875, c. 131, § 15.) Indians abandoning tribal relations.

Acquisition of homestead under statute.—Where an Indian entering a homestead showed that he had abandoned his tribal relations, and had every qualification prescribed by this section, he acquired the homestead under such act, and not under Act Cong. July 4, 1884, c. 180 (Comp. St. 1916, § 4612), although he was issued a patent under the latter act, and was not called on for the fees, and the final receipt carried the notation, "Indian Homestead Act July 4, 1884." Entiat Delta Orchards Co. v. Unknown Heirs of Saska (Wash.) 168 P. 1130.

Evidence as to parol gift of land.—In an action to quiet title to land, claimed by virtue of an alleged parol gift of land by an Indian who had acquired it under Indian homestead law, evidence of intention to make such gift and improvements made on land in reliance upon gift held to warrant a finding that alleged donor made an effective present parol gift of land to plaintiff. Felix v. Yaksum, 163 P. 481, 95 Wash. 138.

Restrictions on alienation or incumbrance of lands acquired by Indians.—Indian who had made a homestead entry under this section, and had substantially performed the conditions entitling him to a patent, except the making of final proof, at passage of Act July 4, 1884, is not affected by provisions of the latter act that patents issued thereunder should contain a 25 years' limitation on alienation. U. S. v. Hemmer, 36 S. Ct. 659, 241 U. S. 379, 60 L. Ed. 1055, affirming decree Hemmer v. U. S., 204 F. 898, 123 C. C. A. 194.

Where nontribal Indian entered on public land pursuant to this section, and died, his surviving widow making final proof under the following section without paying fees, trust patent to such widow is subject to 25-year restriction on alienation. Seaples v. Card (D. C.) 246 F. 501.

Indian, who had made a homestead entry under Act March 3, 1875, and had substantially performed the conditions entitling him to a patent, except the making of final proof, for permission to make which he had applied at passage of Act Cong. July 4, 1884 (Comp. St. 1916, § 4612), is not affected by provisions of the latter act that patents issued thereunder should contain a 25-year limitation on alienation. Porter v. Steinmetz (S. D.) 159 N. W. 39.

Under Rev. St. U. S. § 2291, Comp. St. 1916, § 4532, Indians who made application for government homesteads in 1878 under this section, and made final proof of residence and cultivation in 1897, receiving certificates for patents,

took title under Comp. St. 1916, § 4612, and subject to the limitation that the land should be held in trust for them by United States for 25 years. Robinson v. Steele, 157 P. 845, 91 Wash. 268.

—— Period of restriction.—Where Indian applies for homestead under this section, making final proof under that act and paying fees, he is entitled to a patent with only a five-year restriction on alienation, notwithstanding the passage of Act July 4, 1884, prior to issuance of patent. Seaples v. Card (D. C.) 246 F. 501.

As Act Cong. March 3, 1875, was not modified or repealed by Act Cong. July 4, 1884 (Comp. St. 1916, § 4612), where an Indian, after passage of the act of 1884, made original entry of land under act of 1875, paying required fees, and his widow made final proof, intending to do so under Act of 1875, held that widow acquired title under the act of 1875 subject only to a restraint on alienation for five years. Felix v. Yaksum, 163 P. 481, 95 Wash. 138.

—— Effect of omissions or errors in patent.—A provision in an Indian homestead patent, restricting alienation for which law of case does not warrant, is surplusage, having no controlling force upon title of grantee, and patent must have read into it law under which title it conveys was acquired. Felix v. Yaksum, 163 P. 481, 95 Wash. 138.

Where the Land Department gave an Indian a patent withholding title for 25 years, when the Indian was in fact entitled to a patent under a different act either in fee or with alienation deferred only 5 years, the Land Department could correct the error. Entiat Delta Orchards Co. v. Unknown Heirs of Saska (Wash.) 168 P. 1130.

That the Land Department without the knowledge of an Indian defended foreclosure of his homestead on tax certificates in the Indian's name, on the ground that he had a trust patent, does not prove intent of the Indian to take under a trust patent when he was entitled to a fee patent, and later applied for a correction in his patent. Id.

Acts of Congress providing for correction of errors in patents of public lands to Indians in particular cases do not indicate a policy not to allow cancellation of erroneous patents and issuance of proper ones on application, as to Indians not coming under such acts. Id.

Even if the Land Department had no authority to cancel and correct patents to allotments, it would not follow that a citizen Indian who had severed tribal relations and entered public lands under the homestead laws was not entitled to seek all remedies as freely as any other citizen. Id.

United States Supreme Court decision relating to statute as binding on state courts.—Decision of United States Supreme Court as to application of United States statute relating to Indian homesteads is binding on the courts of the state. Porter v. Steinmetz (S. D.) 159 N. W. 39.

Cited without definite application, Utah Power & Light Co. v. U. S. (C. C. A.) 230 F. 328.

§ 4612. (Act July 4, 1884, c. 180, § 1.) Indians located on public lands; patents.

Acquisition of homestead under statute.—Application for homestead entry, and receiver's receipts, held to show that the application was made under this section, amending Act May 20, 1862, c. 75, permitting entry by Indians under certain restrictions. U. S. v. Joyce, 240 F. 610, 154 C. C. A. 653.

Where an Indian, entering a homestead, showed that he had abandoned his tribal relations, and had every qualification prescribed by Act March 3, 1875, c. 131 (Comp. St. 1916, § 4611), he acquired the homestead under such act and not under Act July 4, 1884, c. 180, though he was issued a patent under the latter act, and was not called on for the fees, and the final receipt carried the notation "Indian Homestead Act July 4, 1884." Entiat Delta Orchards Co. v. Unknown Heirs of Saska, 168 P. 1130, 99 Wash. 84.

Restrictions on alienation of lands acquired by Indians.—Indian who had made a homestead entry under Act March 3, 1875 (Comp. St. 1916, § 4611), and had substantially performed the conditions entitling him to a patent, except the making of final proof, at passage of this section, is not affected by provisions of the latter act that patents issued thereunder should contain a 25 years' limitation on alienation. U. S. v. Hemmer, 36 S. Ct. 659, 241 U. S. 379, 60 L. Ed. 1055, affirming decree Hemmer v. United States, 204 F. 898, 123 C. C. A. 194.

Equitable maxims being to an extent applicable to Indians, held, Land Department, having improperly canceled a trust patent issued under this section, and issued a fee-simple patent under Act Feb. 8, 1887, § 6, or Act May 8, 1906, amendatory thereof (Comp. St. 1916, § 4203), Indian could not, having conveyed land, recover same on theory that purchaser was chargeable with notice of her incapacity to alienate. Seaples v. Card (D. C.) 246 F. 501.

Where trust patent was issued to Indian pursuant to this section, containing a 25-year restriction on alienation, Land Department is without authority, Indian having abandoned tribal life, to thereafter cancel such patent, and issue a new patent, without restric-

tions, under Act Feb. 8, 1887, § 6 (Comp. St. 1916, § 4203). Id.

Act May 8, 1906, amendatory of Act Feb. 8, 1887, § 6 (Comp. St. 1916, § 4203), applies to allottees only; and a homestead patent, having been issued to an Indian under this section, imposing a 25-year restriction on alienation, cannot be canceled, and a new patent issued, without restriction. Id.

Where nontribal Indian entered on public land pursuant to Comp. St. 1916, § 4611, and died, his surviving widow making final proof under this section without paying fees, trust patent to such widow is subject to 25-year restriction on alienation. Id.

Where Land Department, purporting to act under Act Feb. 8, 1887, § 6, or Act May 8, 1906, amendatory thereof (Comp. St. 1916, § 4203), canceled a trust patent to homestead issued to Indian under this section, which restricted alienation for 25 years and issued a fee-simple patent, such patent was not void, being within jurisdiction of Land Department, and it could not be collaterally attacked by Indian, who after issuance disposed of land. Id.

Indian, who had made a homestead entry under Act March 3, 1875 (Comp. St. 1916, § 4611), and substantially performed the conditions entitling him to a patent, except the making of final proof, for permission to make which he had applied at passage of Act July 4, 1884, this section is not affected by provisions of the latter act that patents issued thereunder should contain a 25-year limitation on alienation. Porter v. Steinmetz, 159 N. W. 39, 37 S. D. 488.

Under Rev. St. U. S. § 2291 (Comp. St. 1916, § 4532), Indians who made application for government homesteads in 1878 under Comp. St. 1916, § 4611, and made final proof of residence and cultivation in 1897, receiving certificates for patents, took title under this section, and subject to the limitation that the land should be held in trust for them by United States for 25 years. Robinson v. Steele, 157 P. 845, 91 Wash. 268.

—— **Period of restriction.**—Where Indian applies for homestead under Act March 3, 1875, § 15, making final proof under that act and paying fees, he is entitled to a patent with only a five-year restriction on alienation, notwithstanding the passage of Act July 4, 1884, prior to issuance of patent. Seaples v. Card (D. C.) 246 F. 501.

As Act Cong. March 3, 1875 (Comp. St. 1916, § 4611), was not modified or repealed by this section, where an Indian, after passage of the act of 1884, made original entry of land under act of 1875, paying required fees, and his widow made final proof, intending to do so under act of 1875, held that widow acquired title under the act of 1875 subject only to a restraint on alienation for five years. Felix v. Yaksum, 163 P. 481, 95 Wash. 138.

—— **Effect of omissions or errors in patent.**—Under this section the absence of declaration in patent of homestead to Indian that United States holds lands in trust does not defeat trust. U. S. v. Joyce, 240 F. 610, 154 C. C. A. 653.

Omission from a patent of homestead to Indian of restrictions imposed by this section does not relieve land from the restrictions, and all persons are charged with notice thereof. Id.

Cited without definite application, Utah Power & Light Co. v. U. S. (C. C. A.) 230 F. 328; U. S. v. Lewis (D. C.) 253 F. 469.

CHAPTER SIX—MINERAL LANDS AND MINING RESOURCES

Sec.
4613. Mineral lands reserved.
4614. Mineral lands open to purchase by citizens.
4615. Length of claims on veins or lodes.
4616. Proof of citizenship.
4617. Affidavit of citizenship.
4618. Locators' rights of possession and enjoyment.
4619. Owners of tunnels, rights of.
4620. Regulations by miners.
4620a. Same as to labor not applicable to persons in military or naval service during war with Germany.
4620b. Same; as to labor suspended during years 1917 and 1918.
4620c. Same; Res. Oct. 5, 1917, c. 75, amended.
4620d. Res. July 17, 1917, c. 39, and Res. Oct. 5, 1917, c. 75, extended to Alaska; assessment work laws suspended.
4621. Expenditure of on tunnels.
4622. Patents, how obtained.
4623. Adverse claim; proceedings on.
4624. Same; oath of claimant, before whom made.
4625. Same; findings by jury; costs.
4626. Description of vein claims on surveyed and unsurveyed lands.
4627. Pending applications; existing rights.
4628. Conformity of placer-claims to surveys, limit of.
4629. Subdivisions of ten-acre tracts; maximum of placer locations.

Sec.
4630. Conformity of placer-claims to surveys; limitation of claims.
4631. Evidence of possession, to establish right to patent.
4632. Proceedings for patent for placer-claim.
4635. Entry of mineral oil lands under placer mining laws.
4636. Assessment work on contiguous oil lands, located as claims, of same owner.
4637. Patents for oil or gas lands, not denied because of transfer before discovery of oil or gas.
4640e. Permits to prospect for potassium.
4640ee. Same; patents to permittees on discovery; leases; royalties.
4640f. Same; leases to permittees for camp sites.
4640ff. Same; cancellation of permits.
4640g. Same; restrictions on leasehold interests.
4640gg. Same; reservations in leases.
4640h. Same; provision in leases for protection of United States.
4640hh. Same; forfeiture of leases.
4640i. Same; provisions of act applicable to disposed of public lands reserving deposits.
4640ii. Same; disposition of royalties and rentals.
4640j. Same; rules and regulations.
4640jj. Same; deposits disposed of in accordance with provisions of Act; rights of states.
4640k. Same; provision in leases for regulation of price and disposition of minerals.
4644. Intersecting or crossing veins.
4645. Patents for non-mineral lands.
4647. Vested rights to use of water for mining; right of way for canals.
4648. Rights subject to vested and accrued water-rights.
4658. Grants of lands to States or corporations not to include mineral lands.
4659. Coal-lands; entry.
4660. Same; pre-emption.
4661. Same; presentation of pre-emption claims.
4662. Same; one entry only.
4663. Same; conflicting claims.
4668a. Disposition of lands in Indian reservations with reservation of coal; examination and appraisal of lands.
4668b. Same; statements in application; patents.
4668c. Same; disposition by United States of coal.
4668d. Same; disposition of proceeds.

§ 4613. (R. S. § 2318.) Mineral lands reserved.

I. SYSTEM OF MINING LAWS

1. Basis of system.—See U. S. v. Sweet, 38 S. Ct. 193, 245 U. S. 563, 62 L. Ed. 473.

II. OWNERSHIP AND DISPOSAL OF MINERAL LANDS

7. Disposal of mineral lands as agricultural lands.—While, under Rev. St. §§ 2302, 2318, 2319, 2347, 2351 (Comp. St. 1916, §§ 4591, 4613, 4614, 4659, 4663), mineral lands are not subject to acquisition under Homestead Law, patent under such law for land as agricultural may not be avoided by suit in equity on ground that it was mineral land, unless conditions were such as to make that fact clear to entrymen and others familiar with land. U. S. v. Beaman, 242 F. 876, 155 C. C. A. 464.

III. MINERAL CHARACTER OF LANDS

9. Application of term "mineral."—Land valuable for coal is "mineral land" within the meaning of the public land laws. U. S. v. Sweet, 38 S. Ct. 193, 245 U. S. 563, 62 L. Ed. 473, reversing decree Sweet v. U. S., 228 F. 421, 143 C. C. A. 3.

15½. Proceedings to determine character of claim—Injunction.—The Secretary of the Interior and the Commissioner of the General Land Office will not be enjoined, in a suit in equity by the locator of an unpatented mining claim who states that he is satisfied and does not and may never desire a patent, from proceeding to determine the character of the claim (construing sections 2318 to 2348, Rev. St. [Comp. Stat. 1916, §§ 4613–4616, 4618–4620, 4622, 4623, 4626–4632, 4642–4653, 4658–4660]). Lane v. Cameron, 45 App. D. C. 404.

§ 4614. (R. S. § 2319.) Mineral lands open to purchase by citizens.

II. DISPOSAL OF MINERAL LANDS

6½. Disposal of mineral lands as agricultural lands.—See U. S. v. Beaman, 242 F. 876, 55 C. C. A. 464, ante, § 4613.

9. Lands valuable for mineral—Meaning and proof.—Where plaintiff, when he located placer claim, made a discovery of gold, and since has mined claim, and done assessment work every year, it must be held that land was valuable for placer mining. Batt v. Stedman (Cal. App.) 173 P. 99.

III. MINING LOCATIONS

19. Extralateral rights.—Under Act May 10, 1872 (this and following sections), end lines of a claim are required

to be projected parallel with each other and crosswise of general course of veins within surface limits of location, and whenever top or apex of vein is found within surface lines extended vertically downwards, the vein may be followed outside of vertical side lines. Quilp Gold Mining Co. v. Republic Mines Corp., 165 P. 57, 96 Wash. 439.

23. State regulations of locations.—State statutes, governing location of mining claims and manner of recording, held of no more force and effect than miners' rules. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

V. MINING CLAIM AS PROPERTY

39. Ownership and transfer.—A valid mining claim under the public land laws is property which may be bought and sold and which passes by descent. Lane v. Cameron, 45 App. D. C. 404.

CITED WITHOUT DEFINITE APPLICATION

U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4615. (R. S. § 2320.) Length of claims on veins or lodes.

II. VEIN OR LODE, OR OTHER VALUABLE DEPOSITS

5. What constitutes.—A segment of an ore vein, commencing 15 or more feet below where the vein apexing in complainant's claim terminated in a fault, held a continuation of the same vein, which complainant was entitled to follow in its dip through the side lines into defendant's adjoining claim. Original Sixteen to One Mine v. Twenty-One Mining Co. (D. C.) 254 F. 630.

III. MINING LOCATIONS OR CLAIMS

10. Nature and effect.—Mining claim location, which is invalid under this section and section 4620, is also invalid under Rev. Laws Nev. § 2422. Nelson v. Smith (Nev.) 176 P. 261.

12. Location on vein or lode.—Under this section a conveyance of a placer claim includes as a matter of law all known veins and lodes of quartz. Wilbur v. Everhardy (Cal.) 167 P. 861.

14. Location on unappropriated public lands.—Every competent locator has the right to initiate a lawful claim to unoccupied public land by a peaceable, adverse entry upon it while it is in the possession of those who have no superior right to acquire title or hold possession. Nelson v. Smith (Nev.) 176 P. 261.

27. Form, dimensions, and surface lines—Location and direction of side lines.—While, under this section and section 4618, end lines of a mine location must be parallel and straight to entitle the locator to extralateral rights, that is not true with the side lines, and they may be converging or diverging, so long as their general course is along the vein, and statutory restriction on width of claims is respected. Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co., 38 S. Ct. 574, 247 U. S. 450, 62 L. Ed. 1207, affirming judgment 158 P. 876, 39 Nev. 375.

29. —— Parallelism of end lines.—Under Act May 10, 1872 (Rev. St. U. S. § 2319 et seq. [Comp. St. 1916, § 4614 et seq.]), the end lines of mining claim, are required to be projected parallel with each other and crosswise of general course of veins within surface limits of location, and whenever top or apex of vein is found within surface lines extended vertically downwards, the vein may be followed outside of vertical side lines. Quilp Gold Mining Co. v. Republic Mines Corp. (Wash.) 165 P. 57.

32. —— Excessive claims.—Generally, where a claim is excessive in length, the claim is valid if the error is innocently made, but the excess is void. Nelson v. Smith (Nev.) 176 P. 261.

The location on ground, knowing it to be excess ground, within the staked boundaries of another claim initiated prior thereto, because law governing manner of making location had not been complied with, so that location covers the workings of the prior locators, is what in mining circles is known as "claim jumping." Id.

38. Discovery—Discovery as prerequisite.—Public lands are not locatable or enterable as mineral lands until discovery, and mere information that they may be valuable for oil purposes is not a discovery. Southern Pac. Co. v. U. S. (C. C. A.) 249 F. 785.

Under this section and section 4628, no location of a mining claim either lode or placer, valid as against the government, can be made until the discovery of mineral within the limits of the claim. U. S. v. Midway Northern Oil Co. (D. C.) 232 F. 619.

A location of a mining claim is not valid until there is a discovery, in case of a lode claim, of a vein or lode containing mineral, or, in case of a placer claim, a discovery of petroleum or other mineral within its limits. U. S. v. Ohio Oil Co. (D. C.) 240 F. 996.

41. —— Discovery of rock in place.—Until the actual discovery of mineral in place, all acts tending to consummate a valid mineral location give the locator no right other than the right to continue a reasonable search for mineral. McKenzie v. Moore (Ariz.) 176 P. 568.

A mineral location to be valid for any purpose must be made upon un-

appropriated government land open to location, in which mineral has actually been discovered in place. Id.

Where locator failed to discover minerals in place within 90 days from initiation of location under Civ. Code Ariz. 1913, par. 4030, his right to exclusive possession terminated, but, until the government intervened or some qualified citizen of the United States initiated a better claim to possession of premises located, the actual possession thereof could not be disturbed. Id.

46. —— **Sufficiency of discovery.**—A discovery of minerals sufficient to perfect location of a claim must be such a discovery that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success. U. S. v. Ohio Oil Co. (D. C.) 240 F. 996.

47. —— **Extent and value of discovery.**—Where mineral has been found, and the evidence is of such a character that a person of ordinary prudence, not necessarily an expert miner, would be justified in the further expenditure of his labor and money, with a reasonable prospect of success, in developing a paying mine, the requirements of the statute have been met. Duffy v. Strandberg, 5 Alaska, 353.

48. —— **Discovery insufficient.**—Upon discovery of minerals within the claim, the location becomes valid, although in case of a lode claim the finding of float rock, or in case of a placer claim the mere indications of mineral or oil, is insufficient. U. S. v. Ohio Oil Co. (D. C.) 240 F. 996.

49. —— **Discovery as question of fact, and proof.**—Declaration of W., grubstaked by plaintiff, and accompanied by B., grubstaked by his mother, that "we discovered and located" claims, held insufficient to show he discovered and located any of the claims located in the name of B. and his mother. Turner v. Wells, 238 F. 766, 151 C. C. A. 616.

Whether there has been a discovery of minerals within a claim, so as to perfect the location, is a question of fact, depending on the circumstances of the particular case. U. S. v. Ohio Oil Co. (D. C.) 240 F. 996.

In suit to withdraw mineral lands from appropriation, evidence held to warrant a finding that locator had made a discovery of oil previous to withdrawal order sufficient to justify a person of ordinary prudence in further expenditure of labor with prospects of success in securing oil in commercial quantities. Id.

50. —— **Possession of claim pending discovery.**—Where claim is located, locators were entitled, as against all save government, to pursue their work of discovery uninterrupted, though discovery is essential to a valid mining claim. U. S. v. Stockton Midway Oil Co., 240 F. 1006.

CITED WITHOUT DEFINITE APPLICATION

Consolidated Mut. Oil Co. v. U. S. (C. C. A.) 245 F. 521; U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4616. (R. S. § 2321.) Proof of citizenship.

Cited without definite application, U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4617. (Act April 26, 1882, c. 106, § 2.) Affidavit of citizenship.

Cited without definite application, U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4618. (R. S. § 2322.) Locators' rights of possession and enjoyment.

I. COMMON-LAW RULE OF OWNERSHIP

1. **Application to mineral lands.**—A defendant locator, within the surface lines not included within the rights of either of plaintiff's locations held to own the ore lying beneath such surface boundaries by virtue of its common-law rights. Anaconda Copper Mining Co. v. Pilot-Butte Mining Co. (Mont.) 156 P. 409.

II. MINING LOCATIONS OR CLAIMS

2. **Location as basis of title.**—Where there is no valid location, there can be no right of possession under it. Nelson v. Smith (Nev.) 176 P. 261.

5. **What constitutes vein, lode, or ledge.**—A limestone belt, through which a mineral streak containing ore bodies can be traced, is a "vein," within the apex rule. Wall v. United States Mining Co. (C. C.) 232 F. 613.

As the terms "lodes, veins, and ledges" are used in acts of Congress, it was not intended to make distinctions based on genetic principle, but, when precious metals occur in tilted beds associated with subsequent fissuring and mineralization, they are subject to location as veins and lodes within such

acts. Alameda Mining Co. v. Success Mining Co., 161 P. 862, 29 Idaho, 618.

III. POSSESSORY RIGHTS

12. Locations on existing claims.—Where a locator of a claim abandoned or forfeited the same, together with the mill site, under Comp. St. 1916, § 4645, a relocator, under this section, had the right of possession and enjoyment of buildings and improvements which had been so affixed to the land by the original locator as to become a part of it. Watterson v. Cruse (Cal.) 176 P. 870.

16. —— Invalidity of prior location or claim.—Where public mineral land is open to location at the time a claim is initiated, the location is valid, though the land is excess ground within staked boundaries of another claim, and though persons initiating claim had knowledge thereof. Nelson v. Smith (Nev.) 176 P. 261.

19. Extent and effect of surface ownership and possession.—Locator's unquestionable right to possession of the area within the boundary of the claim carries the right to possession of the timber, soil, country rock, percolating waters, natural springs, except certain mineral springs, and every appurtenant belonging to the realty. McKenzie v. Moore (Ariz.) 176 P. 568.

22. Locator's possessory title and rights as against intruders.—Where plaintiff's predecessor located a mining claim and monumented it, causing notice to be recorded as required under mining law, and doing necessary yearly assessment work, even if no mineral was found by plaintiff, defendants in her action for forcible entry and detainer, mere squatters as on public domain, being trespassers on plaintiff's possession, and not in privity with government title, could not set up defense that no mineral had been found. Foster v. Black (Ariz.) 176 P. 845.

The question, in an action of forcible entry and detainer, as to whether plaintiff's possession of the mining claim involved is actual or not, is ordinarily one of fact; but where the facts are undisputed, it is a question of law. Id.

In action of forcible entry and detainer to recover possession of part of mining claim, recorded notice of location and deeds from plaintiff's predecessors to her were evidence competent to show extent of her claim and possession, but not to show title, as also was evidence of monuments placed on property. Id.

In action of forcible entry and detainer to recover part of mining claim, evidence of acts of dominion and control by plaintiff and her predecessors, as doing of annual assessment work, was properly admitted as tending to show actual possession. Id.

30. Rights of heirs and assigns.—Conveyance by owner of mining claim of interest in adjoining claim, held to give grantee no interest in dip of veins covered by extralateral rights of the grantor's claim. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

The assignee of a mining claim cannot claim any rights superior to those of his assignor, unless he be an innocent purchaser for value. Grand Prize Hydraulic Mines v. Boswell, 162 P. 1063, 83 Or. 1.

IV. OWNERSHIP OF VEINS

34. Presumptions as to ownership.—Owners of mining claims are prima facie entitled to all ore beneath surface of claims, and it is fair to assume, in absence of contrary showing, that vein or veins will continue to extend upward at same angle as exhibited below. Barker v. Condon, 165 P. 909, 53 Mont. 585.

Ore presumptively belonging to defendants, because beneath surface of their claims, cannot rightfully be taken from them, because owners of adjoining claim produce witnesses entertaining opinion that vein containing ore has apex in adjacent claim; presumption favoring defendants cannot be overturned by speculative conjecture or intelligent guess. Id.

V. EXTRALATERAL RIGHTS

37. Nature and extent of right.—The owner of a mining claim has no extralateral rights beyond the end lines of his claim extended vertically downward, except when by mistake he has located his claim across his discovery vein; extralateral rights being a special privilege. Conkling Mining Co. v. Silver King Coalition Mines Co. (C. C. A.) 230 F. 553.

Congress having prescribed conditions upon which extralateral rights may be acquired, a party dealing with mining locations must bring himself within those conditions or else be content with simply the minerals beneath surface of his own territory. Quilp Gold Mining Co. v. Republic Mines Corp. (Wash.) 165 P. 57.

41. Dip or downward course of vein as limit of rights.—If apex of vein crosses one end line and one side line of lode mining claim as located thereon, there is the right to follow vein on its dip beyond the side line. Quilp Gold Mining Co. v. Republic Mines Corporation (Wash.) 165 P. 57.

47. Position of apex determines possession and ownership of veins or lodes.—Under this section limiting extralateral rights to the part of a vein between vertical planes drawn downward through the end lines continued in their own direction, extralateral rights in a vein apexing within a claim may be asserted beyond either or both side lines.

Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co., 38 S. Ct. 574, 247 U. S. 450, 62 L. Ed. 1207, affirming judgment 158 P. 876, 39 Nev. 375.

The juncture of two dipping limbs of a fissure vein must be deemed the apex of the vein, within this section, giving extralateral rights as to veins the apexes of which are within the surface lines of the located claim, where at the juncture point the ore body extended upward from 20 or 30 to 100 feet. Id.

The owner of a mining claim has no extralateral rights beyond the end lines of his claim extended vertically downward except where, by mistake, he has located his claim across his discovery vein; extralateral rights being a special privilege. Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607.

Where a fissure changing the formation of the land crosses a mineral vein, the owner of a claim in which the vein apexes cannot pursue it beyond the fissure. Wall v. U. S. (C. C.) 232 F. 613.

Where defendant, either as owner of one claim or as owner of another, was entitled to entire vein, the apex of which was within its properties, it is immaterial in what way it traces title to ore on which other mine owners claimed it trespassed. Id.

An "apex" is that portion of a terminal edge of a vein from which the vein extends downward in the direction of the dip and is the point from which vein has a dip as well as a strike. Alameda Mining Co. v. Success Mining Co., 161 P. 862, 29 Idaho, 618.

The course of a vein is not determined by its direction at any point, where the vein is a crooked one, and an extralateral right must be determined by course of vein at apex or at the surface or at the nearest point to the surface. Id.

Under this section extralateral rights in a mining claim are determined by the apex and not on the levels disclosed by working of the mine. Id.

A locator can have but the same number of feet along the vein beneath the surface as he has at the apex. Anaconda Copper Mining Co. v. Pilot-Butte Mining Co. (Mont.) 156 P. 409.

Within this section, giving extralateral rights as to veins apexing within the surface line of the located vein, the crest of a vein in the form of a single anticlinal fold is the apex. Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co. (Nev.) 158 P. 876.

50. Veins crossing side line before reaching end line.—Where vein crossed side line, owner of mining claim held not entitled to follow the lode beyond the vertical plane of such side line, unless the apex intersected at least one of the end lines. Bourne v. Federal Mining & Smelting Co. (C. C.) 243 F. 466.

Where vein crossed side line, and proceeded towards intersection of side and end lines in course more nearly parallel with end lines, held, it could not be presumed that it crossed an end line rather than a side line. Id.

51. End lines of location—Establishment and direction.—Where mining claim was in the form of a parallelogram, except for the exclusion of triangular pieces at opposite corners, the remainder of what would otherwise have been the end lines, which were parallel and straight, held the end lines, for the purpose of asserting extralateral rights under this section. Jim Butler Tonopah Mining Co. v. West End Consol. Min. Co., 38 S. Ct. 574, 247 U. S. 450, 62 L. Ed. 1207, affirming judgment 158 P. 876, 39 Nev. 375.

Regarding extralateral rights under this section, the remaining part of an end line of a patented mining location, excluding a triangle at a corner, is an end line. Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co. (Nev.) 158 P. 876.

This section, limiting extralateral rights to the part of a vein between vertical planes drawn downward through the end lines so continued "in their own direction," does not negative extralateral rights in opposite directions; the end lines having two directions. Id.

54. —— End lines of all veins within location.—Under this section, giving the locators of claims theretofore located any additional veins existing therein, the end lines of a claim as the locator places them, with the single exception that, when by mistake he locates his claim across, instead of along, the vein he discovers, fix the limit beyond which he may not go in the appropriation of any vein or veins whose apex or apexes are found within the surface lines of his claim, and the end lines of the original discovery vein are the end lines of all the veins discovered within the surface boundaries of his claim. Conkling Mining Co. v. Silver King Coalition Mines Co. (C. C. A.) 230 F. 553.

There can be but one set of end lines for a mining claim, and if the located end lines fixed extralateral rights upon one vein, they fixed them upon all veins. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

55. —— Parallelism of end lines.—While, under this section and section 4615, ante, end lines of a mine location must be parallel and straight to entitle the locator to extralateral rights, that is not true with the side lines, and they may be converging or diverging, so long as their general course is along the vein and statutory restrictions on width of claims are respected. Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co., 38 S. Ct. 574, 247 U. S. 450, 62 L. Ed. 1207, affirming judgment 158 P. 876, 39 Nev. 375, 1 A. L. R. 405.

Extralateral rights of locator of sur-

face of north, or secondary, vein, with apex longer than that of discovery vein, with which it united on the dip and passed beyond the north side line and beneath the surface of an adjoining locator determined by line to eastward paralleled with its west end line. Anaconda Copper Mining Co. v. Pilot-Butte Mining Co. (Mont.) 156 P. 409.

Under this section and section 4644, extralateral rights of junior locator in vein uniting with vein of prior locator and going beyond its own line northward beneath the surface of another locator determined by plane by a line parallel to its west end line. Id.

58. Identity and continuity of vein—Identity.—Inference that hidden portion of vein follows the same direction as the disclosed portion is an inference of fact and not a presumption of law, and does not follow from the location of the claim or the direction of its boundary lines, but from the actual course of the disclosed portion. Bourne v. Federal Mining & Smelting Co. (C. C.) 243 F. 466.

59. —— Continuity of vein essential.—That a vein terminates against granite or monzonite does not affect extralateral rights given by this section. Alameda Mining Co. v. Success Mining Co., 161 P. 862, 29 Idaho, 618.

63. Burden of proof in asserting extralateral rights.—In suit to recover ore removed by defendant from stope beneath surface of plaintiff's claim, defendant held to have burden of showing that discovery vein in each of its three claims extended across, and not along, the claim, and that locator by mistake placed each claim across, instead of along, its discovery vein. Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607.

Defendant, claiming the right to ore in a stope beneath the surface of plaintiff's claim, as a part of a fissure vein whose apex was found within and on its strike crossed the side lines of defendant's claims, and in its dip passed through the vertical planes of the end lines of such claims and thence beneath the surface of plaintiff's claim, under the exception that when by mistake the locator places his claim across, instead of along, the vein or lode which he discovers, so that the latter crosses the side lines of his claim, his side lines become his end lines, and he may follow the lode or vein on its dip beyond the vertical plane of the end line of his claim, had the burden of bringing itself within the exception by showing that the discovery vein on each of its three claims extended across, and not along, the claim, and that the locator by mistake placed each claim across, instead of along, its discovery vein. Id.

In a suit involving a dispute over extralateral rights asserted by the owners of adjacent mining claims, defendant, whose location was last, has the burden of proving that it has priority throughout its entire depth, as to a vein apparently joining one having its apex in complainant's claim. Butte & Superior Copper Co. v. Clark-Montana Realty Co., 248 F. 609, 160 C. C. A. 509, affirming decree Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547, and certiorari denied Butte & Superior Copper Co. v. Clark-Montana Realty Co., 38 S. Ct. 581, 247 U. S. 516, 62 L. Ed. 1245.

One claiming right to follow lode to and into an adjoining claim held to have the burden of showing such location of his claim as entitles him to do so. Bourne v. Federal Mining & Smelting Co. (C. C.) 243 F. 466.

64. Conflicting rights and priorities.—In suit between owners of adjacent mining claims, involving a dispute over extralateral rights as to veins, the court properly declined to quiet title to claims resting on an undeveloped or possible junction of veins at great depths beneath the surface. Butte & Superior Copper Co. v. Clark-Montana Realty Co., 248 F. 609, 160 C. C. A. 509, affirming decree Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547, and certiorari denied Butte & Superior Copper Co. v. Clark-Montana Realty Co., 38 S. Ct. 581, 247 U. S. 516, 62 L. Ed. 1245.

CITED WITHOUT DEFINITE APPLICATION

Consolidated Mut. Oil Co. v. U. S. (C. C. A.) 245 F. 521; U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4619. (R. S. § 2323.) Owners of tunnels, rights of.

Cited without definite application. Consolidated Mut. Oil Co. v. U. S. (C. C. A.) 245 F. 521; U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4620. (R. S. § 2324, as amended, Act Jan. 22, 1880, c. 9, § 2.) Regulations by miners.

I. LOCATION, RECORDING, AND POSSESSION OF CLAIMS

(A) Construction of section

1. General application and construction.—A patent of land within the jurisdiction of the Land Department is the judgment of the department as a special judicial tribunal on the evidence before it that the patentee is entitled to the land therein described under this

section and section 4622, and the conveyance of the legal title to the patentee in execution of the judgment. Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607.

(B) Mining location and claim

3. What constitutes location.—Mining claim location which is invalid under this section and section 4615, ante, is also invalid under Rev. Laws Nev. § 2422. Nelson v. Smith (Nev.) 176 P. 261.

7. Conflicting locations and priority.—A prior mining location which subsequently fails does not so absolutely withdraw the land from entry as to defeat a junior location of the same ground otherwise valid. Walsh v. Kleinschmidt (Mont.) 173 P. 548.

Where the locators of a mining claim agreed to the location of another claim on the same ground, such agreement is tantamount to an agreement by the first locators to abandon the claim. Id.

9. Possessory rights and title.—The owner of a placer mining claim may maintain a suit for damages against one who trespasses thereon and cuts standing timber, though patent had not issued from the United States. Duffy v. Strandberg, 5 Alaska, 353.

Where there is no valid location, there can be no right of possession under it. Nelson v. Smith (Nev.) 176 P. 261.

(E) Marking location on ground

19. Boundaries must be traceable.—As against subsequent locators of a mining claim, it is a sufficient compliance with the law when the location is distinctly marked on the ground so that its boundaries can be readily traced. Gold Creek Antimony Mines & Smelter Co. v. Perry, 162 P. 996, 94 Wash. 624.

21. Application and construction of requirement.—To accomplish purpose of this section and of Rem. Code Wash. 1915, § 7359, courts are inclined to be liberal with those making mining locations, and are not inclined to defeat the claim of him who has in good faith attempted to comply with the law by technical criticism of the acts relied upon to constitute a valid location. Gold Creek Antimony Mines & Smelter Co. v. Perry, 162 P. 996, 94 Wash. 624.

(F) Location notice or certificate

40. Requirements as to location certificate.—Under Laws Alaska 1913, c. 74, relating to the locating of placer claims, an unverified certificate of location should not be recorded, and furnishes no basis for claim. Cloninger v. Finlaison, 230 F. 98, 144 C. C. A. 396.

Under Laws Alaska 1913, c. 74, § 10, and this section, a certificate of location describing the claim as No. 1 Bear Creek placer claim, situated in the White River mining district, and that Bear creek was tributary to Big Eldorado, is insufficient, not showing the location of the claim by natural monuments. Id.

Under this section and Laws Alaska 1913, c. 74, § 10, requiring the locator of a mining claim to file a certificate setting forth a description of the location of the claim with reference to some natural object, permanent monument, or well-known mining claim, held that a certificate of location declaring that the name of the claim was "No. 1 Bear Creek placer mining claim," and that it was situated in the White River mining district, and that Bear creek was tributary to Big Eldorado, was insufficient, for it did not necessarily mean that the claim was located on Bear creek, and, had it so meant, the mere mention of Bear creek would not establish its location. Id.

44. Declaratory statement — Form and sufficiency.—Defectively verified declaratory statements held not to render mining locations void under a state statute not so providing. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

II. EXPENDITURES ON CLAIMS AND TERMINATION OF LOCATOR'S RIGHTS

(A) Annual labor or improvement

65. Determination of amount or value.—In determining true value of assessment work on mining claim required by this section, true test is actual value of improvement to mine, and not cost of labor, materials, etc. McKirahan v. Gold King Mining Co. (S. D.) 165 N. W. 542.

67. Time for performance of work or making improvements.—The $100 worth of work required by this section to be done during each year on a located mining claim having been commenced on the last day of the year, and thereafter continued, forfeiture is prevented, and no right acquired under a relocation the first day of the next year before completion of the work. Plough v. Nelson (Utah) 161 P. 1134.

72. Development work and improvements outside of claim.—Under this section, party owning several adjoining mining claims might do $100 worth of work on any one, and hold that particular claim and forfeit all others, or he might do enough work on one claim to hold two claims, and forfeit the others. McKirahan v. Gold King Mining Co. (S. D.) 165 N. W. 542.

74. Group claims.—Under this section development work upon one of a group of mining claims, if sufficient in amount and for the development of all of the claims, is sufficient to protect

an entire group U. S. v. Stockton Midway Oil Co. (D. C.) 240 F. 1006.

Where, at the time of withdrawal of public lands, defendant was doing no work on several of group of claims, though engaged in discovery work as to one, held that, under Pickett Act, and despite this section and section 4622, post, such work could not be applied to all of group under group development theory. Id.

Discovery work, to protect rights of occupant or claimant of oil and gas lands under Pickett Act after withdrawal by presidential order, cannot be by group, as in case of group assessment work authorized by this section and section 4622, post. U. S. v. Thirty-Two Oil Co. (D. C.) 242 F. 730.

79. Effect of failure to perform work.—Defendant, who prevented assessment work on plaintiff's mine, cannot base any rights on failure of performance of such work. Ames v. Sullivan, 235 F. 880, 149 C. C. A. 192.

(D) Relocation of claims

98. Relocation on existing claim.—A relocation of a claim located by another admits the validity of the original location. Betsch v. Umphrey (C. C. A.) 252 F. 573.

Where mining company and grantors are holding claim under valid location by their vendors, and have done annual assessment work, attempted relocation of claim by others is void. Kelvin Lumber & Supply Co. v. Copper State Mining Co. (Tex. Civ. App.) 203 S. W. 68.

Locator of mining claim familiar with ground who assisted in doing assessment work for prior locator must make out strong case of prior locator's failure to comply with requirements of this section and of Rem. Code Wash. 1915, § 7359, before he can be heard to say that the ground was vacant and unoccupied, and subject to location. Gold Creek Antimony Mines & Smelter Co. v. Perry, 162 P. 996, 94 Wash. 624.

Where locator of mining claim went on ground knowing that assessment work of prior locator for previous year had not been done, his intention to relocate on forfeited ground availed him nothing if he failed to comply with Rem. Code Wash. 1915, § 7365. Id.

(E) Co-owners

111. Notice to delinquent co-owner.—A co-owner of a mining claim who has filed the notice to his delinquent co-owner, as required by this section and Civ. Code Cal. § 1426o, but has failed to file it within 90 days after service, cannot take advantage of such notice as prima facie evidence that the contribution to assessment work has been refused. Robinson v. Briest (Cal.) 173 P. 88.

CITED WITHOUT DEFINITE APPLICATION

Sutherland v. Purdy (C. C. A.) 234 F. 600; Consolidated Mut. Oil Co. v. U. S. (C. C. A.) 245 F. 521; U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4620a. (Res. July 17, 1917, c. 39.) Same; as to labor not applicable to persons in military or naval service during war with Germany.

The provisions of section twenty-three hundred and twenty-four of the Revised Statutes of the United States, which require that on each mining claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year, shall not apply to claims or parts of claims owned by officers or enlisted men who have been or may, during the present war with Germany, be mustered into the military or naval service of the United States to serve during their enlistment in the war with Germany, so that no mining claim or any part thereof owned by such person which has been regularly located and recorded shall be subject to forfeiture for nonperformance of the annual assessments during the period of his service or until six months after such owner is mustered out of the service or until six months after his death in the service: Provided, That the claimant of any mining location, in order to obtain the benefits of this resolution, shall file, or cause to be filed, a notice in the office where the location notice or certificate is recorded, before the expiration of the assessment year during which he is so mustered, giving notice of his muster into the service of the United States and of his desire to hold said mining claim under this resolution. (40 Stat. 243.)

This was a resolution entitled a "Joint Resolution to relieve the owners of mining claims who have been mustered into the military or naval service of

the United States as officers or enlisted men from performing assessment work during the term of such service," cited above.

§ 4620b. (Res. Oct. 5, 1917, c. 75.) Same; as to labor suspended during years 1917 and 1918.

In order that labor may be most effectively used in raising and producing those things needed in the prosecution of the present war with Germany, that the provision of section twenty-three hundred and twenty-four of the Revised Statutes of the United States which requires on each mining claim located, and until a patent has been issued therefor, not less than $100 worth of labor to be performed or improvements to be made during each year, be, and the same is hereby, suspended during the years nineteen hundred and seventeen and nineteen hundred and eighteen: Provided, That every claimant of any such mining claim in order to obtain the benefits of this resolution shall file or cause to be filed in the office where the location notice or certificate is recorded on or before December thirty-first, of each of the years nineteen hundred and seventeen and nineteen hundred and eighteen, a notice of his desire to hold said mining claim under this resolution: Provided further, That this resolution shall not apply to oil placer locations or claims.

This resolution shall not be deemed to amend or repeal the public resolution entitled "Joint resolution to relieve the owners of mining claims who have been mustered into the military or naval service of the United States as officers or enlisted men from performing assessment work during the term of such service," approved July seventeenth, nineteen hundred and seventeen. (40 Stat. 343.)

This was a resolution entitled a "Joint Resolution to suspend the requirements of annual assessment work on mining claims during the years nineteen hundred and seventeen and nineteen hundred and eighteen," cited above.

See ante, § 4620a.

§ 4620c. (Res. Jan. 25, 1919, c. 12.) Same; Res. Oct. 5, 1917, c. 75, amended.

That the provisions of Senate joint resolution, approved October fifth, nineteen hundred and seventeen, be amended so as to provide that the time for filing notices to hold said mining claims in the Territory of Alaska, under the said resolution, be, and the same is hereby, extended to the first day of April, nineteen hundred and nineteen. (40 Stat. 1055.)

This section is a resolution entitled a "Joint Resolution to amend Senate joint resolution numbered seventy-eight, approved October fifth, nineteen hundred and seventeen, entitled 'Joint resolution to suspend requirements of the annual assessment work on mining claims during the year nineteen hundred and seventeen and nineteen hundred and eighteen,'" cited above.

§ 4620d. (Res. Feb. 28, 1919, c. 85.) Res. July 17, 1917, c. 39, and Res. Oct. 5, 1917, c. 75, extended to Alaska; assessment work laws suspended.

That the provisions of public resolution numbered ten, Sixty-fifth Congress, approved July seventeenth, nineteen hundred and seventeen, and the provisions of public resolution numbered twelve, Sixty-fifth Congress, approved October fifth, nineteen hundred and seventeen, and amendments thereto, be, and they are hereby, extended to the Territory of Alaska. The laws requiring assessment work to be made upon mining claims in the Territory of Alaska for the years nineteen hundred and seventeen, nineteen hundred and eighteen, and nineteen hundred and nineteen, are hereby suspended for such period; and no forfeiture or relocation of any mining claim or mining location in said Territory shall be permitted or adjudged for failure to do or have done the annual assessment work thereon for either of said years; and no mining claim or location therein shall be held to be forfeited or subject to relo-

cation for any failure to have done the annual assessment work thereon where the owner or anyone for him complied with the provisions of public resolution numbered ten, Sixty-fifth Congress, approved July seventeenth, nineteen hundred and seventeen, or public resolution, numbered twelve, Sixty-fifth Congress, approved October fifth, nineteen hundred and seventeen, and amendments thereto. (40 Stat. 1213.)

This section is a resolution entitled a "Joint Resolution to suspend the legal requirements of assessment work on mining claims in Alaska for the years nineteen hundred and seventeen, nineteen hundred and eighteen, and nineteen hundred and nineteen, and extending to that Territory the provisions of public resolution numbered ten, Sixty-fifth Congress, approved July seventeenth, nineteen hundred and seventeen, and public resolution numbered twelve, Sixty-fifth Congress, approved October fifth, nineteen hundred and seventeen, as amended, and for other purposes," cited above.

§ 4621. (Act Feb. 11, 1875, c. 41.) Expenditure on tunnels.

Cited without definite application, U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4622. (R. S. § 2325, as amended, Act Jan. 22, 1880, c. 9, § 2.) Patents, how obtained.

II. LAND DEPARTMENT AND OFFICERS

6. Jurisdiction and authority.—The Land Department, of which the Secretary of the Interior is the head, has jurisdiction, on an application for a patent on a mining location, to cancel the location, having found that the land was not mineral in character, and that no discovery had been made, etc. Cameron v. U. S. (C. C. A.) 250 F. 943.

7. Determination as to mineral character of land.—Failure to give placer claimant notice of department's intended reconsideration of finding that land was mineral held not prejudicial, where, in suit by homestead patentee, the evidence established that the tract was agricultural. Kirk v. Olson, 38 S. Ct. 114, 245 U. S. 225, 62 L. Ed. 256, affirming judgment Olson v. Kirk, 153 N. W. 893, 35 S. D. 620.

The land department has jurisdiction on application for a patent to a mining claim to decide as to whether a location is nonmineral, although after location the land was taken into a national forest reserve. Cameron v. Bass (Ariz.) 168 P. 645.

Where patent issued to the Northern Pacific Railway for lands including claimants' mineral location, the necessary conclusion was that determination by the commission under Act Cong. Feb. 26, 1895, had found that the lots were not mineral lots. Thomas v. Horst, 169 P. 731, 54 Mont. 260.

8. Issuance of patents.—Prior to issuance of patent under placer entry, Land Department held authorized to reconsider its finding that a tract was valuable for placer mining. Kirk v. Olson, 38 S. Ct. 114, 245 U. S. 225, 62 L. Ed. 256, affirming judgment Olson v. Kirk, 153 N. W. 893, 35 S. D. 620.

11. Conclusiveness of decisions of department.—One of two placer claimants, not given notice of department's intended reconsideration of its finding that the land was mineral, held not concluded by the new finding and entitled to litigate the question as to the character of the land, in suit by homestead patentee. Kirk v. Olson, 38 S. Ct. 114, 245 U. S. 225, 62 L. Ed. 256, affirming judgment Olson v. Kirk, 153 N. W. 893, 35 S. D. 620.

Under this section a decision of the Secretary of the Interior that no discovery had been made that the land was not mineral in character is conclusive, regardless of whether the Secretary was authorized to cancel a lode mining location on that ground. Cameron v. U. S. (C. C. A.) 250 F. 943.

In suit to enjoin taking of oil from land, held, that final certificate to defendant and proceedings in the land office could not be disregarded, and the same questions litigated in the court that were pending in the land office. U. S. v. Record Oil Co. (D. C.) 242 F. 746.

A decision of the land department that a mining claim previously located was nonmineral is binding on the world, and renders the location void ab initio, in the absence of fraud, accident, imposition, or mistake. Cameron v. Bass (Ariz.) 168 P. 645.

III. APPLICATION FOR PATENT

14. Essential requisites—Location.—See U. S. v. McCutchen (D. C.) 238 F. 575.

V. IMPROVEMENTS AND EXPENDITURES

28. Character and value.—Where, at the time of withdrawal of public lands, defendant was doing no work on several of group of claims, though engaged in discovery work as to one, held that, under Pickett Act, and despite this section and section 4620, such work could

not be applied to all of group under group development theory. U. S. v. Stockton Midway Oil Co. (D. C.) 240 F. 1006.

VII. ADVERSE CLAIMS

41. Effect of failure to assert adverse claim.—Patent held to be issued to subsequent locator, whose location conflicts with prior location, unless prior locator files adverse claim and litigates it in the proper court. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

43. Adverse suit.—In actions begun in state court pursuant to this and the following section to determine contests over Nevada mining claims, which were removed to federal court and consolidated, refusal of instructions, requested by defendant, submitting issue of adverse possession, which was raised by evidence, was prejudicial error, limitations being defense under Nevada statutes, applicable to actions to recover mining claims. Ralph v. Cole, 249 F. 81, 161 C. C. A. 133, writ of certiorari granted Cole v. Ralph, 39 S. Ct. 8.

44. —— Jurisdiction of federal court.—The public lands being under the control of the Land Department, including a bureau headed by the Commissioner of the General Land Office, to whom, as a special tribunal with quasi judicial powers, Congress has confided the execution of laws for the sale and disposal of public lands, where a patent for mineral and oil lands has been applied for, and charges of fraud are under investigation, pending action upon the application, the courts are without jurisdiction to determine the rights of claimants in possession as against the United States. Devil's Den Consol. Oil Co. v. U. S. (C. C. A.) 251 F. 548.

Bill by the United States, alleging that defendants wrongfully entered into and held possession of mineral and oil lands belonging to the United States, setting up fraud in the entry, but failing to show that any proceeding was pending in land office to determine the right of defendants to the lands, was insufficient to warrant appointment of receiver by the court, pending the determination on the application for patent. Id.

IX. ENTRY

50. Equitable title acquired by entry and payment.—The United States is not precluded from maintaining a suit at any time to determine the rights of a claimant of mineral lands in possession and to protect the property from waste. United States v. Devil's Den Consol. Oil Co. (D. C.) 236 F. 973.

53. Cancellation of entry.—The pendency in the Land Department of an application for patent to a mining claim for which the price has been paid held not a bar to a suit by the government to cancel the applicant's interest and determine his right to possession. U. S. v. Devil's Den Consol. Oil Co. (D. C.) 236 F. 973.

X. PATENT

70. Requisites and validity—Presumptions.—There is a strong presumption that the plain description in a patent of mineral lands was right, and expressed the actual intention of the parties to it. Conkling Mining Co. v. Silver King Coalition Mines Co. (C. C. A.) 230 F. 553.

75. Description of land.—In a suit to quiet the title to an undivided three-fourths of a mining claim, the patent of which recited that the plat and field notes were before the department, and which field notes recited that the claim was 1,500 feet long and 600 feet wide, and which plat showed a tract 1,500 feet long and 600 feet wide, and to recover of defendant three-fourths of the value of the ore which it had removed from a stope beneath the surface of plaintiff's claim, evidence held not to sustain a finding that the patent did not convey the westerly 135.5 feet of the land described in the patent, and to show that it conveyed, and that the plaintiff owned, a tract 1,500 feet in length and 600 feet in width described in his patent. Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607.

78. Effect as conveyance of surface and subsurface or extralateral rights.—Where prior locator, who was already extracting ores from his claim, did not file any adverse against application of an adjacent locator for patent, although there was a surface conflict between the two claims, prior locator did not, patent being issued, lose his priority as to extralateral rights, as they could not have been determined in patent proceedings. Butte & Superior Copper Co. v. Clark-Montana Realty Co., 248 F. 609, 160 C. C. A. 509, affirming decree Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547, and certiorari denied Butte & Superior Copper Co. v. Clark-Montana Realty Co., 38 S. Ct. 581, 247 U. S. 516, 62 L. Ed. 1245.

79. Effect as evidence and determination of rights.—A "patent" of mineral land within the jurisdiction of the Land Department is in the nature of a proceeding in rem, and is the judgment of that tribunal upon the evidence before it that the patentee has located the tract applied for and made application, posted notice, filed the certificate of improvements, etc., as required by section 4620, ante, and this and following sections, and is entitled to the land described therein, and it is also the conveyance of the legal title to the patentee in execution of the judgment, concluding the rights of the claimant and of the United States to

such land and the unavoidable issues as to the validity, the extent, and the boundaries of the claim. Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607.

Presumption created by Act Feb. 26, 1895, § 3, that a lot was mineral when a patent to a mineral claim on such lot had been issued was only a rule of evidence, and the commissioners' duty was to classify the lot in its true character. Thomas v. Horst, 169 P. 731, 54 Mont. 260.

82. Date of patentee's title, and title by relation.—The title conveyed by a patent to a mining claim relates back to the inception of the right by location, and gold dust extracted during the time becomes the property of one who located and has held continuous possession to patent. Smith v. Wheeler, 5 Alaska, 282.

83. Conclusiveness.—There is a strong presumption that the plain description in a patent of mineral lands was right and expressed the actual intention of the parties to it. Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607.

Where mining locations conflicted, and patent first issued covered the conflict, held, that this was not conclusive that the location first patented was the older. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

86. Collateral attack.—The Land Department's adjudication of matters within its jurisdiction, such as its issuance of a patent to land, is, like those of other judicial tribunals, impervious to collateral attack, and voidable only by direct suit for that purpose on the ground of fraud or error of law. Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607.

Action of Land Department in issuing patents is judgment of a special tribunal, not assailable, except by direct proceedings for annulment, invalidity in a mining location is cured by a subsequent issuance of patent. Butte & Superior Copper Co. v. Clark-Montana Realty Co., 248 F. 609, 160 C. C. A. 509, affirming decree Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547, and certiorari denied Butte & Superior Copper Co. v. Clark-Montana Realty Co., 38 S. Ct. 581, 247 U. S. 516, 62 L. Ed. 1245.

89. Cancellation and vacation—Cancellation for fraud.—The government held entitled to cancellation of patents to coal land fraudulently entered and afterward conveyed to a coal company. Northern Colorado Coal Co. v. U. S., 234 F. 34, 148 C. C. A. 50.

Purchaser of ranch which included mining claims cannot, though he knew that fact, and that claims were not being operated, be denied defense of bona fide purchase in suit by government to set aside patents on ground of fraud because he made no further inquiries. U. S. v. Grand Canyon Cattle Co., 247 F. 446, 159 C. C. A. 500.

90. — Proof.—In suit by United States to set aside patents to mining claims on ground that they were fraudulently obtained, defense of bona fide purchaser is affirmative one which must be alleged and proved. U. S. v. Grand Canyon Cattle Co., 247 F. 446, 159 C. C. A. 500.

Where defendant for gross sum purchased ranch which included lands patented as mineral lands, held, that it will be presumed, defendant claiming as bona fide purchaser in suit by government to cancel patents, that portion of gross purchase price was paid for lands patented as mineral property. Id.

Evidence held to show that entries on which patents were based were made pursuant to scheme to enable individuals or association to obtain coal lands in excess of the amount authorized by law. U. S. v. Kirk, 248 F. 30, 160 C. C. A. 170.

CITED WITHOUT DEFINITE APPLICATION

U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4623. (R. S. § 2326.) Adverse claim, proceedings on.

I. CONSTRUCTION AND APPLICATION OF SECTION

3. Determination of rights by suit.—In actions begun in state court, pursuant to this and the preceding section, to determine contests over Nevada mining claims, which were removed to federal court and consolidated, refusal of instructions, requested by defendant, submitting issue of adverse possession, which was raised by evidence, was prejudicial error; limitations being defense under Nevada statutes, applicable to actions to recover mining claims. Ralph v. Cole, 249 F. 81, 161 C. C. A. 133, writ of certiorari granted Cole v. Ralph, 39 S. Ct. 8, 63 L. Ed. —.

II. ADVERSE CLAIMS

14. Waiver of claim.—Prior locator held entitled to abandon conflict area claimed by subsequent locator, without creating presumption to his prejudice respecting the remainder of his claim. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

IV. PROCEEDINGS ON ADVERSE CLAIMS

19. Matters determinable—Character of land.—Even after judgment of the court in a proceeding by an adverse claimant to a mining claim, under this section, on the question of the right of possession, the Land Department may pass upon the sufficiency of the proofs to ascertain the character of the land and determine whether the conditions of the law have been complied with in good faith. Lane v. Cameron, 45 App. D. C. 404.

38. Pleading and proof—Complaint.—A complaint setting forth acts of location, proper maintaining of boundaries, posting and recording of location notice, sinking of shaft and such acts, necessary performance of work each year and improvements, held to state a prima facie right to the exclusive possession of a mining location in an action to restrain trespass. Cameron v. Bass (Ariz.) 168 P. 645.

39. —— Answer or defense.—An allegation, in an answer in action to quiet title to mining claim, that "defendants are the owners in fee," etc., will not be held insufficient, on motion for judgment on the pleadings, by reason of the fact that it did not allege that they were the owners when the action was commenced. Betsch v. Umphrey (C. C. A.) 252 F. 573.

In an action to quiet title to a mining claim, where complaint set forth affidavit of assessment work done by defendants at a certain time, but alleged that defendants had abandoned the claim, and the answer denied the allegation of abandonment, the pleadings showed a prima facie case in favor of defendant on the question of possession, although the answer did not state that defendants were in possession at the commencement of the action. Id.

42. Title and proof to support recovery—Burden of proof.—In suit to quiet title to ore, defendant's admissions held to impose upon it the burden of proving priority of location and union of veins. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

47. —— Neither party establishing title.—In an action by plaintiff in support of his adverse claim to a part of the "M. B." lode in conflict with the "W. C." lode, defendant having abandoned his application for patent to the part of the "M. B." lode in conflict, and plaintiff having waived his right to secure a patent, the action became one for possession, and, there being no proof of a conflict, it was error for the court to direct a verdict for plaintiff for the land in conflict and costs and expenses of suit. Lucky Four Gold Mining Co. v. Bacon (Colo.) 163 P. 862.

51. Judgment—Conclusiveness and effect as against government.—A decision of a state court that plaintiff is entitled to exclusive possession of a mining claim is not binding on the government if not a party thereto, and the land department can declare the land nonmineral and defeat the location. Cameron v. Bass (Ariz.) 168 P. 645.

V. PATENT

54. Effect.—Owner of mining claim, obtaining patent including conflict with older location, held assignee of part of older location, within rule that such assignee cannot take advantage of the breach of conditions subsequent. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

55. Extralateral rights.—Patent issued for mining location, notwithstanding defective compliance with local rules, held to vest all appropriate extralateral rights as of date of discovery. Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547.

CITED WITHOUT DEFINITE APPLICATION

Devil's Den Consol. Oil Co. v. U. S. (C. C. A.) 251 F. 548; U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4624. (Act April 26, 1882, c. 106, § 1.) Same; oath of claimant, before whom made.

See Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607; notes, ante, §§ 4620, 4622.

Cited without definite application, U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4625. (Act March 3, 1881, c. 140.) Same; findings by jury; costs.

Cited without definite application, Ralph v. Cole (C. C. A.) 249 F. 81; U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4626. (R. S. § 2327, as amended, Act April 28, 1904, c. 1796.) Description of vein claims on surveyed and unsurveyed lands.

Monuments control.—This section, declaring that monuments of surveys upon which patents of minerals lands are based shall prevail over the descrip-

tions in the patents, held not to apply to a prior patent, where there was no conflict, except what might be created by the admission of parol evidence. Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607.

This section, passed 12 years after the United States had conveyed a mining claim to its patentee, was not intended to apply thereto, where there was no conflict between the courses and distances and the monuments named in the patent, and to permit parol evidence to create a conflict between those monuments and the courses and distances. Id.

It is the general rule that in cases of conflict monuments prevail over courses and distances; but such rule, designed only to aid in ascertaining the land which the parties intended to convey, is not without its exceptions. Id.

Evidence as to land conveyed.—In suit to quiet title to an undivided three-fourths of a mining claim, evidence held not to sustain finding that the patent did not convey the westerly 135.5 feet of the land described therein, and to show that it conveyed, and that plaintiff owned, a tract 1,500 feet in length and 600 feet in width, as described therein. Conkling Mining Co. v. Silver King Coalition Mines Co., 230 F. 553, 144 C. C. A. 607.

Cited without definite application, U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4627. (R. S. § 2328.) Pending applications; existing rights.

Cited without definite application, U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4628. (R. S. § 2329.) Conformity of placer-claims to surveys, limit of.

I. PLACER CLAIMS

7. Discovery.—The United States held, on the evidence, not entitled to recover oil placer mining claims located under this and the four following sections, and Act Feb. 12, 1903, c. 548 (Comp. St. 1916, § 4636), on which development work was being diligently prosecuted at the time of the withdrawal proclamation of September 27, 1909, and Act June 25, 1910, c. 421, § 2 (Comp. St. 1916, § 4524), though no discovery had at that time been made. Consolidated Mut. Oil Co. v. U. S., 245 F. 521, 157 C. C. A. 633.

Under this section and section 4615, no location of a mining claim either lode or placer, valid as against the Government, can be made until the discovery of mineral within the limits of the claim. U. S. v. Midway Northern Oil Co. (D. C.) 232 F. 619.

Under Pickett Act (Comp. St. 1916, § 4524), held, that an occupant or claimant engaged in diligent prosecution of work of discovery on oil or gas bearing lands is, if he continues and makes discovery, entitled to the same rights under this section and the section following as if such withdrawal had not occurred. U. S. v. Thirty-Two Oil Co. (D. C.) 242 F. 730.

11. Possessory rights.—A placer mining claim which has been perfected in accordance with law is property. When so perfected it has the effect of a grant by the United States of the right of present and exclusive possession, and if taken by the United States just compensation must be made therefor under the Constitution. North American Transportation & Trading Co. v. U. S., 53 Ct. Cl. 424.

CITED WITHOUT DEFINITE APPLICATION

U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4629. (R. S. § 2330.) Subdivisions of ten-acre tracts; maximum of placer locations.

1. Location of claims—Discovery and expenditure.—Under Pickett Act (Comp. St. 1916, §§ 4523–4525), held that an occupant or claimant engaged in diligent prosecution of work of discovery on oil or gas bearing lands is, if he continues and makes discovery, entitled to the same rights under this and the preceding section, as if such withdrawal had not occurred. U. S. v. Thirty-Two Oil Co. (D. C.) 242 F. 730.

6. Possession of claim—Relocation.—Where a placer location is voidable because excessive, another may not locate on the excess without giving notice to prior locators to select authorized area. Adams v. Yukon Gold Co. (C. C. A.) 251 F. 226.

Where complainant, who located on a part of a placer claim which contained an excess of area, notified only two of the joint co-owners, and did not locate as directed by them, held, that he was no more than a trespasser, and acquired no title. Id.

7. Area and extent—Individual claims.—A location of a placer claim, which by mistake contains an excessive area, is invalid only as to the excess. Adams v. Yukon Gold Co. (C. C. A.) 251 F. 226.

9. —— **Location by dummies.**—One in possession under defendant, who made locations under placer mining laws, using names of locators merely as a subterfuge to obtain more land than he was entitled to, has no greater rights than defendant. U. S. v. Brookshire Oil Co. (D. C.) 242 F. 718.

A location by an individual, whereby he sought to escape limitations described by this and the following section by using names of third persons, is void. Id.

§ 4630. (R. S. § 2331.) Conformity of placer-claims to surveys; limitation of claims.

Limitations—Excessive location.—In a suit involving mineral lands, evidence held to show that principal defendant, who made locations under placer mining laws, did not act in good faith for benefit of alleged locators, but merely used their names with intent to secure for himself an area of mineral land in excess of that allowed by law. U. S. v. Brookshire Oil Co. (D. C.) 242 F. 718.

Where only two co-owners of a placer claim gave consent to the location by a third person of the excess acreage in the claim, and other co-owners neither consented to it nor ratified it, it is not binding on the owners. Adams v. Yukon Gold Co., 5 Alaska, 391.

§ 4631. (R. S. § 2332.) Evidence of possession, to establish right to patent.

1. Purpose and application of section.—This section, in providing that evidence that persons have held and worked claim for the period prescribed by the statute of limitations establishes right to patent, presupposes that land so held was open to entry when claimants went thereon, and if it was not, they can acquire no rights as against the government. U. S. v. Midway Northern Oil Co., 232 F. 619.

8. Application for patent—Local customs and rules.—See Ralph v. Cole (C. C. A.) 249 F. 81.

§ 4632. (R. S. § 2333.) Proceedings for patent for placer-claim.

IV. APPLICATION FOR PLACER PATENT

15. Failure to include known veins or lodes—Waiver.—See Southern Pac. Co. v. U. S. (C. C. A.) 249 F. 785.

§ 4635. (Act Feb. 11, 1897, c. 216.) Entry of mineral oil lands under placer mining laws.

Location of oil claims—Discovery.—Rights acquired by locators of oil mineral claims in public lands, prior to a discovery, considered. U. S. v. McCutchen (D. C.) 238 F. 575.

The finding of a small quantity of gas in drilling wells on an oil claim held not such a "discovery" as to give the locators any vested rights as against the United States. Id.

A "discovery," which will vest the locator of an oil claim with rights in the property, must be such as to show that the land is subject to entry under the statute, and to entitle him to a patent in compliance with the law. Id.

A location of a mining claim is not valid until there is a discovery, in case of a lode claim, of a vein or lode containing mineral, or, in case of a placer claim, a discovery of petroleum or other mineral within its limits. U. S. v. Ohio Oil Co. (D. C.) 240 F. 996.

A locator's discovery of oil on one claim cannot perfect his location on an adjoining claim as to which there was no discovery, though raising a natural inference that oil could be discovered on such claim. U. S. v. Stockton Midway Oil Co. (D. C.) 240 F. 1006.

Final certificate vesting entryman with title and prima facie right to patent.—Though subject to be canceled or set aside, final certificate for oil lands vests the entryman with an equitable title and a prima facie right to a patent. U. S. v. Record Oil Co. (D. C.) 242 F. 746.

Trespass on oil claims recovered by government.—Operators of wells on an oil claim, subsequently recovered in equity by the United States, on an accounting for damages will not be treated as willful trespassers, where they acted in good faith, under claim of right, which was not without reasonable foundation. U. S. v. McCutchen (D. C.) 238 F. 575.

Cited without definite application, Consolidated Mut. Oil Co. v. U. S. (C. C. A.) 245 F. 521; U. S. v. Thirty-Two Oil Co. (D. C.) 242 F. 730.

§ 4636. (Act Feb. 12, 1903, c. 548.) Assessment work on contiguous oil lands, located as claims, of same owner.

Lands withdrawn from entry.—The United States held, on the evidence, not entitled to recover oil placer mining claims located under Comp. St. 1916, §§ 4628–4632), and this section, on which development work was being diligently prosecuted at the time of the withdrawal proclamation of September 27, 1909, and Act June 25, 1910, c. 421, § 2 (Comp. St. 1916, § 4524), though no discovery had at that time been made. Consolidated Mut. Oil Co. v. U. S., 245 F. 521, 157 C. C. A. 633.

Cited without definite application, U. S. v. Thirty-Two Oil Co. (D. C.) 242 F. 730.

§ 4637. (Act March 2, 1911, c. 201, § 1.) Patents for oil or gas lands, not denied because of transfer before discovery of oil or gas.

Cited without definite application, Consolidated Mut. Oil Co. v. U. S. (C. C. A.) 245 F. 521; U. S. v. North American Oil Consolidated (D. C.) 242 F. 723.

§ 4640e. (Act Oct. 2, 1917, c. 62, § 1.) Permits to prospect for potassium.

The Secretary of the Interior is hereby authorized and directed, under such rules and regulations as he may prescribe, to issue to any applicant who is a citizen of the United States, an association of such citizens, or a corporation organized under the laws of any State or Territory thereof, a prospecting permit which shall give the exclusive right, for a period not exceeding two years, to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium on public lands of the United States, except lands in and adjacent to Searles Lake, which would be described if surveyed as townships twenty-four, twenty-five, twenty-six, and twenty-seven south of ranges forty-two, forty-three, and forty-four east, Mount Diablo meridian, California: Provided, That the area to be included in such permit shall not exceed two thousand five hundred and sixty acres of land in reasonably compact form. (40 Stat. 297.)

This section and the twelve sections next following were an act entitled "An act to authorize exploration for and disposition of potassium," cited above.

§ 4640ee. (Act Oct. 2, 1917, c. 62, § 2.) Same; patents to permittees on discovery; leases; royalties.

Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one or more of the substances enumerated in section one hereof have been discovered by the permittee within the area covered by his permit, the permittee shall be entitled to a patent for not to exceed one-fourth of the land embraced in the prospecting permit, to be taken in compact form and described by legal subdivisions of the public-land surveys, or if the land be not surveyed, then in tracts which shall not exceed two miles in length, by survey executed at the cost of the permittee, in accordance with rules and regulations prescribed by the Secretary of the Interior. All other lands described and embraced in such a prospecting permit from and after the exercise of the right to patent accorded to the discoverer, and not covered by leases, may be leased by the Secretary of the Interior, through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres, all leases to be conditioned upon the payment by the lessee of such royalty as may be specified in the lease and which shall be fixed by the Secretary of the Interior in advance of offering the same, and which shall not be less than two per centum on the gross value of the output at the point of shipment,

which royalty, on demand of the Secretary of the Interior, shall be paid in the product of such lease, and the payment in advance of a rental, which shall be not less than 25 cents per acre for the first year thereafter; not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively; and not less than $1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods, upon condition that at the end of each twenty-year period succeeding the date of any lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods, and a patentee under this section may also be a lessee: Provided, That the potash deposits in the public lands in and adjacent to Searles Lake in what would be if surveyed townships twenty-four, twenty-five, twenty-six, and twenty-seven south of ranges forty-two, forty-three, and forty-four, east, Mount Diablo meridian, California, may be operated by the United States or may be leased by the Secretary of the Interior under the terms and provisions of this Act: Provided further, That the Secretary of the Interior may issue leases under the provisions of this Act for deposits of potash in public lands in Sweetwater County, Wyoming, also containing deposits of coal, on condition that the coal be reserved to the United States. (40 Stat. 298.)

See note to § 4640e, ante.

§ 4640f. (Act Oct. 2, 1917, c. 62, § 3.) Same; leases to permittees for camp sites.

In addition to areas of such mineral land to be included in prospecting permits or leases the Secretary of the Interior, in his discretion, may issue to a permittee or lessee under this Act the exclusive right to use, during the life of the permit or lease, a tract of unoccupied nonmineral public land not exceeding forty acres in area for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease. (40 Stat. 298.)

See note to § 4640e, ante.

§ 4640ff. (Act Oct. 2, 1917, c. 62, § 4.) Same; cancellation of permits.

The Secretary of the Interior shall reserve the authority and shall insert in any preliminary permit issued under section one hereof appropriate provisions for its cancellation by him upon failure by the permittee or licensee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit. (40 Stat. 299.)

See note to § 4640e, ante.

§ 4640g. (Act Oct. 2, 1917, c. 62, § 5.) Same; restrictions on leasehold interests.

No person shall take or hold any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof which, together with the area embraced in any direct holding of a lease under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, or otherwise, exceeds in the aggregate in any area fifty miles square an amount equivalent to the maximum number of acres allowed to any one lessee under this Act; that no person, association, or corporation holding a lease under the provisions of this

Act shall hold more than a tenth interest, direct or indirect, in any other agency, corporate or otherwise, engaged in the sale or resale of the products obtained from such lease; and any violation of the provisions of this section shall be ground for the forfeiture of the lease or interest so held; and the interests held in violation of this provision shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located, except that any such ownership or interest hereby forbidden which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition. (40 Stat. 299.)

See note to § 4640e, ante.

§ 4640gg. (Act Oct. 2, 1917, c. 62, § 6.) Same; reservations in leases.

Any permit, lease, occupation, or use permitted under this Act shall reserve to the Secretary of the Interior the right to permit for joint or several use such easements or rights of way upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes: Provided, That said Secretary, in his discretion, in making any lease under this Act may reserve to the United States the right to dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: Provided further, That if such reservation is made it shall be so determined before the offering of such lease; that the said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved. (40 Stat. 299.)

See note to § 4640e, ante.

§ 4640h. (Act Oct. 2, 1917, c. 62, § 7.) Same; provision in leases for protection of United States.

Each lease shall contain provisions deemed necessary for the protection of the interests of the United States, and for the prevention of monopoly, and for the safeguarding of the public welfare. (40 Stat. 299.)

See note to § 4640e, ante.

§ 4640hh. (Act Oct. 2, 1917, c. 62, § 8.) Same; forfeiture of leases.

Any lease issued under the provisions of this Act may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property or some part thereof is located whenever the lessee fails to comply with any of the provisions of this Act, of the lease, or of the general regulations promulgated under this Act and in force at the date of the lease, and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof. (40 Stat. 299.)

See note to § 4640e, ante.

§ 4640i. (Act Oct. 2, 1917, c. 62, § 9.) Same; provisions of act applicable to disposed of public lands reserving deposits.

The provisions of this Act shall also apply to all deposits of potassium salts in the lands of the United States which may have been or may be disposed of under laws reserving to the United States the potassium deposits with the right to prospect for, drill, mine, and remove the same, subject to such conditions as to the use and

occupancy of the surface as are or may hereafter be provided by law. (40 Stat. 300.)

See note to § 4640e, ante.

§ 4640ii. (Act Oct. 2, 1917, c. 62, § 10.) Same; disposition of royalties and rentals.

All moneys received from royalties and rentals under the provisions of this Act, excepting those from Alaska, shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress approved June seventeenth, nineteen hundred and two, known as the reclamation Act, but after use thereof in the construction of reclamation works and upon return to the reclamation fund of any such moneys in the manner provided by the reclamation Act and Acts amendatory thereof and supplemental thereto, fifty per centum of the amounts derived from such royalties and rentals, so utilized in and returned to the reclamation fund shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools. (40 Stat. 300.)

See note to § 4640e, ante.

§ 4640j. (Act Oct. 2, 1917, c. 62, § 11.) Same; rules and regulations.

The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act. (40 Stat. 300.)

See note to § 4640e, ante.

§ 4640jj. (Act Oct. 2, 1917, c. 62, § 12.) Same; deposits disposed of in accordance with provisions of Act; rights of states.

The deposits herein referred to, in lands valuable for such minerals, shall be subject to disposition only in the form and manner provided in this Act, except as to valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws: Provided, That nothing in this Act shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee. (40 Stat. 300.)

See note to § 4640e, ante.

§ 4640k. (Act Oct. 2, 1917, c. 62, § 13.) Same; provision in leases for regulation of price and disposition of minerals.

The Secretary of the Interior is hereby authorized and directed to incorporate in every lease issued under the provisions of this Act a provision reserving to the President the right to regulate the price of all mineral extracted and sold from the leased premises, which stipulation shall specifically provide that the price or prices fixed shall be such as to yield a fair and reasonable return to the lessee upon his investment and to secure to the consumer any of such products at the lowest price reasonable and consistent with the foregoing: Provided, That such lease issued under this Act shall also stipulate that the President shall have authority to so regulate the disposal of the potassium products produced under such lease as to secure its distribution and use wholly within the limits of the United States or its possessions. (40 Stat. 300.)

See note to § 4640e, ante.

§ 4644. (R. S. § 2336.) Intersecting or crossing veins.

3½. Crossing and intersecting of veins.—Under this section and section 4618, extralateral rights of junior locator in vein uniting with vein of prior locator and going beyond its own line northward beneath the surface of another locator determined by plane by a line parallel to its west end line. Anaconda Copper Mining Co. v. Pilot-Butte Mining Co. (Mont.) 156 P. 409.

§ 4645. (R. S. § 2337.) Patents for non-mineral lands.

I. MILL SITE LOCATIONS

2. Locations and rights of locators.—Where locator of a mill site under the first division of this section ceases by reason of abandonment or forfeiture to be the proprietor of the vein or lode, the right to the associated mill site is also ended. Watterson v. Cruse (Cal.) 176 P. 870.

Where a locator of a mining claim abandoned or forfeited the same, together with the mill site, under this section, a relocator, under section 4618, ante, had the right of possession and enjoyment of buildings and improvements which had been so affixed to the land by the original locator as to become a part of it. Id.

The status of a locator of a mining claim is not that of a mere licensee, his possession having the attributes of a title in fee; and hence there is no implied agreement that he has a reasonable time after forfeiture or abandonment to remove fixtures. Id.

§ 4647. (R. S. § 2339.) Vested rights to use of water for mining; right of way for canals.

I. CONSTRUCTION AND APPLICATION OF SECTION

1. Purpose and application.—Under this section, locator for water rights acquires no title against United States till all work is done, so that in meantime, lands affected being temporarily withdrawn, and lands and rights granted to city before vacation of orders, locator loses all rights. Silver Lake Power & Irrigation Co. v. City of Los Angeles (Cal.) 167 P. 697.

II. APPROPRIATION OF WATERS

3. Right to appropriate waters.—Where a mining company has appropriated the waters of a spring located on the public domain and has subsequently acquired title to the premises, another cannot over the owner's protest acquire any rights to such waters by making application to the state engineer's office. Peterson v. Eureka Hill Mining Co. (Utah) 176 P. 729.

When his title is questioned, the burden of proof is upon the appropriator to show that at the time of his appropriation the land on which the water was appropriated was vacant and unappropriated. Wendler v. Woodward (Wash.) 161 P. 1043.

III. EASEMENTS GRANTED AND PROTECTED

8. Rights of way for canals and ditches.—Right to easement over public land for ditch or canal, under this section, does not relate back to the commencement of the work as against the United States, and it may withdraw the license before final completion of the work. U. S. v. Utah Light & Ry. Co. (D. C.) 242 F. 742.

Evidence held sufficient to sustain the findings that plaintiff had acquired title to a lateral irrigation ditch by succeeding to the rights of parties, who constructed the ditch upon unsurveyed public land. Lowry v. Carrier (Mont.) 177 P. 756.

Where a sublateral irrigation ditch was constructed to irrigate land within an inclosure, a portion of which fell within defendant's claim upon survey by the government, that did not operate to divest plaintiff, owner of the inclosure, of title to the ditches. Id.

Where landowner appropriated water on government land in 1903, and the state acquired title in 1905 and disposed of it in 1906, Rem. Code Wash. 1915, § 6844, does not apply, but under this section the appropriator acquired right of way for ditch before title passed out of federal government. Colburn v. Winchell (Wash.) 160 P. 1052.

Under this section, before there can be any title to a right of way for irrigation ditch across open and unappropriated public land, a definite quantity of water must have been appropriated. Wendler v. Woodward (Wash.) 161 P. 1043.

9. Rights of way for electric power companies.—So far as they may have been applicable to rights of way for electrical power this and the following section, granting right of way over public lands for canals carrying water for certain purposes, was superseded by Act May 14, 1896 (Comp. St. 1916, § 4944), empowering Secretary of Interior to permit use of right of way for purpose of generating, manufacturing, or distributing electric power. Utah Power & Light Co. v. U. S., 37 S. Ct. 387, 243 U. S. 389, 61 L. Ed. 791.

No right to maintain power houses or transmission lines for electric power on public land could be acquired under this and the following section,

and the right to any further acquisition terminated on the passage of Act May 14, 1896, § 2 (Comp. St. 1916, § 4944) which substituted for such vested easement system the system of obtaining permits from the Secretary of the Interior. Utah Light & Traction Co. v. U. S., 230 F. 343, 144 C. C. A. 485.

The provisions of this and the following section, confirming rights to the use of water and to the maintenance of canals and ditches on the public lands acquired and which became vested in accordance with local customs and laws, were broad enough to include reservoirs, dams, flumes, pipes, and tunnels; and a corporation which constructed such structures on public lands while those sections were in force is protected in their use, whether or not they had been put into operation, but no right to maintain power houses or transmission lines for electric power on public land could be acquired thereunder, and the right to any further acquisition terminated on the passage of Act May 14, 1896, c. 179, § 2, 29 Stat. 120 (Comp. St. 1916, § 4944), which substituted for such vested easement system the system of obtaining permits from the Secretary of the Interior. Id.

One appropriating water, but not constructing reservoir and canals for electric power purposes until after this section was superseded by Act May 14, 1896 (Comp. St. 1916, § 4944), held to have no easement therefor. U. S. v. Utah Light & Ry. Co. (D. C.) 242 F. 742.

10. Water rights determined by priority of appropriation.—Where plaintiffs' predecessors became owners of lateral irrigation ditches by their construction upon unsurveyed public lands, under this and the following section, defendant's predecessors, subsequent entrymen, took the land burdened with such easement; and evidence of limited use or nonuser, being alone insufficient to establish abandonment, is, in absence of other evidence thereof, immaterial. Lowry v. Carrier (Mont.) 177 P. 756.

11. Vested water rights protected.—Under Rem. Code Wash. 1915, § 6333, enacted in 1890, where water rights were appropriated in 1903 before title to the land had passed out of federal government, a subsequent grant to the state was subject to the vested right acquired by the appropriation. Colburn v. Winchell (Wash.) 160 P. 1052.

15. Change in water rights not permitted.—See Utah Power & Light Co. v. U. S. (C. C. A.) 230 F. 328.

IV. LOCAL LAWS AND CUSTOMS

16. State laws affecting water rights.—Under this section and Civ. Code Ariz. 1913, par. 5344, limiting the appropriation of water to rivers, creeks, and streams of running water, a spring of water cannot be appropriated by location claimed under Civ. Code 1913, pars. 5337-5343. McKenzie v. Moore (Ariz.) 176 P. 568.

18. Water right laws in force in Alaska.—Water diverted in accordance with a notice can be used on a claim in the possession of the company for whom the notice was posted at the time of posting, but subsequently declared to be public land and relocated by the same company. Alaska Juneau Gold Mining Co. v. Ebner Gold Mining Co., 239 F. 638, 152 C. C. A. 472.

In a suit to restrain a mining company from interfering with water right on public lands claimed by plaintiff, evidence held to show that the individual who posted in his own name the notice of diversion under which the company claimed was acting for it and in pursuance of a plan for developing its property. Id.

Evidence of a temporary suspension of the work of diverting water for a mill after the posting of the notice, as a result of hostile acts by a rival claimant, does not show want of due diligence in the prosecution of the work. Id.

A notice of diversion of water, posted at a point where the company for which it was posted was then diverting water for a small mill, held sufficient to show an intention not to use the water at the site of the old mill. Id.

A conveyance by one who posted notice of diversion of water to another, who advanced money to defendant for developing its claims, held not inconsistent with a finding in a suit to restrain interference with rights, that the notice was posted on behalf of defendant. Id.

Plaintiff cannot object that defendant's notice of diversion of water posted at a point above plaintiff's dam failed to show that the water was to be taken out above the dam, where he admitted that it was the universal custom to post the notice at the point of intended diversion. Id.

No right to the use of water can be based on a notice posted on land patented to another company without permission of the latter. Id.

CITED WITHOUT DEFINITE APPLICATION

Bergman v. Kearney (D. C.) 241 F. 884.

§ 4648. (R. S. § 2340.) Rights subject to vested and accrued water-rights.

Construction and application of section.—See Utah Power & Light Co. v. U. S. (C. C. A.) 236 F. 328.

So far as they may have been applicable to rights of way for electrical power this and the preceding section, granting right of way over public lands for canals carrying water for certain purposes, was superseded by Act May 14, 1896 (Comp. St. 1916, § 4944), empowering Secretary of Interior to permit use of right of way for purpose of generating, manufacturing, or distributing electric power. Utah Power & Light Co. v. U. S., 37 S. Ct. 387, 243 U. S. 389, 61 L. Ed. 791.

No right to maintain power houses or transmission lines for electric power on public land could be acquired under this and the preceding section, and the right to any further acquisition terminated on the passage of Act May 14, 1896, § 2, which substituted for such vested easement system the system of obtaining permits from the Secretary of the Interior. Utah Light & Traction Co. v. U. S., 230 F. 343, 144 C. C. A. 485.

The provisions of this and the preceding section, confirming rights to the use of water and to the maintenance of canals and ditches on the public lands acquired and which became vested in accordance with local customs and laws, were broad enough to include reservoirs, dams, flumes, pipes, and tunnels; and a corporation which constructed such structures on public lands while those sections were in force is protected in their use, whether or not they had been put into operation, but no right to maintain power houses or transmission lines for electric power on public land could be acquired thereunder, and the right to any further acquisition terminated on the passage of Act May 14, 1896, c. 179, § 2, 29 Stat. 120 (Comp. St. 1916, § 4944), which substituted for such vested easement system the system of obtaining permits from the Secretary of the Interior. Id.

Where plaintiffs' predecessors became owners of lateral irrigation ditches by their construction upon unsurveyed public lands, under this and the preceding section, defendant's predecessors, subsequent entrymen, took the land burdened with such easement; and evidence of limited use or nonuser, being alone insufficient to establish abandonment, is, in absence of other evidence thereof, immaterial. Lowry v. Carrier (Mont.) 177 P. 756.

§ 4658. (R. S. § 2346.) Grants of lands to States or corporations not to include mineral lands.

Cited without definite application, U. S. v. Sweet, 38 S. Ct. 193, 245 U. S. 563, 62 L. Ed. 473.

§ 4659. (R. S. § 2347.) Coal-lands; entry.

22. Fraudulent entry.—Where lands containing valuable minerals were patented under Homestead Law as agricultural, subsequent purchaser from grantee of patentee, who took in good faith without notice of any possible fraud on part of patentee, has equity superior to government, and patent cannot be vacated. U. S. v. Beaman, 242 F. 876, 55 C. C. A. 464.

Where defendants were members of association, purpose of which was to acquire coal lands of United States in excess of amount authorized by law, or paid for such lands with knowledge of facts which, if investigated, would have led to knowledge of fraudulent character of entries, defense of bona fide purchaser is not open. U. S. v. Kirk, 248 F. 30, 160 C. C. A. 170.

Under this section and sections 4660–4663, entries cannot lawfully be made in interest of persons or associations who have exercised their own right of entry, and patents based on entries by persons who had not exercised their pre-emption rights pursuant to scheme to enable person or association to obtain lands in excess of amount allowed are fraudulent and subject to cancellation. Id.

In determining validity of patents to coal lands, where it appeared that entries were all made in pursuance of scheme by association to obtain more lands than allowed by law, validity of several patents cannot be determined apart from general scheme. Id.

That receiver's receipt for public land bore date subsequent to date of conveyance by entryman is not fact which would charge subsequent purchasers with notice of fraud, for delays in issuing receipts in land office are frequent and transaction might well have been innocent. U. S. v. Routt County Coal Co., 248 F. 485, 160 C. C. A. 495.

28. Transfer after entry.—Defendant, which purchased land valuable for coal deposits, which had been patented some years under the Homestead Law, as agricultural, held bona fide purchaser. U. S. v. Beaman, 242 F. 876, 155 C. C. A. 464.

One disqualified from holding title to coal lands may receive a title from a person having it, and transfer it to another who can lawfully take it. Ketchum Coal Co. v. Pleasant Valley Coal Co. (Utah) 168 P. 86.

33. Patent—Cancellation of patent.—While, under Comp. St. 1916, §§ 4591,

4613, 4614, 4659, 4663, mineral lands are not subject to acquisition under homestead law, patent under such law for and as agricultural may not be avoided by suit in equity on ground that it was mineral land, unless conditions were such as to make that fact clear to entrymen and others familiar with land. U. S. v. Beaman, 242 F. 876, 55 C. C. A. 464.

34. —— **Suit to cancel patent.**—After decree in government's suit to cancel a patent of coal lands, the court, upon stipulation by government and defendants, purchasers of land at foreclosure sale in another suit and entitled to deed therefor, that on purchasers' conveyance of adjoining tract to it government would relinquish claim to land in suit, had jurisdiction to modify its decree. U. S. v. Trogler, 237 F. 181, 150 C. C. A. 327.

Where, in suit to set aside patent to lands on which coal was discovered, on ground that patent issued under Homestead Law was obtained through fraud, decree must be for defendant, where evidence was only sufficient to raise uncertainty as to whether persons familiar with land knew, at time it was patented, that it was valuable for coal. U. S. v. Beaman, 242 F. 876, 55 C. C. A. 464.

In suit to set aside patent, to public lands, on ground that lands were coal lands and known as such at time of execution of patent, evidence held insufficient to sustain government's contention. U. S. v. Porter Fuel Co., 247 F. 769, 159 C. C. A. 627.

In suit by United States to cancel patent to public lands, burden of pleading and proving defense of bona fide purchaser is upon defendants. U. S. v. Kirk, 248 F. 30, 160 C. C. A. 170.

In suit to cancel patent to coal lands, on ground that it was procured by fraud, defense of bona fide purchaser is available to lessee for term of years, who had, prior to institution of suit, paid practically whole of consideration. U. S. v. Routt County Coal Co., 248 F. 485, 160 C. C. A. 495.

35. **Conclusiveness of decisions of department.**—A finding of the Land Department after a contested hearing that land was not coal land and was properly selected in lieu of land within a forest reserve, not appealed from and followed by issuance of patent, held conclusive on the government. U. S. v. Whitted, 245 F. 629, 158 C. C. A. 57.

Cited without definite application, Union Coal & Coke Co. v. U. S. (C. C. A.) 247 F. 106.

§ 4660. (R. S. § 2348.) Same; pre-emption.

Cited without definite application, U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926.

§ 4661. (R. S. § 2349.) Same; presentation of pre-emption claims.

Cited without definite application, U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926.

§ 4662. (R. S. § 2350.) Same; one entry only.

9. **Disqualified corporations.**—A corporation, purchasing coal lands previously patented to others, does not "take the benefit" of the act governing entries, within the meaning of this section, so as to preclude its stockholders from making individual entries. Northern Colorado Coal Co. v. U. S., 234 F. 34, 148 C. C. A. 50.

A corporation which has received the benefit of an entry of coal land cannot, under this section, make another entry, either itself or by agent. Union Coal & Coke Co. v. U. S., 247 F. 106, 159 C. C. A. 324.

§ 4663. (R. S. § 2351.) Same; conflicting claims.

Avoidance of patent.—While, under Comp. St. 1916, §§ 4591, 4613, 4614, 4659, 4663, mineral lands are not subject to acquisition under homestead law, patent under such law for and as agricultural may not be avoided by suit in equity on ground that it was mineral land, unless conditions were such as to make that act clear to entrymen and others familiar with land. U. S. v. Beaman, 242 F. 876, 55 C. C. A. 464.

§ 4668a. (Act Feb. 27, 1917, c. 133, § 1.) Disposition of lands in Indian reservations with reservation of coal; examination and appraisal of lands.

In any Indian reservation heretofore or hereafter opened to settlement and entry pursuant to a classification of the surplus lands therein as mineral and nonmineral, such surplus lands not otherwise reserved or disposed of, which have been or may be withdrawn or classified as coal lands or are valuable for coal deposits, shall be subject to the same disposition as is or may be prescribed by law

for the nonmineral lands in such reservation whenever proper application shall be made with a view of obtaining title to such lands, with a reservation to the United States of the coal deposits therein and of the right to prospect for, mine, and remove the same: Provided, That such surplus lands, prior to any disposition hereunder, shall be examined, separated into classes the same as are the nonmineral lands in such reservations, and appraised as to their value, exclusive of the coal deposits therein, under such rules and regulations as shall be prescribed by the Secretary of the Interior for that purpose. (39 Stat. 944.)

This section and the three sections next following were an act entitled "An act to authorize agricultural entries on surplus coal lands in Indian reservations," cited above.

Proclamations issued under this section:

March 21, 1917, relating to entries on coal lands within Fort Peck Indian Reservation, Montana.

April 6, 1917, relating to entries on coal lands within Crow Indian Reservation, Montana.

April 27, 1917, entries on coal lands within Fort Peck Indian Reservation, Montana.

March 14, 1918, entries on coal lands within Fort Peck Indian Reservation, Montana.

§ 4668b. (Act Feb. 27, 1917, c. 133, § 2.) Same; statements in application; patents.

Any applicant for such lands shall state in his application that the same is made in accordance with and subject to the provisions and reservations of this Act, and upon submission of satisfactory proof of full compliance with the provisions of law under which application or entry is made and of this Act shall be entitled to a patent to the lands applied for and entered by him, which patent shall contain a reservation to the United States of all the coal deposits in the lands so patented, together with the right to prospect for, mine, and remove the same. (39 Stat. 945.)

See note to § 4668a, ante.

§ 4668c. (Act Feb. 27, 1917, c. 133, § 3.) Same; disposition by United States of coal.

If the coal-land laws have been or shall be extended over lands applied for, entered, or patented hereunder the coal deposits therein shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right at all times to enter upon the lands applied for, entered, or patented under this Act for the purpose of prospecting for coal thereon, if such coal deposits are then subject to disposition, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such lands, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: Provided, That the owner under such limited patent shall have the right to mine coal for personal use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: Provided further, That nothing herein contained shall be held to deny or abridge the

right to present and have prompt consideration of applications made under the applicable land laws of the United States for any such surplus lands which have been or may be classified as coal lands with a view of disproving such classification and securing a patent without reservation. (39 Stat. 945.)

See note to § 4668a, ante.

§ 4668d. (Act Feb. 27, 1917, c. 133, § 4.) Same; disposition of proceeds.

The net proceeds derived from the sale and entry of such surplus lands in conformity with the provisions of this Act shall be paid into the Treasury of the United States to the credit of the same fund under the same conditions and limitations as are or may be prescribed by law for the disposition of the proceeds arising from the disposal of other surplus lands in such Indian reservation: Provided, That the provisions of this Act shall not apply to the lands of the Five Civilized Tribes of Indians in Oklahoma. (39 Stat. 945.)

See note to § 4668a, ante.

CHAPTER SIX A—TIMBER AND STONE LANDS

§ 4671. (Act June 3, 1878, c. 151, § 1, as amended, Act Aug. 4, 1892, c. 375, § 2.) Sale.

Setting aside patents.—Patents to lands executed under this and the two following sections, and Act June 6, 1900, relating to forest lieu selections, cannot, in view of section 4591, be set aside because land was subsequently found to contain minerals, where that fact was not known, etc., at time of execution of patents. U. S. v. Porter Fuel Co., 247 F. 769, 159 C. C. A. 627.

Cited without definite application, U. S. v. Booth-Kelly Lumber Co. (D. C.) 246 F. 970.

§ 4672. (Act June 3, 1878, c. 151, § 2.) Applications for purchase; false swearing.

3. Showing as to good faith.—The government can, as it did by this section, impose as a condition of the grant of timber and stone lands that the purchaser shall intend to appropriate them to his own use and benefit. Taylor v. United States, 231 F. 938, 146 C. C. A. 134.

A purchaser of timber and stone lands held to have purchased for a speculative purpose, contrary to this section. Id.

13. Setting aside patents.—See U. S. v. Porter Fuel Co., 247 F. 769, 159 C. C. A. 627; note, ante, § 4671.

§ 4673. (Act June 3, 1878, c. 151, § 3.) Same; publication; proofs; entry and patent; regulations.

9. Patents—Cancellation of patent.—See U. S. v. Porter Fuel Co., 247 F. 769, 159 C. C. A. 627; note, ante, § 4671.

Fraudulent statement in application to purchase public land as timber land, and before Land Office, that it is unoccupied and unclaimed and free from improvements by others, held ground for avoiding patent. U. S. v. Frick (D. C.) 244 F. 574.

Evidence in suit to avoid patent for public land under application to purchase timber land held to show fraud in procurement. Id.

That the stock of a corporation which fraudulently acquired public land was in the hands of subsequent innocent purchasers held not a defense to a suit by the government for cancellation of the patent. U. S. v. Booth-Kelly Lumber Co. (D. C.) 246 F. 970.

CHAPTER SIX B—DESERT AND ARID LANDS, AND IRRIGATION AND RECLAMATION

Sec.

DESERT LANDS

4674. Sale; use of water; declaration; patent.
4678a. Expenditures and cultivation; requirements suspended as to persons in military or naval service during war with Germany.
4679. Issue of patent on making proofs; limit of holding.
4682. Assignments of entries.
4684cc. Entries by applicants having made enlarged homestead entries.
4684ccc. Provisions of Act March 4, 1915, c. 147, § 5, extended.

GRANTS OF DESERT LANDS TO STATES FOR RECLAMATION (THE CAREY ACT)

4685. (1) Contracts by, with public-land States for donation of arid lands.
4686. Liens for expenses of reclamation.
4687. Time limit for reclamation; restoration to public domain.
4694a. Extension of time of segregation in Oregon Carey Act segregation lists.
4694aa. Extension of time of segregation in Oregon Carey Act segregation lists.

RECLAMATION OF ARID LANDS BY THE UNITED STATES

4700. Reclamation fund; deficiency in fund for support of agricultural colleges.
4701. Surveys for and location and construction of irrigation works.
4702. Withdrawal of lands; homestead laws.
4703. Contracts for irrigation works; notice of lands irrigable.
4704. Requirements of entrymen; sale of water rights.
4704a. Residence on private lands or within neighborhood to secure private water for irrigation.
4705. Use of reclamation fund for reservoirs and irrigation works; transfer of management to landowners.
4706. Acquisition of rights or property; condemnation proceedings.
4707. Irrigation laws of States and Territories, rights to waters of interstate streams; use of water acquired.
4708. Execution of provisions of act and regulations therefor.
4708a. Leaves of absence to certain entrymen upon lands withdrawn for irrigation within Castle Peak project.
4709a. King Hill project, Idaho.
4712a. Advances to reclamation fund from Treasury; repayment.
4713aa. Money received or refunded in connection with operations credited to appropriation.
4719. Lease of surplus water power.
4724. Desert-land entries within exterior limits of land withdrawal or irrigation project.
4728. Patents to homestead entrymen within projects; final water-right certificates.
4738. Contracts for excess storage or carrying capacity with irrigation systems under Carey Act, for distribution of water to individual users.

DESERT LANDS

§ 4674. (Act March 3, 1877, c. 107, § 1.) Sale; use of water; declaration; patent.

I. DESERT LAND ENTRIES

3. Land subject to entry.—Partial reclamation at time of desert land entry does not invalidate entry. Wolbol v. Steinhoff (Wyo.) 168 P. 251, rehearing denied 170 P. 381.

6. Assignment of entry.—While Desert Land Act allows an assignment of an entry thereunder, contract of entrymen to convey after obtaining patent, is against public policy, as allowing nullification of provision as to amount one can hold before patent. Eymann v. Wright (Cal.) 169 P. 1037.

Where an entryman, having submitted final proof of compliance with requirements entitling him to patent, executes a mortgage on the land, the mortgage is a valid lien upon entryman's equitable interest therein. Roberts v. Hudson (Wyo.) 173 P. 786.

Where entryman executes a mortgage to secure a note for an amount equal to or greater than the value of the mortgaged land, the mortgage will become a valid lien on the legal title subsequently acquired by entryman upon issuance of patent. Id.

A mortgage executed by entryman becomes a lien on the legal title to the land upon the subsequent issuance of the patent, the title acquired by the patent relating back to the date of entry Id.

II. WATER RIGHTS

15. Appropriation of waters and priorities.—Defendant's appropriations of water in excess of amounts to which it

was entitled, under contract with government, having continued for less than 10 years before suit, defendant acquired no adverse rights to water so taken. West Side Irr. Co. v. U. S., 246 F. 212, 158 C. C. A. 372, affirming decree U. S. v. West Side Irr. Co. (D. C.) 230 F. 284.

An abandonment is a question of intention, so that where one did not intend to abandon an irrigation ditch or a water right, even though there was a nonuser for a longer period than the statute of limitations, there was no abandonment. Moore v. Sherman, 159 P. 966, 52 Mont. 542.

One entitled to certain water rights might be estopped by conduct from saying that she did not intend to abandon the rights, or that she had a present claim to such rights, which estoppel might arise from action or nonaction, from silence or speech. Id.

To create obligation upon defendant to speak or assert claim, it was incumbent to show that defendant knew of another's contemplated or actual expenditure of time and money in making appropriation of water rights, relying for any benefit on the assumption that defendant's rights had been abandoned, or would not be asserted to his prejudice. Id.

Under Act Cong. March 3, 1877, the "Desert Land Act," a defendant, deriving title from a patent from United States government, who had made no appropriation of water for irrigation purposes, could not, by reason of the mere abuttal upon stream bed, defeat or diminish a prior appropriation. Hill v. American Land & Live Stock Co. (Or.) 161 P. 403.

§ 4678a. (Act Aug. 7, 1917, c. 48.) Expenditures and cultivation; requirements suspended as to persons in military or naval service during war with Germany.

No desert-land entry made or held under the provisions of the Act of March third, eighteen hundred and seventy-seven, as amended by the Act of March third, eighteen hundred and ninety-one, by an officer or enlisted man in the Army, Navy, Marine Corps, or Organized Militia of the United States shall be subject to contest or cancellation for failure to make or expend the sum of $1 per acre per year in improvements upon such claim, or to effect the reclamation thereof, during the period said entryman or his successor in interest is engaged in the military service of the United States during the present war with Germany, and until six months thereafter, and the time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land shall be, exclusive of the time of his actual service in the Army, Navy, Marine Corps, or Organized Militia of the United States: Provided, That said desert-land entry shall have been made by the said officer or enlisted man prior to his enlistment: Provided further, That each such entryman or claimant shall, within six months after the passage of this Act, or within six months after he is mustered into the service, file in the local land office of the district wherein his claim is situate a notice of his muster into the service of the United States and of his desire to hold said desert claim under this Act: Provided further, That the term "enlisted man," as used in this section shall include any person selected to serve in the military forces of the United States as provided by the Act entitled "An Act authorizing the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen. (40 Stat. 250.)

This was an act entitled "An act for the protection of desert-land entrymen who enter the military or naval service of the United States in time of war," cited above.

§ 4679. (Act March 3, 1877, c. 107, § 7, as amended, Act March 3, 1891, c. 561, § 2.) Issue of patent on making proofs; limit of holding.

Assignment of entry.—Under desert land laws (Act March 3, 1891, and Act March 28, 1908), a desert land entry, not perfected, is subject to payment of the entryman's debts, and on his bankruptcy may be sold. In re Evans (D. C.) 235 F. 956.

Cancellation of entries and reinstatement.—Mortgagee of desert land entryman's grantee is not precluded by can-

cellation proceedings, made without notice to him, from subsequently showing validity of entry. Wolbol v. Steinhoff (Wyo.) 168 P. 251, rehearing denied 170 P. 381.

Secretary of Interior's refusal to reinstate desert land entry on request of mortgagee does not determine validity of entry against such mortgagee, where application was dismissed on other grounds. Id.

§ 4682. (Act March 28, 1908, c. 112, § 2.) Assignments of entries.

Assignment in general.—See In re Evans, 235 F. 956; note, ante, § 4679.

Contract of entryman to convey land.—The provision that no assignment of entry should be allowed except to an individual qualified to make entry does not invalidate the contract of an entryman to convey the land upon which he entered after due proofs were completed. Coburn v. Bartholomew (Utah) 167 P. 1156.

Assignment for benefit of corporation or association.—Under the provision that no assignment of any entry thereof made for benefit of any corporation, or association shall be authorized, a corporation cannot become assignee by operation of law as creditor of entrymen. Stockmen's Nat. Bank of Ft. Benton v. Hofeldt (Mont.) 169 P. 48.

§ 4684cc. (Act Feb. 27, 1917, c. 134.) Entries by applicants having made enlarged homestead entries.

The right to make a desert-land entry shall not be denied to any applicant therefor who has already made an enlarged homestead entry of three hundred and twenty acres: Provided, That said applicant is a duly qualified entryman and the whole area to be acquired as an enlarged homestead entry and under the provisions of this Act does not exceed four hundred and eighty acres. (39 Stat. 946.)

This was an act entitled "An act relating to desert-land entries," cited above.

§ 4684ccc. (Act March 21, 1918, c. 26.) Provisions of Act March 4, 1915, c. 147, § 5, extended.

That the provisions of the last three paragraphs of section five of the Act of March fourth, nineteen hundred and fifteen, "An Act making appropriations to supply deficiencies in appropriations for the fiscal year nineteen hundred and fifteen, and for prior years, and for other purposes," be, and the same are hereby, extended and made applicable to any lawful pending desert-land entry made prior to March fourth, nineteen hundred and fifteen: Provided, That in cases where such entries have been assigned prior to the date of the Act the assignees shall, if otherwise qualified, be entitled to the benefit hereof. (40 Stat. 458.)

This was an act entitled "An act to amend an act entitled 'An act making appropriations to supply deficiencies in appropriations for the fiscal year nineteen hundred and fifteen and for prior years, and for other purposes,'" cited above.

The act referred to in the title of this act is Act March 4, 1915, c. 147, § 5. See U. S. Comp. St. 1916, §§ 4684a–4684c.

GRANTS OF DESERT LANDS TO STATES FOR RECLAMATION (THE CAREY ACT)

§ 4685. (Act Aug. 18, 1894, c. 301, § 4.) (1) Contracts with public-land States for donation of arid lands.

Capacity in which state acts in carrying out act.—State of Idaho, in dealing with Carey Act project, acts by virtue of its sovereignty, and not in capacity of private owner. State v. Twin Falls-Salmon River Land & Water Co., 166 P. 220, 30 Idaho, 41.

Under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), and Act March 3, 1901, § 3 (Comp. St. 1916, § 4687), and Rev. Codes Idaho, § 1613 et seq., applicable thereto, state in carrying out reclamation project acts as agent or trustee for settlers. Id.

In dealing with Carey Act project under Rev. Codes Idaho, § 1613 et seq., state is not dealing in its governmental

capacity, but in its proprietary capacity as private owner improving its own property. Id.

Character of land and sufficiency of water supply.—Under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), and Act March 3, 1901, § 3 (Comp. St. 1916, § 4687), and Rev. Codes Idaho, § 1613 et seq., applicable thereto, question of the sufficiency of water supply to irrigate certain tract of land must necessarily be matter of approximate estimate. State v. Twin Falls-Salmon River Land & Water Co., 166 P. 220, 30 Idaho, 41.

Time to ascertain whether lands are of character subject to segregation under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), and Act March 3, 1901, § 3 (Comp. St. 1916, § 4687), and whether there is water available for their reclamation is prior to segregation. Id.

Supervision and control by state of plan of reclamation.—Under Rev. Codes Idaho, §§ 1618, 1619, part of chapter relating to Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), and Act March 3, 1901, § 3 (Comp. St. 1916, § 4687), entire plan of reclamation is one over which state has complete supervision and control. State v. Twin Falls-Salmon River Land & Water Co., 166 P. 220, 30 Idaho, 41.

Official decisions as conclusive.—Under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), and Act March 3, 1901, § 3 (Comp. St. 1916, § 4687), and Rev. Codes Idaho, § 1613 et seq., applicable thereto, authorizing officers of government and of state to pass on matters relating to reclamation project, their decision is conclusive, in absence of fraud. State v. Twin Falls-Salmon River Land & Water Co., 166 P. 220, 30 Idaho, 41.

Contracts in carrying out act in general.—A contract between the state and the transferee of an insolvent corporation which had contracted with the state under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), held to be a construction contract only, though it contained provisions other than those contained in Rev. Codes Idaho, § 1621. Sauve v. Title Guaranty & Surety Co. of Scranton, Pa. (Idaho) 158 P. 112.

A contract entered into between the state and the transferee of the interest of an insolvent company which had made a Carey Act construction contract, held to bind such transferee to carry out all contracts for water rights sold and contracted to be furnished by the insolvent company, on the terms agreed to by such company. Id.

Under a Carey Act contract between the state and the transferee of the right of an insolvent company which had made a prior contract, held, that it was not intended that locators under contract with the insolvent company should stand in any different position from that of subsequent locators as regards damages sustained from failure to complete the contract. Id.

Under Rev. Codes, Idaho, § 1623, held, that on the continued failure of a construction company to complete irrigation works pursuant to Carey Act, the state land board should advertise and accept proposals for completion of the work and selling the partially completed works, and applying the money received therefrom as provided by law. Id.

Under terms of state contract with construction company engaged in reclamation project under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), and Act March 3, 1901, § 3 (Comp. St. 1916, § 4687), held, that company could not sell water rights for more than its water supply could reclaim. State v. Twin Falls-Salmon River Land & Water Co., 166 P. 220, 30 Idaho, 41.

In carrying out Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), and Act March 3, 1901, § 3 (Comp. St. 1916, § 4687), and Rev. Codes, § 1613 et seq., applicable thereto, there are contracts between government and state, between state and construction company, and between construction company and settlers. Id.

Under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), and Act March 3, 1901, § 3 (Comp. St. 1916, § 4687), and Rev. Codes Idaho, § 1613 et seq., proper government and state officers must determine, before state's contract with construction company, sufficiency of water supply, character of irrigation system, and price to be charged settlers. Id.

After contract between United States and state segregating lands under Carey Act of August 18, 1894, as amended by Act Cong. June 11, 1896, c. 420 (Comp. St. 1916, § 4686), such lands are reserved from sale by United States, and are not public lands, within Act Cong. March 3, 1875, c. 152 (Comp. St. 1916, §§ 4921–4926), granting railroad rights of way, and are not subject to location thereunder. Oregon Short Line R. Co. v. Williams, 168 P. 14, 30 Idaho, 715.

A written contract executed in Pennsylvania held unenforceable where the real consideration was that one contracting party should withdraw his competitive proposal to perform labor in the reclamation of land under Act Cong. Aug. 18, 1894, Act Cong. June 11, 1896 (Comp. St. 1916, § 4686), and Act Cong. March 3, 1901 (Comp. St. 1916, § 4687), accepted by Rev. Codes

Idaho, §§ 1613–1634. Kuhn v. Buhl, 96 A. 977, 251 Pa. 348.

Construction bonds.—Under Rev. Codes Idaho, § 1621, held, that all settlers on the Big Lost River project were entitled to the protection of a Carey Act construction bond; the entire amount being intended to guarantee completion of the project. Sauve v. Title Guaranty & Surety Co. of Scranton, Pa. (Idaho) 158 P. 112.

The obligor on a bond guaranteeing the performance of a Carey Act construction contract may insist that the remedy provided by Rev. Codes Idaho, § 1623, be followed; such remedy being exclusive. Id.

A bond given on the execution of a construction contract under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), held to be a construction bond only, conditioned for the fulfillment of the contract with the state according to the plans and specifications thereof. Id.

A Carey Act construction bond could not be resorted to to reimburse individual locators for damages by failure to complete the work, but must be resorted to by the state for the benefit of all locators on the project. Id.

Sale of school lands within reclamation project.—Where state after determination that there was insufficient water for reclamation project under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), and Act March 3, 1901, § 3 (Comp. St. 1916, § 4687), and Rev. Codes Idaho, § 1613 et seq., sold school lands within project it was estopped to require construction company to sell purchaser water right. State v. Twin Falls-Salmon River Land & Water Co., 166 P. 220, 30 Idaho, 41.

Where state selling school lands within reclamation project under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), and Act March 3, 1901, § 3 (Comp. St. 1916, § 4687), and Rev. Codes, § 1613 et seq., and its purchaser then knew that water supply was insufficient for project, state was not entitled to priority for water for land so sold. Id.

Assessment of costs of reclamation.—Under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4683), and Act March 3, 1901, § 3 (Comp. St. 1916, § 4687), and Rev. Codes Idaho, § 1613 et seq., applicable thereto, general plan is that costs of reclamation be assessed by state board of land commissioners as benefit against land, to be paid by settler. State v. Twin Falls-Salmon River Land & Water Co., 166 P. 220, 30 Idaho, 41.

Patent to state.—Whether a state has actually furnished an ample supply of water for the reclamation of land segregated under the Carey Act to entitle it to a patent held a question of fact to be determined by the Land Department. Twin Falls Salmon River Land & Water Co. v. Caldwell, 242 F. 177, 155 C. C. A. 17, modifying decree Same v. Twin Falls County (D. C.) 231 F. 769.

Rights of settlers in general.—The rights of settlers on land in Idaho within an irrigation project created under the Carey Act considered and determined. Twin Falls Salmon River Land & Water Co. v. Caldwell, 242 F. 177, 155 C. C. A. 17, modifying decree Same v. Twin Falls County (D. C.) 231 F. 769.

Appropriation of water.—All persons using or contracting for the use of water for irrigation purposes in Idaho under the Carey Act do so subject to the provisions of such act and of the laws and contracts, of the state for carrying it into effect. Twin Falls Salmon River Land & Water Co. v. Caldwell, 242 F. 177, 155 C. C. A. 17, modifying decree Same v. Twin Falls County (D. C.) 231 F. 769.

Appropriation of water from public stream, under Carey Act, may be initiated by notice on actual diversion from stream. Vineyard Land & Stock Co. v. Twin Falls Salmon River Land & Water Co., 245 F. 9, 157 C. C. A. 305.

Appropriator can claim no more than is necessary for purpose of appropriation, and when he has that he cannot prevent others from using surplus. Id.

In project, under Carey Act of Congress, to impound all waters of Salmon river in Idaho, plaintiffs had 10 years within which to make diversion and proof thereof for beneficial use, in view of Laws Idaho 1915, c. 94. Id.

Want of diligence in constructing high line ditch and application of water to beneficial use, held to deprive defendant of its initiatory rights in so far as affecting plaintiffs' appropriations. Id.

Whether appropriator of water from public stream has used due diligence to utilize water for beneficial use must be determined upon facts of particular case. Id.

After initiating appropriation, appropriator must use due diligence in applying water to beneficial use or he will be deemed to have abandoned rights. Id.

In appropriation of water from stream by notice, notice would indicate amount of intended appropriation, while in appropriation by diversion ditch would indicate appropriator's thought as to amount. Id.

Ordinarily one having obtained right to use given quantity of water from stream may change place or character of its use and point of diversion. Id.

Defendants would be precluded by prior appropriations of water from stream by plaintiffs' predecessors adequately established by evidence. Vine-

yard Land & Stock Co. v. Twin Falls Oakley Land & Water Co., 245 F. 30, 157 C. C. A. 326.

Whoever is first in time is entitled to sufficient water from public stream for his reasonable needs. Id.

Where no complaint was made that others than defendants were attempting to interfere with plaintiffs' water rights, appropriated under Carey Act and within the court's jurisdiction, there was no defect of parties defendant. Id.

Under Carey Act Aug. 18, 1894, § 4, as amended by Act June 11, 1896 (Comp. St. 1916, § 4686), and Act March 3, 1901, § 3 (Comp. St. § 1916, § 4687), and Rev. Codes Idaho, § 1613 et seq., construction company might appropriate water for transfer to settlers within project for their own use, it being only trustee in the appropriation of the water. State v. Twin Falls-Salmon River Land & Water Co., 166 P. 220, 30 Idaho, 41.

State taxation.—Under Laws Idaho 1899, p. 221, as amended by Laws Idaho 1913, p. 173, an irrigation system constructed under this section is exempt from taxation both as to the sold and unsold water rights. Twin Falls Salmon River Land & Water Co. v. Twin Falls County (D. C.) 231 F. 769.

Jurisdiction of courts.—United States District Court of Idaho, in proceeding in personam, had power to impose upon defendant obligation of installing measuring devices in Nevada, and provide that plaintiffs should have right of inspection. Vineyard Land & Stock Co. v. Twin Falls Salmon River Land & Water Co., 245 F. 9, 157 C. C. A. 305.

United States District Court of Idaho had power in proceeding in personam to restrict defendant's use of water to circumscribed locality in Nevada. Id.

Mandamus to compel allowance of entry on land.—Mandamus will lie to compel state board of land commissioners to allow entry on land of a Carey Act (Comp. St. 1916, §§ 4685, 4686) segregation by person qualified under Rev. Codes Idaho, § 1626, and who has complied with conditions precedent to a right to make entry. Furbee v. Alexander (Idaho) 176 P. 97.

After state board of land commissioners has opened to entry land of a Carey Act (Comp. St. 1916, §§ 4685, 4686) segregation, and published its notice to that effect according to Rev. Codes Idaho, § 1625, it has no discretion to refuse an entry by one possessing qualifications under section 1626, and who has complied with conditions precedent to right to make entry. Id.

Lien on land and water right.—While Rem. Code Wash. 1915, § 6721, providing for reclamation of arid lands under the Carey Act is limited in its scope to water right under that act, and does not apply generally, irrespective of statute, parties may contract that a water right for irrigation shall be subject to a lien in favor of the irrigation company which sold the right. Fruitland Irr. Co. v. Thayer, 160 P. 1048, 93 Wash. 338.

Contract for sale of water right, which expressly charged price as lien on land and water right, in favor of irrigation company selling, possessed all elements of lien created by contract on specific property, enforceable in equity by irrigation company against landowner for any default, though it lacked essential elements of mortgage. Id.

In irrigation company's action against landowner and others to foreclose lien created by landowner's contract to purchase perpetual water right, providing for foreclosure and sale of land and water right on enforcement of lien, a sale under the decree directing sale of both land and right would pass title to right, as against irrigation company, though it never tendered or brought into court a deed for the right. Id.

Suits as to water rights.—That plaintiffs' surveys and estimates were made three years earlier than those of defendant renders plaintiffs' testimony as to amount of water appropriated, under Carey Act, more reliable. Vineyard Land & Stock Co. v. Twin Falls Salmon River Land & Water Co., 245 F. 9, 157 C. C. A. 305.

In suit between individuals, held they could not raise controversy as to use of water of interstate stream in another state outside of jurisdiction of court. Id.

Suit to determine rights to waters of stream is essentially one to quiet title to real property, and is local and not transitory. Id.

In suit between appropriators of water from interstate stream, under Carey Act, evidence held sufficient to support court's estimate that 5,500 acres comprised all lands which defendant had under irrigation at time of plaintiffs' appropriation. Id.

In suit to determine rights to waters of interstate stream, appropriated under Carey Act, evidence held sufficient to establish older rights in plaintiffs. Vineyard Land & Stock Co. v. Twin Falls Oakley Land & Water Co., 245 F. 30, 157 C. C. A. 326.

In suit between defendant stock company and plaintiff, who had entered upon project under Carey Act of Congress for impounding waters, award to plaintiff of 2¾ acre-feet per acre of land under project held reasonable. Id.

Suit being for purpose of quieting plaintiffs' water rights in Idaho, court was without jurisdiction to settle water rights in Nevada. Id.

On counterclaim for damages from plaintiff's diversion of water, used by defendants to irrigate their lands, evidence held sufficient to support the

findings of the jury that defendants sustained damages in the sum of $266. Cleary v. Daniels (Utah) 167 P. 825.

Cited without definite application, Emmett Irr. Dist. v. Thompson (C. C. A.) 253 F. 316.

§ 4686. (Act June 11, 1896, c. 420, § 1.) Liens for expenses of reclamation.

See notes under section 4685, ante.

Nature and extent of lien.—Where payment of irrigation charge becomes a first lien on the land for which the water is used, independent of lien fixed by contract for initial construction of irrigation works, and if land belongs to state or federal government, charges become a lien on the crops grown thereon. Adams v. Twin Falls-Oakley Land & Water Co., 161 P. 322, 29 Idaho, 357.

Foreclosure of lien.—Remedy of foreclosure given under Rev. Codes Idaho, § 1629, to give effect to liens reserved under this section and Rev. Codes Idaho, § 3288, is exclusive. Adams v. Twin Falls-Oakley Land & Water Co., 161 P. 322, 29 Idaho, 357.

Under this section and Rev. Codes Idaho, § 3288, first liens for construction of irrigation works are created on land and water right to insure return of initial cost, and such lien may, under Rev. Codes, § 1629, be foreclosed on default of settler in payment of installments of principal and interest. Id.

§ 4687. (Act March 3, 1901, c. 853, § 3.) Time limit for reclamation; restoration to public domain.

See notes under section 4685, ante.

§ 4694a. (Act Feb. 26, 1917, c. 124.) Extension of time of segregation in Oregon Carey Act segregation lists.

The Secretary of the Interior is hereby authorized, within his discretion, to extend for a period of not exceeding ten years the time of segregation in the Oregon Carey Act segregation lists numbered six and nineteen, the two areas comprising one hundred and forty thousand seven hundred and fourteen acres, in the aggregate, approximately eighty-six thousand acres of which are irrigable, same being situated in Crook County, Oregon: Provided, That the Secretary of the Interior is further authorized to grant to the State of Oregon a similar extension of ten years for the reclamation of said lands in addition to the time allotted under existing rules, regulations, contracts, and laws. (39 Stat. 942.)

This was an act entitled "An act providing for the extension of time for the reclamation of certain lands in the State of Oregon under the Carey Act," cited above.

§ 4694aa. (Act March 3, 1919, c. 114.) Extension of time of segregation in Oregon Carey Act segregation lists.

The Secretary of the Interior is hereby authorized, within his discretion, to continue to not beyond January twelfth, nineteen hundred and twenty-nine, the segregation of the lands embraced in approved Oregon segregation list numbered thirteen, under the Carey Act. (40 Stat. 1322.)

This section is an act entitled "An act providing for the extension of time for the reclamation of certain lands in the State of Oregon under the Carey Act," cited above.

RECLAMATION OF ARID LANDS BY THE UNITED STATES

§ 4700. (Act June 17, 1902, c. 1093, § 1.) Reclamation fund; deficiency in fund for support of agricultural colleges.

Cited without definite application, Eastern Oregon Land Co. v. Deschutes R. Co. (C. C. A.) 246 F. 400.

§ 4701. (Act June 17, 1902, c. 1093, § 2.) Surveys for and location and construction of irrigation works.

Cited without definite application, Eastern Oregon Land Co. v. Deschutes R. Co. (C. C. A.) 246 F. 400.

§ 4702. (Act June 17, 1902, c. 1093, § 3.) Withdrawal of lands; homestead laws.

The Secretary of the Interior is authorized to exchange with the state of Montana for certain described lands not to exceed an equal amount of vacant, surveyed, unreserved, unoccupied, nonmineral public lands, the lands so acquired by the United States to be reserved for the use of the United States Reclamation Service, by Act Feb. 28, 1919, c. 74, 40 Stat. 1205.

Notes of Decisions

Effect of withdrawal and restoration to entry.—Under Act May 14, 1880, c. 89 (Comp. St. 1916, §§ 4536–4538), where contest was entertained while land was withdrawn from entry under Reclamation Act June 17, 1902, c. 1093, successful contestant held properly permitted to enter the land within 30 days after its restoration to entry. Edwards v. Bodkin (D. C.) 241 F. 931.

Abandonment of withdrawn lands.—Failure of entryman on arid lands, withdrawn under this section as susceptible of irrigation, to continuously reside upon or cultivate land which, though later withdrawn for irrigation works, was finally released during time when no reclamation project had been devised or installed, cannot be deemed an abandonment, in view of Act June 27, 1906, § 5 (Comp. St. 1916, § 4724). Edwards v. Bodkin, 249 F. 562, 161 C. C. A. 488.

Cited without definite application, Eastern Oregon Land Co. v. Deschutes R. Co. (C. C. A.) 246 F. 400.

§ 4703. (Act June 17, 1902, c. 1093, § 4.) Contracts for irrigation works; notice of lands irrigable.

Suspension of contract.—Under contract between plaintiff and the government reclamation service for construction of a division dam and headwork, held that, where work was not completed within contract period as extended, deduction of stipulated per diem from monthly amount earned as liquidated damage was authorized, and, where plaintiff declined to complete work because of such deductions, suspension of the contract by the Secretary of the Interior was proper. S. R. H. Robinson & Son Contracting Co. v. U. S., 53 Ct. Cl. 536.

Where the contract is properly suspended but the government materially departs from the contract terms in taking over and completing the work, the contractor is entitled to recover the value of his plant and equipment at the time it was seized; and the government is not entitled to recover on a counterclaim for the excess of cost to complete over the contract price. Pacific Coast Const. Co. v. U. S., 53 Ct. Cl. 582.

Where a contractor refuses to proceed with the work and the engineer in charge telegraphs his superior that fact and requests authority to suspend the contract in case the contractor should not conclude to go on with the work, and the Director of the Reclamation Service in communicating that telegram to the Secretary of the Interior, recommends that the authority be granted in order that the engineer may act promptly, as indicated in the telegram, and the Secretary of the Interior grants authority as recommended, and after such suspension approves it, such suspension must be regarded as the act of the Secretary. Id.

Government's liability for damages or delays.—The government is responsible in damages for delaying a contractor's work under contract to construct a dam for the United States Reclamation Service, and for noncompliance with provisions respecting the prompt delivery of materials undertaken to be furnished by it. United States Fidelity & Guaranty Co. v. U. S., 53 Ct. Cl. 561.

The government is not liable ex contractu for damages or delays suffered by one of its contractors by virtue of the actions of third parties merely because the latter are engaged in furnishing materials for the government as well as for the public generally. Id.

Completion of contract by surety company.—Under contract between surety company and plaintiff for completion of work on government contract which the contractor had breached, held, that compensation should be all moneys paid out by government on account of work required, in addition to defendant's absolute liability for certain sum. Peters v. National Surety Co., 166 N. W. 43, 167 Wis. 131, rehearing denied 166 N. W. 1087, 167 Wis. 131.

Under contract between plaintiff and surety company for the completion of a government contract, held, that plaintiff was not entitled as against defendant to receive amount of penalties withheld by government against original contractor. Id.

Plaintiff contracting with surety company to complete government work obtained by surety company, in absence of express provision, held not precluded from action on contract because it had not discharged certain claims of subcontractors and others. Id.

In action on contract for government work, where defendant surety company had repudiated any obligation to be active agent in securing certain moneys from government, held, that it was in no position under its contract with plaintiff to insist that plaintiff obtain engineer's certificate as condition precedent to payment. Id.

Plaintiffs contracting with defendant surety company to complete government contract, after default of principal, held, under the findings, entitled to recover amount deducted by government for materials and supplies purchased after suspension of original contract. Id.

Plaintiff contracting with defendant surety company to complete government contract, on which surety's principal had defaulted, held entitled to recover net cost of property to be furnished by defendant, and which plaintiff had purchased from third party. Id.

Cited without definite application, Eastern Oregon Land Co. v. Deschutes R. Co. (C. C. A.) 246 F. 400.

§ 4704. (Act June 17, 1902, c. 1093, § 5.) Requirements of entrymen; sale of water rights.

Cited without definite application, Eastern Oregon Land Co. v. Deschutes R. Co. (C. C. A.) 246 F. 400.

§ 4704a. (Act Aug. 10, 1917, c. 52, § 11.) Residence on private lands or within neighborhood to secure water for irrigation.

The Secretary of the Interior is hereby authorized, in his discretion, to suspend during the continuance of this Act that provision of the Act known as the "Reclamation Act" requiring residence upon lands in private ownership or within the neighborhood for securing water for the irrigation of the same, and he is authorized to permit the use of available water thereon upon such terms and conditions as he may deem proper. (40 Stat. 276.)

This was section 11 of an act entitled "An act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products," cited above.

§ 4705. (Act June 17, 1902, c. 1093, § 6.) Use of reclamation fund for reservoirs and irrigation works; transfer of management to landowners.

Authority of Secretary of Interior.—The Secretary of the Interior is not authorized by Reclamation Act June 17, 1902, to turn over the operation and maintenance of completed reclamation projects, in whole or in part, or to any extent, to water users' associations before the payment by such water users for water rights are made for the major portion of the lands irrigated by such works. 30 Op. Atty. Gen. 208.

Cited without definite application, Eastern Oregon Land Co. v. Deschutes R. Co. (C. C. A.) 246 F. 400.

§ 4706. (Act June 17, 1902, c. 1093, § 7.) Acquisition of rights or property; condemnation proceedings.

Cited without definite application, Eastern Oregon Land Co. v. Deschutes R. Co. (C. C. A.) 246 F. 400.

§ 4707. (Act June 17, 1902, c. 1093, § 8.) Irrigation laws of States and Territories; rights to waters of interstate streams; use of water acquired.

Appropriation of waters.—The government, like an individual, can appropriate only so much water as it applies to beneficial uses, and can only restrain a diversion which operates to its prejudice. U. S. v. West Side Irrigating Co. (D. C.) 230 F. 284.

Agreement with irrigation company limiting claim to water.—In suit by United States to enforce terms of contract entered into by defendant, which provided that it should not divert more than 80 cubic feet per second from stream, evidence held insufficient to sustain defendant's contention that its officers and stockholders did not understand terms of contract and executed it through mistake. West Side Irr. Co. v. U. S., 246 F. 212, 158 C. C. A. 372, affirming decree U. S. v. West Side Irr. Co. (D. C.) 230 F. 284.

Complaint by United States, seeking to restrain defendant from appropriating greater quantity of water from stream than amount specified in con-

tract with Reclamation Service, held to state cause of action. Id.

United States, by construction of reservoirs, etc., under Reclamation Act June 17, 1902, and having become appropriator of water, held to have sufficient interest to maintain suit to restrain defendant from diverting water in excess of amount agreed upon. Id.

Contract executed by defendant, stating amount of water which it appropriated from stream, held enforceable by United States, it having constructed reclamation works on faith of such contract. Id.

Where defendant mutual irrigation company executed contract with government, limiting its appropriation of water, and government proceeded with reclamation project based on such contract, defendant cannot defeat contract on theory that it should not be construed as abandonment of rights of its stockholders. Id.

Irrigation company and its stockholders, by silence while government was proceeding with reclamation project, held estopped to deny authority of officers to execute agreement limiting its claim to water from a river. U. S. v. West Side Irrigating Co. (D. C.) 230 F. 284.

Agreement by irrigation company, limiting its claim to water for purpose of inducing reclamation project, held to require measurement of water at intake of its canal, and not at points of diversion therefrom by landowners. Id.

Cited without definite application, Eastern Oregon Land Co. v. Deschutes R. Co. (C. C. A.) 246 F. 400.

§ 4708. (Act June 17, 1902, c. 1093, § 10.) Execution of provisions of act and regulations therefor.

Regulations.—Any right under regulation 7 of June 6, 1905, issued by Secretary of Interior, which successful contestant of homestead entry on land withdrawn as susceptible of irrigation might have had, was lost by promulgation of regulation 6 of January 19, 1909, as land before termination of contest or entry by contestant was withdrawn for irrigation works. Edwards v. Bodkin, 249 F. 562, 161 C. C. A. 488.

While this section authorizes Secretary of Interior to make such regulations as may be necessary and proper to carry act into full force and effect, he is not authorized to amend, modify, or change Act May 14, 1880, § 2 (section 4537, ante), fixing rights of a successful contestant, who has secured cancellation of any pre-emption homestead, or timber culture entry. Id.

Cited without definite application, Eastern Oregon Land Co. v. Deschutes R. Co. (C. C. A.) 246 F. 400.

§ 4708a. (Act Feb. 28, 1919, c. 78.) Leaves of absence to certain entrymen upon lands withdrawn for irrigation within Castle Peak project.

Any qualified entryman who has heretofore made bona fide entry upon land subsequently withdrawn under the provisions of the reclamation Act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), for the Castle Peak irrigation project, in Utah, upon filing an application to have his entry made subject to all the charges, terms, conditions, provisions, and limitations of the reclamation Act, together with a satisfactory showing of full compliance with the homestead laws under which such entry was made to the date of such application, may be granted leave of absence from the land until the Secretary of the Interior announces the availability of a water supply for the irrigation of the land, or until the lands embraced in his entry shall be restored to the public domain: Provided, That the period of actual absence under this Act shall not be deducted from the full time of residence required by law. (40 Stat. 1210.)

This section is an act entitled "An act for the relief of entrymen within the Castle Peak irrigation project, in Utah," cited above.

§ 4709a. (Act July 1, 1918, c. 113, § 1.) King Hill project, Idaho.

King Hill project, Idaho: * * Said project shall be subject to the reclamation Act of June seventeenth, nineteen hundred and two, and all Acts amendatory thereof or supplementary thereto, so far as applicable and consistent with contract heretofore made between the United States and King Hill irrigation district: Provided further, That for the purposes of issuing patent to lands re-

claimed, the reclamation effected by the operations of the United States Reclamation Service may be considered by the Secretary of the Interior as equivalent to reclamation effected by the State of Idaho, under the Carey Act of August eighteenth, eighteen hundred and ninety-four. (40 Stat. 674.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 4712a. (Act June 12, 1917, c. 27, § 1.) Advances to reclamation fund from Treasury; repayment.

The Act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes, page eight hundred and thirty-five), is amended to provide that reimbursement of the moneys advanced under the provisions of that Act shall be made by transferring annually the sum of $1,000,000 from the reclamation fund to the general funds in the Treasury, beginning July first, nineteen hundred and twenty, and continuing until full reimbursement has been made. (40 Stat. 149.)

This was a provision of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 4713aa. (Act June 12, 1917, c. 27, § 1.) Money received or refunded in connection with operations credited to appropriation.

All moneys heretofore or hereafter refunded or received in connection with operations under the reclamation law, except repayments of construction and operation and maintenance charges, shall be a credit to the appropriation for the project or operation from or on account of which the collection is made and shall be available for expenditure in like manner as if said sum had been specifically appropriated for said project or operation. (40 Stat. 149.)

This was a provision of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 4719. (Act April 16, 1906, c. 1631, § 5, as amended, Act Feb. 24, 1911, c. 155.) Lease of surplus water power.

Contract as violating statute.—The contract entered into between the United States and the Pacific Gas & Electric Company, in connection with the construction, operation and maintenance of the Salt River reclamation project, does not violate the provision of this section that preference shall be given to municipal uses. 30 Op. Atty. Gen. 197.

§ 4724. (Act June 27, 1906, c. 3559, § 5.) Desert-land entries within exterior limits of land withdrawal or irrigation project.

Abandonment of land by entryman.—Failure of entryman on arid lands, withdrawn under Comp. St. 1916, § 4702, as susceptible of irrigation, to continuously reside upon or cultivate land which, though later withdrawn for irrigation works, was finally released during time when no reclamation project had been devised or installed, cannot be deemed an abandonment, in view of this section. Edwards v. Bodkin, 249 F. 562, 161 C. C. A. 488.

§ 4728. (Act Aug. 9, 1912, c. 278, § 1, as amended, Act Feb. 15, 1917, c. 71.) Patents to homestead entrymen within projects; final water-right certificates.

Any homestead entryman under the Act of June seventeenth, nineteen hundred and two, known as the reclamation Act, including entrymen on ceded Indian lands, may, at any time after having complied with the provisions of law applicable to such lands as to residence, reclamation and cultivation, submit proof of such residence, reclamation and cultivation, which proof, if found regular and satisfactory, shall entitle the entryman to a patent, and all purchasers of water-right certificates on reclamation projects shall be entitled to a final water-right certificate upon proof of the cultivation and reclamation of the land to which the certificate applies, to the extent required by the reclamation Act for homestead entrymen: Provided, That no such patent or final water-right certificate

shall issue until after the payment of all sums due the United States on account of such land or water-right at the time of the submission of proof entitling the homestead or desert-land entryman to such patent or the purchaser to such final water-right certificate. (37 Stat. 265. 39 Stat. 920.)

As originally enacted the proviso to this section read as follows: "Provided, That no such patent or certificate shall issue until all sums due the United States on account of such land or water right at the time of issuance of patent or certificate have been paid." It was amended by Act Feb. 15, 1917, c. 71, cited above, to read as set forth here.

§ 4738. (Act Feb. 21, 1911, c. 141, § 1.) Contracts for excess storage or carrying capacity, with irrigation systems under Carey Act, for distribution of water to individual users.

Authority of Secretary of Interior.—The Secretary of the Interior is not authorized by Reclamation Act June 17, 1902, to turn over the operation and maintenance of completed reclamation projects, in whole or in part, or to any extent, to water users' associations before the payment by such water users for water rights are made for the major portion of the lands irrigated by such works. 30 Opp. Atty. Gen. 208.

CHAPTER SEVEN—SALE AND DISPOSAL OF THE PUBLIC LANDS

§ 4756. (R. S. § 2356.) Credit on sales.

Effect of "final receiver's receipt."—A "final receiver's receipt" is an acknowledgment by the government that it has received full payment for public land, that it holds the legal title in trust for the entryman and will in due course issue to him a patent, but it does not divest the government of title to, or the Land Department of jurisdiction over, the land. Bovey-Shute Lumber Co. v. Erickson (N. D.) 170 N. W. 628.

§ 4765. (Act March 1, 1907, c. 2286.) Sale for cemetery purposes.

The Secretary of the Interior is authorized to sell and convey to the White River Cemetery Company a ten acre tract within the former Rosebud Indian Reservation in Mellette County, South Dakota, by Act March 3, 1919, c. 110, 40 Stat. 1320.

§ 4771. (R. S. § 2362.) Refund of purchase-money.

Action for repayment of price of canceled coal entry.—As to a right of action under this section and Act June 16, 1880, c. 244 (Comp. St. 1916, §§ 4595–4598), for the repayment of the price of a canceled coal entry, held, that the statute of limitations of six years is jurisdictional and need not be pleaded. Quinn v. U. S., 52 Ct. Cl. 496.

Cited without definite application, Causey v. U. S., 36 S. Ct. 365, 60 L. Ed. 711.

CHAPTER EIGHT—RESERVATION AND SALE OF TOWN-SITES ON THE PUBLIC LANDS

§ 4784. (R. S. § 2380.) Town-sites to be reserved.

Opening Indian reservation to settlement.—Where the statute opening an Indian reservation to settlement authorized the Secretary of the Interior to reserve land for town sites, and the proclamation issued pursuant thereto in terms applied only to unreserved land, no rights on a tract reserved for a town site can be acquired by a homestead application. Cooper v. U. S. (C. C. A.) 253 F. 360.

§ 4791. (R. S. § 2387.) Entry of town authorities in trust for occupants.

4. Town-site entry in trust.—Evidence held to show that defendant, as Nevada town-site trustee, under mistake as to authority, fixed and collected of grantees of lots greater fees for attorney obtaining patent than statute authorized; and so, as to excess, is, under Civ. Code Cal. § 2224, trustee, not for plaintiff, the attorney, but for the grantees, who but for the mistake would have it. Donovan v. Stevens (Cal.) 175 P. 400.

Under the statute, the probate judge was a trustee for those who were actually occupying the land at the date a town site was entered, and the lot holders could claim only to the extent of such occupancy. Eisenhart v. City and County of Denver (Colo.) 170 P. 1179, affirming judgment 150 P. 729, 27 Colo. App. 470.

Act Jan. 15, 1891, c. 73, passed for relief of inhabitants of Gallup, N. M., did not grant to probate judge of Bernalillo county a certain quarter section, but merely authorized his entry in trust for inhabitants for town-site purposes, subject to general town-site law (Rev. St. §§ 2387–2389 [Comp. St. 1916, §§ 4791–4793]), and until entry was made under the law the probate judge took no title to land. Dugan v. Montoya (N. M.) 173 P. 118.

11. Occupant's rights as against railway grant.—Where application was made by probate judge of Bernalillo county under Act Jan. 15, 1891, c. 73, to enter land for town-site purposes, and officers of land department determined that title to railroad right of way had vested in road and passed from United States, their action was not subject to collateral attack. Dugan v. Montoya (N. M.) 173 P. 118.

A claimant under Code N. M. 1915, § 5516, to lots in a town site which embrace a part of a railroad right of way and station grounds, is not entitled to a deed from the probate judge including any part thereof. Id.

12. Conveyances by beneficiaries or occupants.—An assignment to a town-site company of "the within contract and the premises therein described," indorsed on the back of a written declaration made by such company to the effect that it held a certain interest in the town site in trust for the assignor, held to constitute a conveyance of the interest of the assignor; the declaration of trust containing a particular reference to a recorded instrument which described the property conveyed. Western Town Lot Co. v. Pettigrew (S. D.) 168 N. W. 30.

19. Highways, streets, and alleys.—Though city council of Socorro was not authorized to convey away its streets, etc., it was authorized as trustee, under Territorial Laws 1893, c. 77, to determine a claimant's title to lands within grant to city, and whether lands so claimed had been dedicated, and whether city or claimant was entitled to conveyance of legal title. City of Socorro v. Cook (N. M.) 173 P. 682.

§ 4792. (R. S. § 2388.) Same; when to be made.

Probate judge's authority.—Under this section, probate judge of Bernalillo county, N. M., was only authorized by Act Cong. Jan. 15, 1891, c. 73, to enter land for town-site purposes, the title to which was in United States at date of application, it being for officers of land department to judicially determine whether such lands were subject to entry. Dugan v. Montoya (N. M.) 173 P. 118.

CHAPTER NINE—SURVEY OF THE PUBLIC LANDS

§ 4803. (R. S. § 2395.) Rules of survey.

I. MAKING SURVEYS AND EFFECT THEREOF

5. Division of lands into townships and sections.—See Santa Fé Pacific R. Co. v. Lane, 37 S. Ct. 714, 244 U. S. 492, 61 L. Ed. 1275.

6. Erroneous or defective surveys and correction thereof.—Where through fraud or error land is excluded from a survey of public land by a meander line, the Land Department, on discovering the mistake, may deal with the excluded area, cause it to be surveyed and dispose of it. Lee Wilson & Co. v. U. S., 38 S. Ct. 21, 245 U. S. 24, 62 L. Ed. 128, affirming decree 227 F. 827, 142 C. C. A. 351, which affirmed U. S. v. Lee Wilson & Co. (D. C.) 214 F. 630.

Power to survey and dispose of public land erroneously excluded from survey by drawing of meander line held not barred by five-year limitation on vacation or annulment of patent prescribed by Act March 3, 1891 (Comp. St. 1916, § 5114). Id.

Where township is only 5½ miles wide east and west, whether shortage is in east or west tier of sections is to be decided on the evidence in each particular case. Thomas v. Mettel (S. D.) 168 N. W. 651.

In an action to quiet title to S. W. ¼ of section 29, claimed by defendant to be S. E. ¼ of section 30, township being only 5½ miles wide east and west, evidence held to sustain finding that it was the S. W. ¼ of section 29, and that shortage was in section 30. Id.

11. Conclusiveness and effect of surveys.—Where the issue in ejectment was whether the land in controversy constituted part of a particular government lot when the lot was surveyed and platted, held, that the official survey, including the government plat and field notes, must control. Lord v. Curry (Fla.) 71 So. 21.

12. —— Change or correction of survey after disposal of lands.—Only plaintiff, to whom title to section 36 of the original survey had passed before Congress ordered a new survey, and not defendants, who had entered section 33 after such order, could question the location of section 36 as determined by the resurvey. In re Scott (Cal.) 156 P. 872.

14. Collateral attack on surveys.—Where survey and plat were approved by the General Land Office, neither can be called in question in a collateral proceeding. Sala v. Crane (Idaho) 170 P. 92.

Making, correcting, and approving of surveys of public lands is under authority of General Land Office of United States, and its decisions are not subject to correction by courts in suits between individuals. Leader Realty Co. v. Lakeview Land Co. (La.) 76 So. 599.

II. PLATS AND FIELD NOTES

21. Conclusiveness and effect as evidence.—Field notes of United States surveys of public lands made prior to their conveyance to state or to private persons will control in ascertaining locations of corners, lines, and locations, even though monuments established by United States cannot be found. T. L. Wright Lumber Co. v. Ripley County, 192 S. W. 996, 270 Mo. 121.

It will be presumed that government field notes are correct. Kohlmorgan v. Roswell Tp., Miner County (S. D.) 169 N. W. 229.

Where government field notes place a quarter corner on a direct line between section corners, it will require clear and satisfactory proof to justify a finding that the corner was located other than on such line. Id.

Evidence held sufficient to show that a quarter corner placed by government field notes on a direct line between section corners was located several feet south of straight line. Id.

In action to restrain opening of highway, in which location of disputed boundary, claimed by defendants to be on a straight line between the section corners, depended solely upon whether quarter corner as established by government survey had become lost or obliterated, a finding that original government corner had merely become obliterated and not lost held warranted. Id.

Where government field notes place a quarter corner upon a direct line between section corners, it will be presumed that the quarter corner, as actually located, was on such line. Id.

Evidence to fix a section or quarter section corner at a point on the ground materially different from that called for by the field notes, in view of presumption of law as to its true location approximately where the law requires it to be, must be clear and certain. Reed v. Firestack (Wash.) 160 P. 292.

In action to establish north and south boundary lines of section 14 and to restore lost corners of United States survey, the fact that the location of the southwest corner of section 14 had probably been relied upon by owners in vicinity as true location held not a determining factor. Id.

§ 4804. (R. S. § 2396.) Boundaries and contents of public lands, how ascertained.

II. BOUNDARY LINES

3. Boundary lines actually run and marked in surveys returned.—Since boundaries of land were originally fixed by government survey, it is presumed that persons bought according to such survey. Morley v. Murphy (Iowa) 162 N. W. 63.

III. BOUNDARIES OF LANDS BORDERING ON WATERS

7. Meander lines—Object and significance.—The meander of a body of water or lake in a survey of the public domain excludes its area therefrom, and it becomes subject to the riparian rights of the abutting owners in accordance with state laws. Lee Wilson & Co. v. U. S., 38 S. Ct. 21, 245 U. S. 24, 62 L. Ed. 128, affirming decree 227 F. 827, 142 C. C. A. 351, which affirmed U. S. v. Lee Wilson & Co. (D. C.) 214 F. 630.

A patent to a fractional section of land does not necessarily confer riparian rights because of the presence of meanders. Lord v. Curry (Fla.) 71 So. 21.

9. Fractional sections and water course or meander line as boundary.—Under the United States survey, as appearing in field notes, held, that the Newell grant of 5.05 acres borders on Snake river. Northern Pac. Ry. Co. v. Hirzel, 161 P. 854, 29 Idaho, 438.

Block 2 of the city of Lewiston, held to border on the Snake and Clearwater rivers. Id.

§ 4824a. (Act July 1, 1918, c. 113, § 1.) Surveys and resurveys; surveyors.

For surveys and resurveys of public lands, under the supervision of the Commissioner of the General Land Office and direction of the Secretary of the Interior, $700,000: Provided, That in expending this appropriation preference shall be given, first, in favor of surveying townships occupied in whole or in part by actual settlers and of lands granted to the States by the Act approved February twenty-second, eighteen hundred and eighty-nine, and the Acts approved July third and July tenth, eighteen hundred and ninety, and to survey under such other Acts as provide for land grants to the several States and Territories, and such indemnity lands as the several States and Territories may be entitled to in lieu of lands granted them for educational and other purposes which may have been sold or included in some reservation or otherwise disposed of, except railroad land grants, and other surveys shall include lands adapted to agriculture and lands deemed advisable to survey on account of availability for irrigation or dry farming, lands subject to disposition under mineral land laws where survey thereof is not otherwise provided for, lines of reservations, and lands within boundaries of forest reservations. The surveys and resurveys provided for in this appropriation to be made by such competent surveyors as the Secretary of the Interior may select, at such compensation, not exceeding $200 per month each, as he may prescribe, except in Alaska, where a compensation not exceeding $300 per month each may be allowed such surveyors, except that the Secretary of the Interior may appoint not to exceed one supervisor of surveys, whose compensation shall not exceed $300 per month, and not to exceed ten surveyors who may be employed in a supervisory capacity, whose compensation shall not exceed $250 per month each, and such per diem in lieu of subsistence, not exceeding $3.50, when allowed pursuant to section thirteen of the sundry civil appropriation Act approved August first, nineteen hundred and fourteen, and actual necessary expenses for transportation, including necessary sleeping-car fares, said per diem and traveling expenses to be allowed to all surveyors employed hereunder and to such clerks who are competent surveyors who may be detailed to make surveys, resurveys, or examinations of surveys heretofore made and reported to be defective or fraudulent, and inspecting mineral deposits, coal fields, and timber districts, and for making, by such competent surveyors, frag-

mentary surveys, and such other surveys or examinations as may be required for identification of lands for purposes of evidence in any suit or proceeding in behalf of the United States: Provided further, That the sum of not exceeding ten per centum of the amount hereby appropriated may be expended by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, for the purchase of metal or other equally durable monuments to be used for public-land survey corners wherever practicable: Provided further, That not to exceed $25,000 of the above amount may be used to bring up the arrears of office work in surveyors general's offices upon returns of surveys filed therein prior to the passage of this Act: Provided further, That not to exceed $10,000 of this appropriation may be expended for salaries of employees of the field surveying service temporarily detailed to the General Land Office. (40 Stat. 668.)

This section was a part of the sundry civil appropriation act for the fiscal year 1919, cited above.

§ 4824b. (Act Sept. 21, 1918, c. 175.) Resurveys or retracements of township lines.

Upon the application of the owners of three-fourths of the privately owned lands in any township covered by public-land surveys, more than fifty per centum of the area of which townships is privately owned, accompanied by a deposit with the United States surveyor general for the proper State, or if there be no surveyor general of such State, then with the Commissioner of the General Land Office, of the proportionate estimated cost, inclusive of the necessary work, of the resurvey or retracement of all the privately owned lands in said township, the Commissioner of the General Land Office, subject to the supervisory authority of the Secretary of the Interior, shall be authorized in his discretion to cause to be made a resurvey or retracement of the lines of said township and to set permanent corners and monuments in accordance with the laws and regulations governing surveys and resurveys of public lands; that the sum so deposited shall be held by the surveyor general or commissioner when ex officio surveyor general and may be expended in payment of the cost of such survey, including field and office work, and any excess over the cost of such survey and the expenses incident thereto shall be repaid pro rata to the person making said deposits or their legal representatives; that the proportionate cost of the field and office work for the resurvey or retracement of any public lands in such township shall be paid from the current appropriation for the survey and resurvey of public lands, in addition to the portion of such appropriation otherwise allowed by law for resurveys and retracements; that similar resurveys and retracements may be made on the application, accompanied by the requisite deposit, of any court of competent jurisdiction, the returns of such resurvey or retracement to be submitted to the court; that the Secretary of the Interior is authorized to make all necessary rules and regulations to carry this act into full force and effect. (40 Stat. 965.)

This was an act entitled "An act authorizing the resurvey or retracement of lands heretofore returned as surveyed public lands of the United States under certain conditions," cited above.

CHAPTER TEN A—RESERVATIONS AND GRANTS TO STATES FOR PUBLIC PURPOSES

Sec.
4860. Settlements before survey on sections 16 or 36; deficiencies.
4861. Selections to supply deficiencies of school lands.
4866. Same; grant to Utah.
4867. Same; additional school sections included as applicable to Utah.
4869. Pre-emptions by counties for seats of justice.
4870. Fee-simple to pass in all grants.
4871. Patents for wagon-road grants to Oregon.
4876. Survey of lands granted to certain States.
4878. Certain lands selected by California confirmed thereto.

§ 4860. (R. S. § 2275, as amended, Act Feb. 28, 1891, c. 384.) Settlements before survey on sections 16 or 36; deficiencies.

II. RESERVATION OF LANDS FOR SCHOOLS

2. Nature of reservation.—A distinction exists between the policy of the federal government and the Oregon state government regarding the taking up of public lands, the former being for purposes of development and the latter to provide funds for the public school system. Grand Prize Hydraulic Mines v. Boswell, 162 P. 1063, 83 Or. 1.

3. State's title to school lands.—As between state and schools, title to fractional section of land, for all purposes of suit by state against claimant of land must be held to be in schools; Land Department having so adjudicated title, and state not having appealed. State v. New Orleans Land Co. (La.) 79 So. 515.

Waters of a nonnavigable stream, on lands granted to and held by the state for school purposes, being part of the land, cannot be appropriated by a nonriparian owner; the lands, under Const. art. 16, §§ 1, 2, being held in trust for the people and disposable only at auction, at not less than price prescribed in grant. Colburn v. Winchell (Wash.) 165 P. 1078, reversing judgment on rehearing 160 P. 1052.

4. Survey as affecting state's title.—Title did not pass to Oregon under Enabling Act, § 4, providing that sections 16 and 36 in each township "shall be granted" to the state for the use of the schools, until such sections were surveyed, and until such survey Congress could dispose of the land otherwise, compensating the state for deficiencies resulting. U. S. v. Morrison, 36 S. Ct. 326, 240 U. S. 192, 60 L. Ed. 599, reversing judgment Morrison v. U. S., 212 F. 29, 128 C. C. A. 485.

The authority of Congress to dispose of public lands before title passed by a survey under Enabling Act Or. § 4, was not limited by this and the following section, protecting settlements made "before the survey of the lands in the field." Id.

The survey of the Oregon school land grant under Enabling Act, § 4, was not completed, so as to prevent Congress from otherwise disposing of such lands, until the survey was finally accepted in the General Land Office, though the approval of the survey was made after prolonged examination. Id.

5. School lands included within forest reservation.—The descriptions by townships of lands withdrawn by the Secretary of the Interior for forestry purposes and reference in the official correspondence to a diagram showing such townships and sections was not an approval of the survey of the Oregon school land grant. U. S. v. Morrison, 36 S. Ct. 326, 240 U. S. 192, 60 L. Ed. 599, reversing judgment Morrison v. U. S., 212 F. 29, 128 C. C. A. 485.

The exception in the President's proclamation January 25, 1907, enlarging the Cascade Forest Reserve, of all reservations for other purposes, did not apply to subsequently accruing claims of title under school grants as to which Congress had the power of disposition pending a survey. Id.

State could waive its right to a school section included in a forest reservation after title had vested in state by this section. State of California v. Deseret Water, Oil & Irrigation Co., 37 S. Ct. 394, 243 U. S. 415, 61 L. Ed. 821, reversing judgment Deseret Water, Oil & Irr. Co. v. State, 138 P. 981, 167 Cal. 147.

The state's title to surveyed land is not divested by the subsequent creation of a United States Forest Reservation in the boundaries in which it is included, and the land is not a part of such reservation. Pacific Power Co. v. State (Cal. App.) 162 P. 643.

III. SELECTION OF INDEMNITY LANDS BY STATE

8½. Selection in lieu of school lands.—Selection of lands by a state under this section, in lieu of school lands granted, held valid. Stutsman v. Olinda Land Co. (D. C.) 231 F. 525.

9. Selection where school sections are within a reservation.—A judgment of a state court holding certain school lands within a forest reservation subject to condemnation by a water company is reviewable in the federal Supreme Court, where opinion of state court shows that this and the following section, giving right to select other lands in lieu of school sections, were basis for decision. State of California v. Deseret Water, Oil & Irrigation Co., 37 S. Ct. 394, 243 U. S. 415, 61 L. Ed. 821, reversing judgment Deseret Water Oil & Irr. Co. v. State, 138 P. 981, 167 Cal. 147.

Under this and the following section providing for indemnity, state's title to school lands surveyed and afterwards included in United States forest reserve, in the absence of any law of Congress authorizing an exchange for lieu lands, was not divested. Pacific Power Co. v. State (Cal. App.) 162 P. 643.

Land is within a reservation within this section, appropriating and granting to and authorizing the state to select other lands where school lands are within any reservation when the land has been withdrawn by the Secretary of the Interior pending determination as to the advisability of including it within a forest reservation. Walker v. Kingsbury (Cal. App.) 173 P. 95.

Forest reservations authorized in 1891 are identical with "national forests," as they are called in Act Cong. March 4, 1907 (Comp. St. 1916, § 5122 et seq.), and in St. Cal. 1917, p. 1218, authorizing reselection when lands once selected as lieu lands are closed on account of the release of base lands from national forests, and neither act requires that the land shall have been permanently included in a national forest as a prerequisite to reselection. Id.

10. Selection for loss of mineral lands.—Act July 16, 1894, § 6, granting school lands to Utah, when read in the light of the mining laws, the School Land Indemnity Law (this and the following section), and the settled public policy, does not include mineral lands, especially in view of Act May 3, 1902 (Comp. St. 1916, §§ 4866, 4867). U. S. v. Sweet, 38 S. Ct. 193, 245 U. S. 563, 62 L. Ed. 473, reversing decree Sweet v. U. S., 228 F. 421, 143 C. C. A. 3.

11½. Suit to recover land.—In suit by United States to recover land deeded to defendant by state of Florida, selected under this and the following section, on theory that selection of lands was approved by reason of false affidavits that they were not mineral lands, mortgagee of all of defendant's property is necessary party. Charleston South Carolina Min. & Mfg. Co. v. U. S., 246 F. 828, 159 C. C. A. 130.

Failure to join mortgagee, in suit by United States to recover lands on ground that they had been fraudulently secured, cannot be upheld on theory that mortgage was for large amount and security was only few hundred dollars. Id.

CITED WITHOUT DEFINITE APPLICATION

U. S. v. Morehead, 37 S. Ct. 458, 61 L. Ed. 926.

§ 4861. (R. S. § 2276, as amended, Act Feb. 28, 1891, c. 384.) Selections to supply deficiencies of school lands.

Purpose and effect of statute.—Act July 16, 1894, § 6, granting school lands to Utah, when read in the light of the mining laws, the School Land Indemnity Law (this and the preceding section), and the settled public policy, does not include mineral lands, especially in view of Act May 3, 1902 (Comp. St. 1916, §§ 4866, 4867). U. S. v. Sweet, 38 S. Ct. 193, 245 U. S. 563, 62 L. Ed. 473, reversing decree Sweet v. U. S., 228 F. 421, 143 C. C. A. 3.

Forest reservations.—Under this and the preceding section, providing for indemnity, state's title to school lands surveyed and afterwards included in United States forest reserve, in the absence of any law of Congress authorizing an exchange for lieu lands, was not divested. Pacific Power Co. v. State (Cal. App.) 162 P. 643.

A judgment of a state court holding certain school lands within a forest reservation subject to condemnation by a water company is reviewable in the federal Supreme Court, where opinion of state court shows that this and the preceding section, giving right to select other lands in lieu of school sections, were basis for decision. State of California v. Deseret Water, Oil & Irrigation Co., 37 S. Ct. 394, 243 U. S. 415, 61 L. Ed. 821, reversing judgment Deseret Water Oil & Irr. Co. v. State, 138 P. 981, 167 Cal. 147.

Selections upon unsurveyed lands.—The authority of Congress to dispose of public lands before title passed by a survey under Enabling Act Or. § 4, was not limited by this and the preceding section, protecting settlements made "before the survey of the lands in the field." U. S. v. Morrison, 36 S. Ct. 326,

240 U. S. 192, 60 L. Ed. 599, reversing judgment Morrison v. U. S., 212 F. 29, 128 C. C. A. 485.

Suit to recover land.—See Charleston South Carolina Min. & Mfg. Co. v. U. S., 246 F. 828, 159 C. C. A. 130; note, ante, § 4860.

Cited without definite application, U. S. v. Morehead, 37 S. Ct. 458, 61 L. Ed. 926.

§ 4866. (Act May 3, 1902, c. 683, § 1.) Same; grant to Utah.

Mineral lands.—Act July 16, 1894, § 6, granting school lands to Utah, when read in light of the mining laws, the School Land Indemnity Law (Comp. St. 1916, §§ 4860, 4861), and the settled public policy, does not include mineral lands, especially in view of this and the following section. U. S. v. Sweet, 38 S. Ct. 193, 245 U. S. 563, 62 L. Ed. 473, reversing decree Sweet v. U. S., 228 F. 421, 143 C. C. A. 3.

§ 4867. (Act May 3, 1902, c. 683, § 2.) Same; additional school sections included as applicable to Utah.

Mineral lands.—See U. S. v. Sweet, 38 S. Ct. 193, 245 U. S. 563, 62 L. Ed. 473, reversing decree Sweet v. U. S., 228 F. 421, 143 C. C. A. 3; note, ante, § 4866.

§ 4869. (R. S. § 2286.) Pre-emptions by counties for seats of justice.

Cited without definite application, U. S. v. Morehead, 37 S. Ct. 458, 61 L. Ed. 926.

§ 4870. (R. S. § 2449.) Fee-simple to pass in all grants.

Listing and certificate to state as conveyance. The listing of public land by the Land Department under this section as lieu land under a school land grant held not subject to collateral attack on the ground that the land was mineral. Stutsman v. Olinda Land Co., (D. C.) 231 F. 525.

The word "void," as used in this section, construed as "voidable" in respect to listing of lands to states which were not within the grant. Id.

§ 4871. (Act June 18, 1874, c. 305.) Patents for wagon-road grants to Oregon.

Terms and conditions of particular grant.—A grant of public lands to a state for an internal improvement construed with respect to a proviso limiting the price at which the land should be sold and the quantity to be sold to each purchaser. Southern Oregon Co. v. U. S., 241 F. 16, 154 C. C. A. 16.

That officers of the government had knowledge that lands had been disposed of in violation of the terms on which they were granted and took no action does not estop the government from subsequently enforcing covenants in the grant. Id.

Subsequent purchasers of land granted to a state to aid in an internal improvement held charged with notice of the terms and conditions of the grant. Id.

§ 4876. (Act Aug. 18, 1894, c. 301, § 1.) Survey of lands granted to certain States.

School land grant to New Mexico.—Enabling Act of New Mexico, §§ 6, 11, and this section, operate as present grant to state of school sections, subject only to identification by survey, whereupon title vested in state as of date of Enabling Act, and state may take possession as soon as land is surveyed. Dallas v. Swigart (N. M.) 172 P. 416.

§ 4878. (R. S. § 2485.) Certain lands selected by California confirmed thereto.

Cited without definite application, State of California v. Deseret Water, Oil & Irrigation Co., 37 S. Ct. 394, 61 L. Ed. 821.

CHAPTER TEN B—GRANTS IN AID OF RAILROADS AND WAGON ROADS

Sec.
4882. Cost of survey of grants to railroads; payment.
4889. Selection by railroads of lands in lieu of lands entered subsequent to accrual of rights; title of settlers.
4891. Homestead entries on railroad lands.
4895. Adjustment of land grants to railroads.
4896. Cancellation of patents erroneously issued; reconveyance.
4897. Erroneous cancellation of bona fide settlers corrected.
4898. Patents to purchasers from railroads; purchase money.
4899. Rights of purchasers from railroads of coterminous lands not within grants.
4900. Limitation of quantity to be conveyed.
4901. Suits to cancel patents to lands erroneously issued under railroad or wagon road grants.
4902. Claims of bona fide purchasers; establishment of rights.
4903. Same; investigation before suit.
4905. Forfeiture of unearned grants; restoration to public domain.
4914. Deposits by railroad companies for costs of surveying, and conveying unsurveyed lands granted.
4917. Regulations for carrying out statute.

§ 4882. (Act July 31, 1876, c. 246.) Cost of survey of grants to railroads; payment.

Constitutionality.—Vested rights of grantee under Railway Land Grant Act were not infringed, contrary to due process of law clause of Const. Amend. 5, by enactment of this section while grantee was in default. Santa Fé Pac. R. Co. v. Lane, 37 S. Ct. 714, 244 U. S. 492, 61 L. Ed. 1275, reversing decree 43 App. D. C. 497.

Departmental construction of statute.—Departmental construction of this section was incorporated into Act June 25, 1910 (Comp. St. 1916, § 4914), where Congress, with knowledge of that construction, left terms of the former provision undisturbed. Santa Fé Pac. R. Co. v. Lane, 37 S. Ct. 714, 244 U. S. 492, 61 L. Ed. 1275, reversing decree 43 App. D. C. 497.

§ 4889. (Act June 22, 1874, c. 400.) Selection by railroads of lands in lieu of lands entered subsequent to accrual of rights; title of settlers.

Provision for the relinquishment by the Northern Pacific Railroad Company of lands within certain former Indian reservations, found in the possession of actual bona fide qualified settlers under the homestead laws, to such settlers, and the selection by said railroad of an equal quantity of other lands in lieu thereof from surveyed public lands in Montana, including lands withdrawn or classified as coal lands, is made by Act Feb. 28, 1919, c. 72, 40 Stat. 1204.

Notes of Decisions

Selection of land occupied by qualified settler as a homestead.—The right of a railroad company to select indemnity land on any public nonmineral land to which no adverse claim has attached at the time of selection does not extend to land then occupied by a qualified settler as a homestead, although, the land being unsurveyed, no filing has been made. U. S. v. Great Northern Ry. Co. (C. C. A.) 254 F. 522.

§ 4891. (Act April 21, 1876, c. 72, § 1.) Homestead entries on railroad lands.

Homestead entries.—Right of railroad company to lands granted under Act Cong. July 2, 1864, c. 217, attaches upon the filing with and acceptance by the Interior Department of the map of definite location, but does not apply to lands upon which a homestead entry is pending. Baker v. Berg (Minn.) 164 N. W. 588, certiorari denied Berg v. Baker, 38 S. Ct. 332, 62 L. Ed. 927.

§ 4895. (Act March 3, 1887, c. 376, § 1.) Adjustment of land grants to railroads.

Scope and purpose of act.—Though conferring on Secretary of Interior broad power to adjust claims to railroad aid lands, this section makes no provision as to completion of surveys of unsurveyed lands. Northern Pac. R. Co. v. Lane, 46 App. D. C. 434.

Cited without definite application, United States v. St. Paul, M. & M. Ry. Co., 38 S. Ct. 525, 62 L. Ed. 1130.

§ 4896. (Act March 3, 1887, c. 376, § 2.) Cancellation of patents erroneously issued; reconveyance.

Cancellation of patent for mineral lands.—Where railroad company which selected lands under its grant was required to attach to its selection list affidavit of its land agent setting forth that lands had been examined and to best of his knowledge were not of mineral character, agent in suit to set aside patent on ground that lands were valuable for minerals must be charged with knowledge of facts which examination would have disclosed, as well as all facts known to railroad company's geologists and employés. Southern Pac. Co. v. U. S. (C. C. A.) 249 F. 785.

Evidence.—In suit to cancel patent to public lands issued to railroad company on affidavit of its land agent that lands were not of mineral character, evidence held insufficient to show that at time selection list and affidavit were prepared conditions were such as to engender belief that lands were valuable on account of oil deposits, and hence patent thereto cannot subsequently be set aside though lands were afterwards discovered to be in oil belt. Southern Pac. Co. v. U. S. (C. C. A.) 249 F. 785.

Cited without definite application, U. S. v. St. Paul, M. & M. Ry. Co., 38 S. Ct. 525, 62 L. Ed. 1130.

§ 4897. (Act March 3, 1887, c. 376, § 3.) Erroneous cancellation of bona fide entries corrected.

Cited without definite application, U. S. v. St. Paul, M. & M. Ry. Co., 38 S. Ct. 525, 62 L. Ed. 1130.

§ 4898. (Act March 3, 1887, c. 376, § 4, as amended, Act Feb. 12, 1896, c. 18.) Patents to purchasers from railroads; purchase money.

Cited without definite application, U. S. v. St. Paul, M. & M. Ry. Co., 38 S. Ct. 525, 62 L. Ed. 1130.

§ 4899. (Act March 3, 1887, c. 376, § 5.) Rights of purchasers from railroads of coterminous lands not within grants.

Right to purchase from the United States.—Where land included in a grant did not pass to railroad company because, before right of way was located, individual filed valid pre-emption declaration, one who thereafter purchased from company, first pre-emption filing having expired, is entitled, under this section, to purchase land from government. Krueger v. U. S., 38 S. Ct. 262, 246 U. S. 69, 62 L. Ed. 582, affirming decree U. S. v. Krueger, 228 F. 97, 142 C. C. A. 503.

State's remedy where claim is denied on ground that land is disposed of under statute.—Where claim of state of Minnesota asserted under Act Aug. 3, 1892, granting undisposed of public land was denied by Commissioner of General Land Office and Secretary of the Interior on ground that lands had been disposed of under this section, and so did not pass under later grant, state cannot maintain a bill to quiet its title and enjoin commissioner and Secretary of the Interior from issuing patents, but must seek its relief after patents are issued. State of Minnesota v. Lane, 38 S. Ct. 508, 247 U. S. 243, 62 L. Ed. 1098.

Cited without definite application, U. S. v. St. Paul, M. & M. Ry. Co., 38 S. Ct. 525, 62 L. Ed. 1130.

§ 4900. (Act March 3, 1887, c. 376, § 7.) Limitation of quantity to be conveyed.

Cited without definite application, U. S. v. St. Paul, M. & M. Ry. Co., 38 S. Ct. 525, 62 L. Ed. 1130.

§ 4901. (Act March 2, 1896, c. 39, § 1.) Suits to cancel patents to lands erroneously issued under railroad or wagon road grants.

Cancellation of patents—Limitations.—This section, limiting time for suits to cancel patents theretofore issued, held applicable, though land was reserved or excluded from the grant under which the patent was erroneously issued. U. S. v. New Orleans Pac. Ry. Co., 235 F. 833, 149 C. C. A. 145.

Lapse of time prescribed for suits to cancel patents under this section held to give patent the same effect as though originally valid. Id.

This section, limiting time for suits to cancel patents, held applicable, though cancellation will inure to benefit of occupant, and not to benefit of the United States. Id.

This section, limiting time for suits

to cancel patents, held applicable to lands in railroad grant confirmed to railroad company by Act Feb. 8, 1887. Id.

Confirmation of title of bona fide purchasers—Purpose and effect of statute.—Act March 2, 1896, c. 39, deals only with patents erroneously issued under a railroad or wagon grant, and the limitation in section 2 (Comp. St. 1916, § 4902) on the recovery by the United States on account of erroneously patented lands sold to bona fide purchaser has no application to an action to recover the value of public lands described in a patent procured by fraud. U. S. v. Whited & Wheless, 38 S. Ct. 367, 246 U. S. 552, 62 L. Ed. 879, reversing judgment 232 F. 139, 146 C. C. A. 331.

Defendant in suit to avoid for fraud patent to public land having passed title to bona fide purchaser, recovery may be had of him of the amount at which he sold; this and the following two sections applying only to case of issuance of patent by mistake without fraud. U. S. v. Frick (D. C.) 244 F. 574.

Recovery of lieu lands certified or patented.—In view of legislative history, the proviso that no suit shall be brought for lands or value thereof that were patented in lieu of other lands covered by grant which were lost or relinquished by grantee in consequence of failure of government or officers to withdraw same from entry, must be confined to lands already patented. U. S. v. St. Paul, M. & M. Ry. Co., 38 S. Ct. 525, 247 U. S. 310, 62 L. Ed. 1130, reversing decree 225 F. 27, 139 C. C. A. 301.

The proviso cannot, on equitable considerations, be extended so as to bar suit to cancel patents for lands thereafter selected by railroad company in lieu of those granted which had been lost because Land Department failed to withdraw same from entry, where company's agents fraudulently represented lieu lands were not mineral, for equity implies equal fairness and honesty on both sides. Id.

The proviso is a curative provision, and does not apply to lands patented after its enactment. U. S. v. Great Northern Ry. Co. (C. C. A.) 254 F. 522.

Cited without definite application, Southern Oregon Co. v. U. S. (C. C. A.) 241 F. 16; Union Coal & Coke Co. v. U. S. (C. C. A.) 247 F. 106.

§ 4902. (Act March 2, 1896, c. 39, § 2.) Claims of bona fide purchasers; establishment of rights.

Scope of section.—See Pitan v. U. S., 241 F. 364, 154 C. C. A. 244.

Defendant in suit to avoid for fraud patent to public land having passed title to bona fide purchaser, recovery may be had of him of the amount at which he sold; this section and sections 4901 and 4903 applying only to case of issuance of patent by mistake without fraud. U. S. v. Frick (D. C.) 244 F. 574.

Act March 2, 1896, c. 39, deals only wtih patents erroneously issued under a railroad or wagon grant, and the limitation in section 2 on the recovery by the United States on account of erroneously patented lands sold to bona fide purchaser has no application to an action to recover the value of public lands described in a patent procured by fraud. U. S. v. Whited & Wheless, 38 S. Ct. 367, 246 U. S. 552, 62 L. Ed. 879, reversing judgment 232 F. 139, 146 C. C. A. 331.

Cited without definite application, Union Coal & Coke Co. v. U. S. (C. C. A.) 247 F. 106.

§ 4903. (Act March 2, 1896, c. 39, § 3.) Same; investigation before suit.

See U. S. v. Frick (D. C.) 244 F. 574; notes, ante, §§ 4901, 4902.

Cited without definite application, Union Coal & Coke Co. v. U. S. (C. C. A.) 247 F. 106.

§ 4905. (Act Sept. 29, 1890, c. 1040, § 1.) Forfeiture of unearned grants; restoration to public domain.

Cited without definite application, Laughlin v. U. S., 52 Ct. Cl. 292.

§ 4914. (Act June 25, 1910, c. 406, § 1.) Deposits by railroad companies for costs of surveying and conveying unsurveyed lands granted.

Incorporation of prior statute.—Departmental construction of Act July 31, 1876 (Comp. St. 1916, § 4882), requiring grantee of railway land grant to pay for survey in advance of issue of patents, was incorporated into this act, where Congress, with knowledge of that construction, left terms of the former provision undisturbed. Santa Fé Pac. R. Co. v. Lane, 37 S. Ct. 714, 244 U. S. 492, 61 L. Ed. 1275, reversing decree 43 App. D. C. 497.

Tender of deposit.—Tender by grantee in railway land grant of one-half

of amount demanded by Secretary of Interior as advance deposit under this section, to recover cost of surveying township in which grantee was entitled to odd-numbered sections only, held adequate. Santa Fé Pac. R. Co. v. Lane, 37 S. Ct. 714, 244 U. S. 492, 61 L. Ed. 1275, reversing decree 43 App. D. C. 497.

Injunction against unauthorized demand under statute.—Giving effect to unauthorized demand by Secretary of the Interior under this section that grantee in railway land grant should make advance deposit of cost of surveying township within grant may be enjoined, where statute contemplates that when demand is not complied with rights in granted land shall cease, where there are millions of acres of unsurveyed lands within primary limits of such grants. Santa Fé Pac. R. Co. v. Lane, 37 S. Ct. 714, 244 U. S. 492, 61 L. Ed. 1275, reversing decree 43 App. D. C. 497.

§ 4917. (Act June 25, 1910, c. 406, § 4.) Regulations for carrying out statute.

Act Feb. 26, 1919, c. 47, 40 Stat. 1179, provides for the acceptance from the Southern Oregon Company of a reconveyance of the lands granted to the State of Oregon by Act March 3, 1869, c. 150, 15 Stat. 340, and for the disposition of such lands as provided for by Act June 9, 1916, c. 137, 39 Stat. 218.

CHAPTER TEN C—RIGHTS OF WAY AND OTHER EASEMENTS IN PUBLIC LANDS

Sec.
4918. Navigable rivers public highways.
4919. Right of way for highways.
4920. Roads across military reservations; ferry landings; bridges.
4921. Right of way through public lands, granted to railroads.
4924. Same; map of road to be filed; forfeiture of rights.
4925. Same; lands excepted.
4933. Reservation in patents of right of way for ditches or canals.
4934. Right of way for irrigation and drainage purposes.
4935–4937. Same; map; damages to settlers, etc.
4938. Right of way for water transportation, domestic purposes, or development of power.
4943. Right of way for tramroads, canals, or reservoirs.
4944. Right of way to electric power companies.
4945. Rights of way for wagon roads or railroads.
4946. Rights of way for electrical plants.
4947. Rights of way for dams, reservoirs or water plants, for municipal, mining, and milling purposes.
4948. Rights of way for electrical poles and lines.

§ 4918. (R. S. § 2476.) Navigable rivers public highways.

II. GOVERNMENT OWNERSHIP OF SUBMERGED LANDS

4. Policy of government as to disposal and control by states.—Authority given by the War Department to a corporation to erect an elevator to load sand and gravel does not authorize it to remove sand and gravel from the river bed within the state so as to deprive the state of its right to the compensation therefor fixed by Acts Ark. 1913, p. 1088, and Acts Ark. 1915, p. 532. Union Sand & Material Co. v. State, 192 S. W. 380, 127 Ark. 456.

In preservation and development of navigable inland waterways, the nation and the state have a common interest. Gray v. Reclamation Dist. No. 1500 (Cal.) 163 P. 1024; Proper v. Same, Id. 1037.

The right of control over navigable waters embraces power to do anything subserving the purpose. Id.

The federal or state control of streams for navigation purposes is an exercise of police power. Id.

5. State ownership.—Under law of Illinois, neither the United States nor the state owns lands under a navigable river, but riparian owners own fee to middle of stream, subject to government's paramount right to use it and to make improvements for navigation without compensation, including deepening of channel. Tempel v. U. S., 39 S. Ct. 56, 63 L. Ed. —.

The state had the power to permit a railroad company to build and operate a railroad over tide and submerged lands to a connection with deep-water navigation, as such a disposition of the public land held in trust for purposes of navigation and commerce would be in furtherance of the trust and valid. Koyer v. Miner (Cal.) 156 P. 1023.

The state may, for navigation and

commerce purposes, grant control and management of tide and submerged lands to a local administrative agency. City of Long Beach v. Lisenby (Cal.) 166 P. 333.

The title and control of tide and submerged lands of navigable waters is vested in the state impressed with a public use for navigation and commerce purposes. Id.

The shores of navigable waters and the soils under them were not granted by the federal Constitution to the United States, but were reserved to the states respectively, and new states have the same rights, sovereignty, and jurisdiction over such shores as the original states. Churchill Co. v. Kingsbury (Cal.) 174 P. 329.

The title of the state to land under navigable waters extends, not only to the land underlying the part of the navigable waters over which navigation may be conducted, but to the entire bed, in particular to the land covered and uncovered by the ordinary rise and fall of the tide, stream, or lake. Id.

Title to soil under waters where tide ebbs and flows, and in Florida all navigable waters between high and low water mark is in state subject to power of Congress to regulate commerce. Thiesen v. Gulf, F. & A. Ry. Co. (Fla.) 78 So. 491.

State's title to soil under waters where tide ebbs and flows and all navigable waters is held in trust for people having rights of navigation, fishing, bathing, and commerce upon and in waters. Id.

On its admission to the Union Oregon was vested with title to the land under the navigable waters within the state, subject to the public right of navigation, and to the common right of citizens of the state to fish. Monroe v. Withycombe, 165 P. 227, 84 Or. 328.

Under United States patent to lands through which navigable slough passed, not meandered by government, title to bed and tide lands remained in state, limit of grant being ordinary high-water mark. Washington Boom Co. v. Chehalis Boom Co., 156 P. 24, 90 Wash. 350.

6. State ownership of river beds.—That sand in river bed is liable to be shifted held not to change its character while at rest, as respects right of state to make charge for taking sand. Wear v. State of Kansas ex rel. Brewster, 38 S. Ct. 55, 245 U. S. 154, 62 L. Ed. 214, Ann. Cas. 1918D, 586, affirming judgment State ex rel. Dawson v. Akers, 140 P. 637, 92 Kan. 169, Ann. Cas. 1916B, 543.

That there is a public right to take sand from a navigable stream does not hinder the state from collecting for the good of the whole public a charge from those individuals taking sand and thereby withdrawing it from public access. Id.

State takes title to bed of navigable streams in its borders, and, subject to paramount authority of Congress to control navigation in the regulating of interstate and foreign commerce, may appropriate and dispose of minerals found in beds of such streams. U. S. v. Brewer-Elliott Oil & Gas Co. (D. C.) 249 F. 609.

State may fix exterior lines of navigable river if rights of people to use of waters and shores are not substantially impaired, and right to submerged lands not within reasonably fixed exterior lines may be granted if it does not impair rights of people to use of waters. Panama Ice & Fish Co. v. Atlanta & St. A. B. Ry. Co. (Fla.) 71 So. 608.

The state holds the title to the beds of navigable streams below the average high-water mark for the use and benefit of the whole people. Northern Pac. Ry. Co. v. Hirzel, 161 P. 854, 29 Idaho, 438.

The title to beds of navigable streams passed to the state of Idaho on its admission without any special grant. Id.

The Legislature should enact proper laws for the management and control of the beds of navigable streams. Id.

The state is owner of lands underlying navigable waters below mean high water with power to determine rights of riparian proprietors, subject only to limitations of United States Constitution. State v. Richardson, 72 So. 984, 140 La. 329.

Title of a riparian owner to submerged lands of a navigable stream is subservient to superior right of the United States under Const. U. S. art. 1, § 8(3), to take, control, and regulate same in interests of navigation. McMorran Milling Co. v. C. H. Little Co., 167 N. W. 990, 201 Mich. 301.

The title of either the state or riparian owners to submerged lands of navigable waters is burdened with a trust for use and benefit of the people for commerce. Id.

The federal government has paramount dominant right superior to that of riparian owner, and may take, control, and regulate in interest of navigation navigable waters and submerged lands under the same. Id.

7. State ownership of lake beds.—The state acquires by adverse possession any private land submerged by the building of a levee, although the owner continues to make futile efforts to drain it, and after seven years the right to fish and hunt thereon are in the public. State v. Parker (Ark.) 200 S. W. 1014, certiorari denied Parker v. State of Arkansas ex rel. Thompson, 38 S. Ct. 579, 247 U. S. 512, 62 L. Ed. 1243.

The right of the public to hunt and fish on navigable waters extends to high-water mark, and the state cannot alienate nor abdicate the trust to hold them for such use. Id.

Lands bordering a navigable lake left

uncovered in the fall by the natural recession of its waters are sovereign lands of the state. Churchill Co. v. Kingsbury (Cal.) 174 P. 329.

The state holds the title to the bed of Lake Michigan. Miller v. Commissioners of Lincoln Park, 116 N. E. 178, 278 Ill. 400.

The right of a state in and to lands under the waters of Lake Michigan within the state boundaries is a holding in trust for all the people of the state, and citizens of the state may use such lands so long as they do not interfere with use by other citizens, but the privilege does not extend to the citizens of another state. Lake Sand Co. v. State (Ind. App.) 120 N. E. 714.

State, suing to enjoin removal of sand from submerged lands under Lake Michigan, is not aided by doctrine of purpresture, since a "purpresture" is a permanent obstruction, whereas the trespass complained of was a temporary use by anchoring vessels for dredging. Id.

Complaint in state's suit to enjoin removal of sand from land under the waters of Lake Michigan, which alleged the value of the sand as it lay on the bed of the lake, held to state a cause of action. Id.

The state in its sovereign capacity is without power to convey or curtail the right of its people in lands under the waters of Lake Michigan within the boundaries of the state. Id.

The ownership of the waters of Lake Erie and the land under them, being matters of public concern, the state cannot as trustee for the public by acquiescence or otherwise abandon the property or permit a diversion of it to private uses. State v. Cleveland & P. R. Co. (Ohio) 113 N. E. 677, L. R. A. 1917A, 1007.

The title to land under the waters of Lake Erie within the limits of Ohio, is in the state as trustee for the benefit of the people. Id.

The state is the owner of the bed of a navigable lake below ordinary low-water mark. State v. Deisch, 162 N. W. 365, 38 S. D. 560.

III. BOUNDARIES OF RIPARIAN LANDS

9. Application of local or common-law rule.—Where a river gradually washed away lots in section 31 belonging to plaintiff, until they became submerged, and encroached on the southwest quarter of section 30 upon some owned by defendant, so that he became the riparian owner, and thereafter the land submerged was by gradual deposit restored, the lots in section 31 did not become the property of defendant on the theory that the old boundary line was extinguished. Allard v. Curran (S. D.) 168 N. W. 761.

9½. Meander lines of river.—Where an Indian reservation was by act of Congress bounded by the main channel of a river, the meander lines of the river are not to be deemed the traverse lines bounding the reservation. U. S. v. Hutchings (D. C.) 252 F. 841.

10. High-water mark as boundary.—Private ownership of land riparian to navigable waters in Florida extends ordinarily to high-water mark. Thiesen v. Gulf, F. & A. Ry. Co. (Fla.) 78 So. 491.

At common law lands which were bounded by and extended to high-water mark of waters in which tide ebbed and flowed were riparian or littoral to such waters. Id.

Grants by the United States under the public land laws of lands bounded by navigable waters do not of their own force carry title or right below the high-water mark. Northern Pac. Ry. Co. v. Hirzel, 161 P. 854, 29 Idaho, 438.

Whenever a municipality is a riparian owner on navigable waters, it takes title to the lands to high-water mark. Id.

The property line of lots abutting on Lake Michigan is the water line of the lake as it exists when free from disturbing causes, and not the high-water mark. Brundage v. Knox, 117 N. E. 123, 279 Ill. 450.

Riparian owner on a navigable lake owns down to ordinary high-water mark; between that and ordinary low-water mark he and the state have qualified ownerships. State v. Deisch, 162 N. W. 365, 38 S. D. 560.

13. Water's edge or bank as boundary.—Where meander line is run for purpose of calculating area of land granted, shore line constitutes real boundary. Curtis v. Upton (Cal.) 165 P. 935.

Where boundary of land is described in deed as main channel of stream, in the absence of language indicating otherwise, such boundary is center of stream, not water's edge. Kerr v. Fee (Iowa) 161 N. W. 545.

14. Thread of stream as boundary.—Presumption that land conveyed and bounded by stream extends to run of stream and not to a swamp between stream and upland is not conclusive, and may be rebutted by showing immemorial usage to contrary, etc. Mullins Lumber Co. v. Williamson & Brown Land & Lumber Co., 246 F. 232, 158 C. C. A. 392.

When a navigable stream changes its main channel of navigation, not by creeping over the intermediate lands between the old channel and the new one, but by jumping over them or running around them, and making or adopting a new course, the boundary remains in the old channel subject to subsequent changes, while the water in it remains a running stream, etc.,

notwithstanding the fact that the change from the old channel to the new one was wrought gradually during several years, etc. Davis v. Anderson-Tully Co. (C. C. A.) 252 F. 681.

At common law, riparian owner took title to middle of adjacent nonnavigable stream. U. S. v. Brewer-Elliott Oil & Gas Co. (D. C.) 249 F. 609.

Under Act June 5, 1872, describing the Osage Reservation as bounded by the main channel of the Arkansas river, the "main channel" does not simply mean the main branch of the river, for the "channel" of a river is less comprehensive and means primarily its bed, and hence the reservation extended to the main channel. U. S. v. Hutchings (D. C.) 252 F. 841.

Center of stream bounding land bordering on nonnavigable river, means the center of the whole stream, and not the center of that portion of a stream between an island and the shore. Kerr v. Fee (Iowa) 161 N. W. 545.

Where deed described land as all of quarter section "lying and being on the right bank of White Breast creek," held that such deed conveyed to center of creek. Id.

To retain title to bed of a nonnavigable stream in grantor the intention to do so must be clearly expressed in conveyance. Id.

Description in deed of boundary, as bank of stream or as beginning at defined point on bank and running along nonnavigable stream, is presumed to run along center of the stream if grantor's title extends to such center. Id.

Where vendor sold 127 acres of land bordering on a nonnavigable stream, the purchaser became a riparian owner, with full riparian rights, and in legal effect the deed conveyed to the center line of the stream. Compton v. Hites (Iowa) 169 N. W. 401.

After selling land bordering on a nonnavigable stream, the state, without the consent of the purchaser, cannot lease to another the bed of the stream for the purpose of drilling for oil or gas. Palmer Co. v. Wilkinson, 75 So. 806, 141 La. 874.

Title of a riparian owner to subaqueous lands of a navigable stream extends to thread of stream. McMorran Milling Co. v. C. H. Little Co., 167 N. W. 990, 201 Mich. 301.

The riparian owner takes to the center of the thread of navigable streams, subject to the public right of use and navigation; tidewater, navigable streams, and lakes belonging to public for purposes of commerce, fisheries, and other uses. Richardson v. Sims (Miss.) 80 So. 4.

Riparian owners on nonnavigable streams are presumed to own to the middle thread of the stream, but this presumption yields to proof that the edge of the stream is the true boundary line. Jennings v. Marston (Va.) 92 S. E. 821.

Where riparian owners on a nonnavigable stream own to the middle of the stream, and convey by a deed calling for the stream as a boundary, they are conclusively presumed to convey to the middle, unless they expressly exclude that presumption by words in the conveyance. Id.

A deed describing land as bounded on the south by a pond did not convey land to the middle thread of a stream forming the pond, where it appeared that the grantor and his predecessors in title did not own or claim further than the edge of the pond at the time of the execution of the deed. Id.

15. State line as boundary.—How land that emerges on either side of interstate boundary stream shall be disposed of as between public and private ownership is to be determined according to the law of each state. State of Arkansas v. State of Tennessee, 38 S. Ct. 301, 246 U. S. 158, 62 L. Ed. 638. L. R. A. 1918D, 258.

Where the main channel of a navigable stream is the boundary between two states, and it changes by the slow and natural processes of accretion and reliction, the boundary follows the channel; but, where it changes by the sudden and violent process of avulsion, the boundary remains where the main channel was at the time of the avulsion, subject to such changes as may be wrought thereafter by accretion or erosion. while the old channel is occupied by the running stream. Davis v. Anderson-Tully Co. (C. C. A.) 252 F. 681.

16. Ownership of river beds.—Servitude of privately owned lands forming banks of a stream to the interests of navigation is confined to such streams as are in their natural condition navigable in fact. U. S. v. Cress, 37 S. Ct. 380, 61 L. Ed. 746.

In view of Act March 3, 1811, declaring navigable waters in former territory of Louisiana and Orleans to be public highways, and declarations in Treaty with France, Cherokee Nation when by patent dated December 31, 1838, it secured lands in Louisiana Purchase Territory on both sides of Arkansas river, did not acquire title to bed of stream if it was navigable. U. S. v. Brewer-Eliott Oil & Gas Co. (D. C.) 249 F. 609.

Minerals in bed of Arkansas river which bounded Osage Reservation, under Osage Allotment Act of June 28, 1906, belong to tribe alone if river at that point is nonnavigable, so that title to bed would pass to riparian owners. Id.

The title to beds of navigable streams does not pass to patentees of the United States by sale of lands bordering thereon. Northern Pac. Ry. Co. v. Hirzel, 161 P. 854. 29 Idaho, 438.

There is no statute law granting a

riparian owner on a navigable stream, the bed of such stream or any portion. Id.

A riparian owner's rights extend only to the high-water mark; the state holding title to the bed for the benefit of the whole public. Id.

Under Const. art. 9, the term "public lands" refers to those subject to disposal by the state land board and does not include the beds of navigable waters or lands below high-water mark. Id.

The title and rights of littoral and riparian owners in the subaqueous soil of navigable waters within the limits of the state, are governed by the laws of the state subject to the superior authority of the federal government. State v. Cleveland & P. R. Co. (Ohio) 113 N. E. 677, L. R. A. 1917A, 1007.

A riparian owner of a navigable stream, not a state boundary line, takes to the center of the stream between his boundary lines produced to the center of the stream at right angles with the center line. Metropolitan Inv. Co. of Milwaukee v. City of Milwaukee, 161 N. W. 785, 165 Wis. 216.

18. Ownership of islands.—Plaintiff did not lose title to island by fact that it was totally submerged at one time, and remained so for a considerable period, where the land reappeared and was capable of identification by its original description. Randolph v. Hinck, 115 N. E. 182, 277 Ill. 11.

Where a government patent conveyed land adjacent to a nonnavigable river, patent conveyed all land between meander line on shore and middle thread of river, including an island which was not mentioned in government survey, in the absence of an express reservation or the existence of a previous patent or survey covering such island. T. L. Wright Lumber Co. v. Ripley County, 192 S. W. 996, 270 Mo. 121.

Where the original government survey commenced in 1871 and finished in 1872 plainly indicated an island in the Arkansas river which bounded the Osage Reservation, the fact that the island was not meandered or surveyed did not affect the claim of the tribe thereto; indeed, title would not have been affected had the island been wholly ignored. U. S. v. Hutchings (D. C.) 252 F. 841.

The division line between opposite riparian owners on a nonnavigable stream would be the middle of the stream, and, if that line falls upon an island, a division of the island is required. Id.

An island between Osage and Pawnee counties, Okl., held to belong to the Osage Indian Tribe under Act June 5, 1872, which described reservation as extending to main channel of Arkansas river, which at that time was on the side of the island furthest from the reservation. Id.

19. Lakes as boundaries.—Lowlands covered with blackthorn, cottonwood, maple, and honey locust, with an undergrowth of vines and briars, are not a part of the lake on which they border, although submerged part of the year. State v. Parker (Ark.) 200 S. W. 1014, certiorari denied Parker v. State of Arkansas ex rel. Thompson, 38 S. Ct. 579, 247 U. S. 512, 62 L. Ed. 1243.

Whether riparian proprietors on a nonnavigable lake take title to bed of lake to center or middle, or only to water's edge, is a question of local law, to be finally determined by statute or decisions of the highest state court. Richardson v. Sims (Miss.) 80 So. 4.

Nonnavigable lakes being subject to private ownership, title to their beds goes with the riparian ownership as appurtenant thereto. Id.

The riparian owner on a nonnavigable lake takes title to the middle or center of the lake ratably with other riparian owners. Id.

If riparian ownership on a nonnavigable lake should extend to a mere rim of the lake, and it should clearly appear that to enforce general rule as to title to bed of lake running to center would be to perpetrate manifest injustice to grantor, an exception to the general rule might possibly be made. Id.

Title of riparian owner on nonnavigable lake does not merely extend to water's edge, where the lake boundary on government's plat is shown to have been meandered; meander lines having been run to ascertain exact quantity of upland to be charged for by government in granting riparian land. Id.

IV. RIPARIAN RIGHTS

20. Application of local or common-law rules.—Under Civ. Code La. arts. 455, 457, land between a levee and a navigable river is the property of a riparian proprietor, though subject to public use. Pittsburgh & Southern Coal Co. v. Otis Mfg. Co., 249 F. 667, 161 C. C. A. 577.

As the reason for the common-law rule of riparian rights on navigable streams does not exist in Idaho, the rule does not apply. Northern Pac. Ry. Co. v. Hirzel, 161 P. 854, 29 Idaho, 438.

There is no common-law doctrine as to navigable streams similar to those found in Idaho; such streams not existing in England. Id.

21. Nature and extent of rights.—Riparian owners may protect themselves from extraordinary flood by erecting defensive works along the front of their lands. Cubbins v. Mississippi River Commission, 36 S. Ct. 671, 241 U. S. 351, 60 L. Ed. 1041.

Decree enjoining party from constructing, continuing, or maintaining on tidelands any structure obstructing or interfering with access of owner of upland and building of wharf by it held

not erroneous. Worthen Lumber Mills v. Alaska Juneau Gold Mining Co., 229 F. 966, 144 C. C. A. 248.

After river changed its channel to new route, center line of old channel held to become fixed and unvarying boundary between contiguous subdivisions of land, and not changed by gradual and imperceptible accretions. A. G. Wineman & Sons v. Reeves, 245 F. 254, 157 C. C. A. 446.

Right which public in Louisiana has to use banks of navigable rivers does not entitle one other than a riparian proprietor to appropriate part of such bank to his private use, and a riparian proprietor has such an interest, distinct from that of the public, that he may recover for another's appropriation of a part of the bank to a private use. Pittsburgh & Southern Coal Co. v. Otis Mfg. Co., 249 F. 667, 161 C. C. A. 577.

At common law riparian proprietor whose land extended to high-water mark of tide waters had right of ingress and egress to and from land over the waters upon which his land bordered. Thiesen v. Gulf, F. & A. Ry. Co. (Fla.) 78 So. 491.

Rights of riparian proprietors in bed of navigable stream below mean high-water line held subordinate to public right of navigation and right to improve the channel for such purpose. Mintzer v. North American Dredging Co. (D. C.) 242 F. 553, decree affirmed North American Dredging Co. of Nevada v. Mintzer, 245 F. 297, 157 C. C. A. 489.

In improving navigable stream for purpose of navigation, held, that there is no right to carry away underlying soil without compensation to riparian proprietor and to sell it to another. Id.

In Florida riparian proprietor whose land extends to high-water mark of tide waters has right of ingress and egress, of unobstructed view over waters, and, in common with public, right of navigation, bathing and fishing over and in such waters. Id.

Whether a riparian owner having the right to use waters for irrigation has actually used them or not is immaterial, the right to such waters not being subject to acquirement by use or to loss by disuse. Half Moon Bay Land Co. v. Cowell (Cal.) 160 P. 675.

The use by one riparian owner of the water of a stream in whole or in part cannot be interfered with by another riparian owner, not using the water himself. Id.

Owners of land upon the littoral of a navigable bay have no right of access to deep water over intervening tide lands. City of Oakland v. Wheeler (Cal. App.) 168 P. 23.

The riparian rights of owners of land on the shore of Lake Michigan adjoining the water were the right of accretion and the right of access to the water from their land. Miller v. Commissioners of Lincoln Park, 116 N. E. 178, 278 Ill. 400.

The riparian rights of owners of land on the shore of Lake Michigan adjoining the water were the right of accretion and the right of access to the water from their land. Id.

Addition to the land of an owner of property abutting on one of the Great Lakes, cause by accretions due in part to the erection of artificial structures by other parties on adjacent property, belongs to the riparian owner. Brundage v. Knox, 117 N. E. 123, 279 Ill. 450.

As a general rule, additions to land fronting on bodies of water, caused by artificial means, by the owner of the adjoining shore land, do not come under the laws as to ownership of accretions formed by purely natural causes. Id.

A riparian owner may make such reasonable use of the water of a navigable river for power or other purposes as does not materially interfere with navigation. Bissell Chilled Plow Works v. South Bend Mfg. Co. (Ind. App.) 111 N. E. 932.

An owner of land abutting on a navigable stream had a right to the use of the ice abutting to the land on which its manufacturing plant was located. Parsons v. E. I. Du Pont De Nemours Powder Co. (Mich.) 164 N. W. 413.

Sand and gravel in navigable streams belong to riparian owners, who are entitled to compensation from private individuals who take the same. McMorran Milling Co. v. C. H. Little Co., 167 N. W. 990, 201 Mich. 301.

Where an island increases by accretions, a riparian owner cannot claim any part thereof extending beyond his boundaries. Archer v. Southern Ry. Co. in Mississippi, 75 So. 251, 114 Miss. 403.

The owner of tidelands on a navigable stream cannot be deprived of his rights to draw seines along his lands by erection of fish traps by private individuals under federal license on the theory that such persons are acting under the jus publicum. Johnson v. Jeldness, 167 P. 798, 85 Or. 657.

Act Cong. Feb. 14, 1859, § 2, admitting Oregon to statehood and providing for freedom of navigable waters, is merely declarative and preservative of the jus publicum, including the public rights of navigation and fishery; but a freeholder whose close abuts upon such waters is entitled to the aid of the courts to maintain his right against invasion by private persons in their own interests. Id.

Conceding that title to bed of stream which is navigable in fact is in riparian owners, they do not own the water itself, but only the use of it as it

flows by their property. Guilliams v. Beaver Lake Club (Or.) 175 P. 437.

22. Landings and wharves.—Where title to tidelands was withheld from sale by Const. Cal. 1879, art. 15, § 3, no wharfing-out right by an owner of water front property can be acquired by adverse possession. City of Oakland v. Wheeler (Cal. App.) 168 P. 23.

CITED WITHOUT DEFINITE APPLICATION

U. S. v. Brewer-Elliot Oil & Gas Co. (D. C.) 249 F. 609.

§ 4919. (R. S. § 2477.) Right of way for highways.

Grant of right of way.—In action to restrain park commissioners from occupying land for road purposes, county's evidence to support its claim, not specifically pleaded, of right to road under this section, held admissible, not constituting variance. Greiner v. Board of Com'rs of Park County (Colo.) 173 P. 719.

If way for highway was granted public by Act Cong. July 26, 1866, and road was laid out before November, 1872, when government survey was made dividing tract into sections, this section applied to give public right of way, despite Colo. Organic Act, providing a temporary government for territory of Colorado, approved February 28, 1861, section 14 reserving sections 16 and 36 in each township for support of schools, though one of sections involved was section 16. Id.

—— **Acceptance.**—For county commissioners to accept on state's behalf grant of right of way over public domain expressed in this section, it must conform to Rev. Codes Idaho, § 916 et seq., and its order of record declaring certain section lines to be public highways, is not substantial compliance with law. Gooding Highway Dist. of Gooding County v. Idaho Irr. Co. (Idaho) 164 P. 99.

To constitute acceptance of congressional grant of right of way for highways across public lands, there must be either user sufficient to establish highway under laws of state or some positive act of proper authorities manifesting intent to accept. Koloen v. Pilot Mound Tp. (N. D.) 157 N. W. 672.

Laws 1870–71, c. 33, accepting right of way for highways on public lands granted by this section, related back to date of grant, and was not revoked by subsequent use of part of land as Indian reservation, nor by Laws N. D. 1897, c. 112, §§ 3, 22, and Laws 1879, c. 97, § 3. Faxon v. Lallic Civil Tp., 163 N. W. 531, 36 N. D. 634.

Under this section a highway grant may be accepted by the public without action by the public authorities and continued use of the road under circumstances clearly indicating an intention to accept is sufficient. Hatch Bros. Co. v. Black (Wyo.) 165 P. 518.

Evidence held to make a question for the jury whether a highway across public lands granted by this section was accepted by the public. Id.

Interference with homestead and other entries.—Under this section and Rev. St. Colo. 1908, § 5834, highway cannot be declared established over section or township lines on public domain where it interferes with rights of entryman thereon. Korf v. Itten (Colo.) 169 P. 148.

Under this section and Rev. St. Colo. 1908, § 5834, declaration of highway over public domain does not establish same as to lands on which there has been homestead or pre-emption entry though entries have been subsequently abandoned. Id.

Land granted to railroad.—Sections of land granted to a railroad before this section was made applicable by Pol. Code S. D. § 1594, were not public lands on which lines highways could thereby be opened. Sample v. Harter (S. D.) 156 N. W. 1016.

§ 4920. (Act July 5, 1884, c. 214, § 6.) Roads across military reservations; ferry landings; bridges.

City roadway constructed by permission of Congress through land occupied as a fort.—City, permitted by Congress to construct roadway, with curbings, through federal land occupied as a fort, held not liable for injury to one who, while in exercise of due care, tripped over iron guard placed by a federal officer, rendering sidewalk constructed by government outside the curb unsafe for travel. Holt v. City of Buffalo (Sup.) 160 N. Y. S. 750.

§ 4921. (Act March 3, 1875, c. 152, § 1.) Right of way through public lands granted to railroads.

Railroad right of way—Acquisition in general.—Under Act Cong. March 3, 1875, railroad right of way over public lands may be acquired either by actual construction of road or by approval of Secretary of Interior after definite location and filing profile of road in local land office. Van Dyke v. Arizona Eastern R. Co. (Ariz.) 157 P. 1019.

Where railroad company purchased right of way over mining location, such right of way was limited by terms of purchase so long as land remained a mining location, but not when by aban-

donment it reverted to public domain. Id.

Homesteaders of lands in forest reserve, claimed by railroad as within right of way under Act Cong. March 3, 1875 (Comp. St. 1916, §§ 4921–4926) and Act March 3, 1899 (Comp. St. 1916, § 4945), could not object, as against railroad, that it was beyond its charter powers to construct line involved, that being matter for Secretary of Interior when granting permission to locate line, while homesteaders had no relation to railroad entitling them to complain. Id.

—— Nature and purpose of grant.—Grant of railroad right of way has been fixed by Congress at 100 feet on each side of center of track, and power to so fix it is a legislative function which cannot be reviewed by courts. Van Dyke v. Arizona Eastern R. Co. (Ariz.) 157 P. 1019.

Act Cong. July 2, 1864, c. 217, § 2, granting right of way to Northern Pacific Railroad, granted limited fee on implied condition of reverter if the grantee or its successor ceased to use or retain land for purpose for which it was granted. Crandall v. Goss, 167 P. 1025, 30 Idaho, 661.

Under Act of Congress July 1, 1862, c. 120, as amended by Act Cong. July 2, 1864, c. 216, Union Pacific Railroad Company became owner in fee of a right of way 200 feet on each side of center of track, superior to claims initiated after amendatory act, and such right was not a mere easement of passage. Union Pac. R. Co. v. Davenport, 170 P. 993, 102 Kan. 513.

Under Act Cong. July 1, 1862, c. 120, as amended by Act Cong. July 2, 1864, c. 216, the Union Pacific Railroad Company became owner in fee of right of way 200 feet on each side of center of track, and not a mere easement of passage, which would not be defeated by adverse possession. Id.

Under Act Cong. July 27, 1866, c. 278, granting railroad right of way over public lands of United States without reservation, if it clearly appeared that the term "public lands" was intended to include lands previously reserved for specific purposes, such intention would prevail. Dugan v. Montoya (N. M.) 173 P. 118.

A right of way granted by Congress and devoted to transportation by a common carrier cannot, either with or without the consent of the carrier, be devoted to permanent structures such as tipples for a coal company. Ketchum Coal Co. v. Pleasant Valley Coal Co. (Utah) 168 P. 86.

—— Lands subject to grant of right of way.—Rights of applicant to select land as forest reserve lieu lands held superior to those of railroad whose profile under this act was filed and approved after his application was filed but before patents were issued. Eastern Oregon Land Co. v. Deschutes R. Co., 246 F. 400, 158 C. C. A. 464, reversing decree Same v. Des Chutes R. Co. (D. C.) 213 F. 897, certiorari denied Deschutes R. Co. v. Eastern Oregon Land Co., 38 S. Ct. 192, 245 U. S. 672, 62 L. Ed. 540.

Where, under Act Dec. 15, 1870, railroad company was granted right of way over public land, it is entitled to right of way over such lands within incorporated city, despite town-site law, for it could not have been intended that right of way would stop at city limits. Salt Lake Inv. Co. v. Oregon Short Line R. Co., 38 S. Ct. 348, 246 U. S. 446, 62 L. Ed. 823, affirming judgment 148 P. 439, 46 Utah, 203.

Where defendant after holding land under mining location abandoned it and immediately established a homestead residence thereon which finally ripened into a patent, his title as against a railroad claiming a right of way dated from his homestead residence, not from his prior mining location. Van Dyke v. Arizona Eastern R. Co. (Ariz.) 157 P. 1019.

After contract between United States and state segregating lands under Comp. St. 1916, § 4686, such lands are reserved from sale by United States, and are not public lands, within Act Cong. March 3, 1875, c. 152, granting railroad rights of way, and are not subject to location thereunder. Oregon Short Line R. Co. v. Williams, 168 P. 14, 30 Idaho, 715.

If when railroad seeks to appropriate public land for right of way it is subject to entry and sale, it is entitled to benefits of this act, though such land was reserved from entry and sale at date of its passage, as status of land at appropriation and not at date of act controls railroad's rights. Jackman v. Atchison, T. & S. F. R. Co. (N. M.) 170 P. 1036.

Claim of adverse possession by defendant or his predecessor holding under a pre-emption or homestead claim subsequent to Act Cong. March 21, 1864, held unavailing against right of way granted to Northern Pacific Railroad Company by Act Cong. July 2, 1864. Northern Pac. Ry. Co. v. McDonald, 157 P. 222, 91 Wash. 113.

—— Location and acquisition of title.—A definite location of a railway right of way under Act March 3, 1875, is made by completion of the grading, though a map is not filed in the local land office. Barlow v. Northern Pac. Ry. Co., 36 S. Ct. 456, 240 U. S. 484, 60 L. Ed. 760, affirming judgment Northern Pac. Ry. Co. v. Barlow, 143 N. W. 903, 26 N. D. 159.

Definite location by railroad of right of way under Act Cong. March 3, 1875 (Comp. St. 1916, §§ 4921–4926), occurs by actual construction of road. Van Dyke v. Arizona Eastern R. Co., 39 S. Ct. 29, 63 L. Ed. —.

Under Act Cong. March 3, 1875 (Comp. St. 1916, §§ 4921–4926) and Act March 3, 1899 (Comp. St. 1916, §

4945), railroad which platted lines across public lands, filing in local land office map of definite location some months after land was incorporated in forest reserve, held to have acquired part of land involved, as against homesteader, despite change in right of way, as constructed, from filed map; Secretary of Interior having given permission to enter reserve and approved map. Id.

Where railroad company long after constructing its road filed its amended map and profile in the local land office, its title to its right of way was initiated by construction of road and not by filing such map. Van Dyke v. Arizona Eastern R. Co. (Ariz.) 157 P. 1019.

Where the entryman, whose claim plaintiff successfully contested before ousted, granted a right of way to defendant, which filed a map of location which was approved by Secretary of the Interior, and constructed its railroad, held that under this act and Rev. St. § 2288 (Comp. St. 1916, § 4535), the railroad company acquired title to its right of way, good as against plaintiff. Pierce v. Chicago, M. & P. S. Ry. Co. (Mont.) 156 P. 127.

Where railroad complied with this act, and Secretary of Interior approved its profile map of right of way and station grounds, which approval was noted on plats in local land office, the omission of the reservation from the patent or final receipt of an entryman settling after right of railroad accrued did not give patentee title to land. Jackman v. Atchison, T. & S. F. R. Co. (N. M.) 170 P. 1036.

Act Cong. March 3, 1875, §§ 1, 4 (Comp. St. 1916, §§ 4921, 4924) permits location of right of way and acquisition of title by construction of railroad over public domain, and acquisition of station grounds by location of road, filing of profile in local land office, and approval by Secretary of Interior noted in plats in local land office. Id.

—— **Right to attack grant.**—One holding title to homestead, on which residence was acquired subsequent to construction of railroad, cannot attack grant of right of way on ground that railroad had no capacity to accept grant. Van Dyke v. Arizona Eastern R. Co. (Ariz.) 157 P. 1019.

Timber for construction of road.—A railroad, under Act March 3, 1875 (Comp. St. 1916, § 4921), cut ties "necessary for the construction of said railroad," and granted to plaintiffs the right to use and sell certain portions of the timber remaining, known as tie slash. Held, that the railroad acquired no title to tops of trees from which the tie slash was made, and hence could confer none on an assignee, and an official of the General Land Office had no authority to permit removal of such slash. Caldwell v. U. S., 53 Ct. Cl. 33.

§ 4924. (Act March 3, 1875, c. 152, § 4.) Same; map of road to be filed; forfeiture of rights.

I. FILING AND APPROVAL OF PROFILE OR MAP OF ROAD

4. Method of securing station grounds.—This section, in requiring filing of profile of road, is directory, and railroad may file such map and secure benefits of act after prescribed time for filing has elapsed, and that it has completed its road does not prevent it from obtaining station grounds thereunder, if land is public land when it applies therefor. Jackman v. Atchison, T. & S. F. R. Co. (N. M.) 170 P. 1036.

9. Conclusiveness of decision of Secretary of Interior.—Approval by Secretary of Interior of railroad's profile filed under this act, showing its claim to lands for right of way and stations, is conclusive against collateral attack, if, when so approved, land was public lands of United States subject to entry and sale. Jackman v. Atchison, T. & S. F. R. Co. (N. M.) 170 P. 1036.

12. Effect of appropriation of lands.—Where railroad, by Act Cong. July 27, 1866, c. 278, was granted all "necessary grounds" for its station, switches, etc., and filed a copy with land office showing its claim to certain land, which was acquiesced in, a private individual cannot litigate with railroad the question of necessity. Dugan v. Montoya (N. M.) 173 P. 118.

Railroad company complying with Act Cong. July 27, 1866, c. 278, giving right to lands for right of way and station, acquired more than an easement and took a limited fee, to which no one could acquire any title by adverse possession or by grant from railroad itself. Id.

II. ABANDONMENT OR FORFEITURE OF RIGHTS

15. Forfeiture.—The question of railroad's forfeiture of land grant under Act Cong. July 27, 1866, c. 278, for nonuser, could only be asserted by United States either by legislative declaration or in a proper proceeding, and until such assertion land would not revert to United States, but would remain in grantee. Dugan v. Montoya (N. M.) 173 P. 118.

§ 4925. (Act March 3, 1875, c. 152, § 5.) Same; lands excepted.

See, also, notes under section 4921, ante.

Lands in forest reserve.—Lands in forest reserve are excepted from grant of right of way over public lands by provisions of this section. Chicago, M. & St. P. Ry. Co. of Idaho v. United States, 37 S. Ct. 625, 244 U. S. 351, 61 L. Ed. 1184, affirming decree 218 F. 288, 134 C. C. A. 84.

In view of exceptions in this act and Act March 3, 1899 (Comp. St. 1916, § 4945), a railroad can acquire right of way to a forest reserve only through approval of the Secretary of Interior. Id.

Temporary withdrawal by direction of Secretary of Interior of land with view of creation of forest reserve under Act March 3, 1891, § 24 (Comp. St. 1916, § 5121), held an obstacle to acquisition of railroad right of way over such lands under this section. Id.

§ 4933. (Act Aug. 30, 1890, c. 837, § 1.) Reservation in patents of right of way for ditches or canals.

Power of government in adopting law.—The government of the United States, in adopting the laws under which it will transfer public lands to private persons, has power to grant such lands in fee, or less than in fee, or on lease for limited terms and limited uses. Cosby v. Danziger (Cal. App.) 175 P. 809.

Indemnity railroad lands.—The requirement of this section as to reservation of a right of way for ditches or canals embraces indemnity railroad lands selected under Act July 27, 1866, after the passage of this section. U. S. v. Lane, 46 App. D. C. 74.

Under this section it was the duty of the Land Department, in issuing a patent to the Southern Pacific Railroad Company for indemnity lands under the act of July 27, 1866 (14 Stat. 292, c. 278), which lands were selected by that company after the passage of the act of 1890 to insert in the patent a reservation from the lands thereby granted of such a right of way. Id.

Government easement as incumbering title.—A contract to pass an ordinary clear and unincumbered title is not complied with by offering a title based on a patent which excepts a right of way for ditches to be constructed by its authority. Cosby v. Danziger (Cal. App.) 175 P. 809.

§ 4934. (Act March 3, 1891, c. 561, § 18, as amended, Act March 4, 1917, c. 184, § 1.) Right of way for irrigation and drainage purposes.

The right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company or drainage district formed for the purpose of irrigation or drainage and duly organized under the laws of any State or Territory, and which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization under the same, to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof; also the right to take from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: Provided, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the department of the Government having jurisdiction of such reservation; and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories. (26 Stat. 1101. 39 Stat. 1197.)

This section was amended by Act March 4, 1917, c. 184, § 1, cited above, by inserting, after the words "any canal or ditch company," the words "or drainage district," and by inserting, after the words "for the purpose of irrigation," the words "or drainage," so as to make the section read as set forth here.

Notes of Decisions

Purpose and effect of statute.—Act May 11, 1898, § 2 (Comp. St. 1916, § 4938), and Act March 3, 1891, §§ 18–21 (this section and Comp. St. 1916, §§ 4935–4937), did not supersede or in any way affect Act May 14, 1896, § 2 (Comp. St. 1916, § 4944), which requires the consent of the Secretary of

the Interior to the acquiring by power companies of rights in public lands or forest reservations. Utah Power & Light Co. v. U. S., 230 F. 328, 144 C. C. A. 470.

No right to use public lands as sites for electric power works can be founded on this section and Comp. St. 1916, §§ 4935–4937, or under Act May 11, 1898 (sections 4938, post, and Comp. St. 1916, § 4943), where no maps of location have been filed or approved and rights of ways are not claimed for irrigation. Utah Power & Light Co. v. U. S., 37 S. Ct. 387, 243 U. S. 389, 61 L. Ed. 791.

§§ 4935–4937. (Act March 3, 1891, c. 561, §§ 19–21.) Same; map; damages to settlers, etc.

See Utah Power & Light Co. v. U. S., 230 Fed. 328, 144 C. C. A. 470; note, ante, § 4934.

§ 4938. (Act May 11, 1898, c. 292, § 2, as amended, Act March 4, 1917, c. 184, § 2.) Right of way for water transportation, domestic purposes, or development of power.

Rights of way for ditches, canals, or reservoirs heretofore or hereafter approved under the provisions of sections eighteen, nineteen, twenty, and twenty-one of the Act entitled "An Act to repeal timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation or drainage. (30 Stat. 404. 39 Stat. 1197.)

This section was amended by Act March 4, 1917, c. 184, § 2, cited above, by inserting at the end thereof the words "or drainage."

Notes of Decisions

Purpose of legislation.—This section and Act March 3, 1891, §§ 18–21 (Comp. St. 1916, §§ 4934–4937), did not supersede or in any way affect Act May 14, 1896, § 2 (Comp. St. 1916, § 4944), which requires the consent of the Secretary of the Interior to the acquiring by power companies of rights in public lands or forest reservations. Utah Power & Light Co. v. U. S., 230 F. 328, 144 C. C. A. 470.

Sites for electric power.—No right to use public lands as sites for electric power works can be founded on Comp. St. 1916, §§ 4934–4937, relating to rights of way for purposes of irrigation, when approved by Secretary of Interior, or under this section where no maps of location have been filed or approved and rights of ways are not claimed for irrigation. Utah Power & Light Co. v. U. S., 37 S. Ct. 387, 243 U. S. 389, 61 L. Ed. 791.

Cited without definite application, Utah Light & Traction Co. v. U. S. (C. C. A.) 230 F. 343.

§ 4943. (Act Jan. 21, 1895, c. 37, as amended, Act May 11, 1898, c. 292, § 1.) Right of way for tramroads, canals, or reservoirs.

Right of way for canal.—Federal government, having passed title to plaintiff to right of way for canal by statute, could convey no title thereto when it conveyed title to mill site; patentee of land in mill site took title subject to right of way for canal, and purchaser of mill site acquired no greater right. Sheehan v. Kasper (Nev.) 165 P. 632.

Sites for electric power.—No right to use public lands as sites for electric power works can be founded on Act March 3, 1891, §§ 18–21, relating to rights of way for purposes of irrigation, when approved by Secretary of Interior, or under Act May 11, 1898 (this section, and section 4938), where no maps of location have been filed or approved and rights of ways are not claimed for irrigation. Utah Power & Light Co. v. U. S., 37 S. Ct. 387, 243 U. S. 389, 61 L. Ed. 791.

See Utah Power & Light Co. v. U. S. (C. C. A.) 230 F. 328.

Cited without definite application, Utah Light & Traction Co. v. U. S., 230 F. 343, 144 C. C. A. 485.

§ 4944. (Act May 14, 1896, c. 179, § 2.) Right of way to electric power companies.

Mode of acquiring rights.—So far as they may have been applicable to rights of way for electrical power, Comp. St. 1916, §§ 4647, 4648, granting right of way over public lands for canals carrying water for certain purposes, was su-

perseded by this section, empowering Secretary of Interior to permit use of right of way for purpose of generating, manufacturing, or distributing electric power. Utah Power & Light Co. v. U. S., 37 S. Ct. 387, 243 U. S. 389, 61 L. Ed. 791.

Comp. St. 1916, §§ 4934–4938, did not supersede or in any way affect this section, which requires the consent of the Secretary of the Interior to the acquiring by power companies of rights in public lands or forest reservations. Utah Power & Light Co. v. U. S., 230 F. 328, 144 C. C. A. 470.

The provisions of Comp. St. 1916, §§ 4647, 4648, confirming rights to the use of water and to the maintenance of canals and ditches on public lands acquired and which became vested in accordance with local customs and laws, were broad enough to include reservoirs, dams, flumes, pipes, and tunnels; and a corporation which constructed such structures on public lands while those sections were in force is protected in their use, whether or not they had been put into operation, but no right to maintain power houses or transmission lines for electric power on public land could be acquired thereunder, and the right to any further acquisition terminated on the passage of this section which substituted for such vested easement system the system of obtaining permits from the Secretary of the Interior. Utah Light & Traction Co. v. U. S. (C. C. A.) 230 F. 343.

No right to maintain power houses or transmission lines for electric power on public land could be acquired under Rev. St. §§ 2339, 2340 (Comp. St. 1916, §§ 4647, 4648), and the right to any further acquisition terminated on the passage of this section, which substituted for such vested easement system the system of obtaining permits from the Secretary of the Interior. Id.

One appropriating water, but not constructing reservoir and canals for electric power purposes until after Rev. St. § 2339 (Comp. St. 1916, § 4647), was superseded by Act May 14, 1896, held to have no easement therefor. U. S. v. Utah Light & Ry. Co. (D. C.) 242 F. 742.

Act May 14, 1896, as to rights of way over public land for electric purposes, held not to give easement to one completing its diversion of water before the promulgation of regulations by Secretary of Interior. Id.

§ 4945. (Act March 3, 1899, c. 427, § 1.) Rights of way for wagon roads or railroads.

Approval of railroad right of way.—Equity has jurisdiction of a suit by the United States to enjoin railroad from constructing road through national forest reserve without execution of stipulation in accordance with an agreement by the railroad to pay for damages caused by construction and operation of road. Chicago, M. & St. P. Ry. Co. of Idaho v. U. S., 37 S. Ct. 625, 244 U. S. 351, 61 L. Ed. 1184, affirming degree 218 F. 288, 134 C. C. A. 84.

Railroad company which had availed itself of advance permission to construct its road through a forest reserve granted by the Forest Office on faith of promise to execute a stipulation must execute it or discontinue construction in operation of its road. Id.

In view of exceptions in Act March 3, 1875 (Comp. St. 1916, § 4921), and the provision in this section, a railroad can acquire right of way to a forest reserve only through approval of the Secretary of Interior. Id.

Under this section and Comp. St. 1916, §§ 4921–4926, railroad which platted lines across public lands, filing in local land office map of definite location some months after land was incorporated in forest reserve, held to have acquired part of land involved, as against homesteader, despite change in right of way, as constructed, from filed map; Secretary of Interior having given permission to enter reserve and approved map. Van Dyke v. Arizona Eastern R. Co., 39 S. Ct. 29, 63 L. Ed. —.

Homesteaders of lands in forest reserve, claimed by railroad as within right of way under this section and Comp. St. 1916, §§ 4921–4926, could not object, as against railroad, that it was beyond its charter powers to construct line involved, that being matter for Secretary of Interior when granting permission to locate line, while homesteaders had no relation to railroad entitling them to complain. Id.

Where railroad has been granted permit under this section to enter a forest reserve and its map of location approved by Secretary of Interior, it must be presumed that road has conformed with rules of Interior Department, that it was rightfully on the reservation, and that construction was sanctioned by proper authorities. Van Dyke v. Arizona Eastern R. Co. (Ariz.) 157 P. 1019.

Actual construction of railroad having proper permission under this section to enter forest reserve invests railroad with title to its right of way. Id.

Cited without definite application, Eastern Oregon Land Co. v. Deschutes R. Co. (C. C. A.) 246 F. 400.

§ 4946. (Act Feb. 15, 1901, c. 372.) Rights of way for electrical plants.

Effect of statute.—Those who have not conformed to requirements of this section, and have received no license under it, can claim no right under such statute to use public lands as sites for electric power works. Utah Power & Light Co. v. U. S., 37 S. Ct. 387, 243 U. S. 389, 61 L. Ed. 791.

Those using public lands in forest reservations as sites for works to distribute electric power without license under this section, or conforming with administrative regulations, cannot complain that some of the regulations go beyond what is appropriate for protection of the interests of the government. Id.

Congressional enactments, recognizing that rights to use water in streams running through public lands may be acquired in accordance with local laws, have no application over right to use public lands and forest reservations as sites for electric power works. Id.

Appropriate compensation to the United States for past use of public lands as sites for electric power works without consent of the United States should be included in a decree avoiding such use, measured by the reasonable value of the occupancy, and not by charges fixed by administrative regulations promulgated under this section. Id.

Defendant, having succeeded to rights of predecessors authorized to construct on public domain plant for generation of electricity, held confined to rights given by this section; permission for construction being applied for and granted under such act. U. S. v. Colorado Power Co. (D. C.) 240 F. 217.

This section relates to Secretary of Interior, and confers no powers on Secretary of War. 30 Op. Atty. Gen. 154.

Licenses or permits to use land and charges therefor.—One constructing plant on public domain in pursuance of permission of Secretary of Interior under this section has no more than revocable permit. U. S. v. Colorado Power Co. (D. C.) 240 F. 217.

Under this section held, that there is a doubtful field as to exactions Secretary of Interior may make for use of public domain by electrical companies, and hence refusal of such company to pay exaction does not warrant forfeiture of its rights. Id.

Secretary of Interior cannot, without just cause, or arbitrarily, exercise his discretion and revoke permit given to electrical company under this section. Id.

Rights of electric company in plant erected on public domain pursuant to permission given under this section, held not affected because water was diverted by tunnel, instead of by open ditches, according to application. Id.

In view of the ruling of the Secretary of Interior a license granted plaintiff pursuant to this section to maintain a power line across the Cœur d'Alene Indian reservation, held not revoked by the granting of a patent under Act June 21, 1906, to lands used as part of the right of way, though no reservation was contained therein. Washington Water Power Co. v. Harbaugh (D. C.) 253 F. 681.

A permit under this section to construct a power line over the Cœur d'Alene Indian reservation held a mere license, revocable by the Secretary of Interior, together with a right of way for a telephone line granted to the same company under Comp. St. 1916, § 4191; the latter being a mere incident to the license. Id.

Where a patentee of public lands took same burdened by license for power line granted power company, held, that power company was entitled to access under certain conditions prescribed to govern both parties. Id.

Applications for revocable permits under this section should be filed with and passed upon by the Secretary of Agriculture when they relate to lands of the national forests. 30 Op. Atty. Gen. 263.

§ 4947. (Act Feb. 1, 1905, c. 288, § 4.) Rights of way for dams, reservoirs or water plants for municipal, mining, and milling purposes.

Transmission lines for distribution of electrical power.—This section does not invest the Secretary of the Interior with authority to grant rights of way for transmission lines through the national forests for the distribution of electrical power. 30 Op. Atty. Gen. 263.

Rights of power company trespassing on lands before enactment of statute.—This section is to be construed in connection with prior acts in pari materia, and rights thereunder can only be acquired under such reasonable rules and regulations as may be prescribed by the Secretary, who is clearly authorized to impose conditions on the grant. It conferred no rights on a power company which, prior to its passage had as a trespasser and without right entered on public lands later included in a forest reservation, appropriated water therefrom, and constructed thereon its electrical plant. Utah Power & Light Co. v. U. S. (C. C. A.) 230 F. 328.

§ 4948. (Act March 4, 1911, c. 238.) Rights of way for electrical poles and lines.

Authority of Secretary of Agriculture.—The authority to grant easements for rights of way for electrical, telephone, and telegraph purposes, as contemplated by this act is vested in the Secretary of Agriculture, when and in so far as the lands to be affected constitute portions of the national forests. (1914) 30 Op. Atty. Gen. 263.

CHAPTER TEN D—GRANTS OF SWAMP AND OVERFLOWED LANDS

§ 4958. (R. S. § 2479.) Grant to States to aid in construction of levees and drains.

3. Subsequent disposal of lands by government.—Under Act Cong. Sept. 28, 1850 (Comp. St. 1916, §§ 4958–4960), known as the Swamp Act, and Act Cong. March 3, 1905, known as the McLaurin Act, confirming sales by state under Swamp Act, defendants whose remote vendors had purchased from state held to have good title, as against complainant entering or purchasing in 1907 under the homestead laws. Shoub v. Perkins (Miss.) 71 So. 270.

6. Land subject to grant—Swamp and overflowed lands within statute.—Land erroneously excluded from acreage of township by meander line, there being no lake to meander, held not to pass under grant to the state by the Swamp Land Act of 1850 and a patent thereunder which described the acreage of the township in conformity to reduction by excluding such area. Lee Wilson & Co. v. U. S., 38 S. Ct. 21, 245 U. S. 24, 62 L. Ed. 128, affirming decree 227 F. 827, 142 C. C. A. 351, which affirmed U. S. v. Lee Wilson & Co. (D. C.) 214 F. 630.

Parol evidence is admissible to show that lands claimed by Louisiana to have been selected under Act March 2, 1849, were swamp lands in 1850, so as to give the state title under Swamp Land Act. U. S. v. Thibodeaux, 232 F. 91, 146 C. C. A. 283.

Under Act Sept. 28, 1850 (Comp. St. 1916, §§ 4958–4960), investing the state with a title to all swamp and overflowed land therein, and state's grant of such land to counties, nothing more than proof that land was overflowed land was necessary to invest the county with the title. Burns v. Curran, 114 N. E. 166, 275 Ill. 448.

Determination by Secretary of Interior, as head of Land Department, that lands were swamp and overflowed, within Swamp Land Act of 1850, is not open to collateral attack. State v. New, 117 N. E. 597, 280 Ill. 393.

§ 4959. (R. S. § 2480.) Lists and plats of lands for governors of States.

I. LISTING AND IDENTIFICATION OF LANDS

1. Identification and listing essential.—Under Act Cong. March 2, 1849, where entire section of swamp lands is listed and approved by Secretary of Interior for conveyance to state, register of land office has no authority to dispose of it as fractional section nor to sell unsurveyed part uncovered by recession of water. Bank of Coushatta v. Yarborough (La.) 71 So. 784.

When approved list of swamp lands mentions whole section, entryman buying on basis of estimated acreage under description calling for all of fractional section acquires no title to unsurveyed portion subsequently uncovered by recession of water. Id.

4. Conclusiveness and effect of decisions as to character of lands.—Until state's selection of swamp lands, as of character passing to it under Act Cong. of Sept. 28, 1850 (Comp. St. 1916, §§ 4958–4960) was approved by federal Land Department, question remained under control of department to extent of its authority to order resurvey or correct errors, and until selection was approved and patent issued conflicting claims were to be settled by Land Department and not by courts. Willoughby v. Caston (Miss.) 72 So. 129.

II. PATENTS

6. Nature, office, and effect of patent.—Where the United States patent to the state conveyed land according to official plats of the survey, which described the land by section numbers and acreage without reference to meander line or thread of stream, and the total acreage was less than the acreage would have been had it included an impassable morass within the meander line, such morass remained the property of the United States. Tolleston Club of Chicago v. Carson (Ind.) 114 N. E. 629.

III. DISPOSAL OF LANDS AND PROCEEDS

10. Nature of grant as affecting disposal of lands and proceeds by state.—A state patent of a west quarter section, made under Act Ind. May 29, 1852 (1 Rev. St. Ind. 1852, c. 104), as to donated swamp lands, held not to include lands west of the west boundary of the section, though it was a nonnavigable river. Cobe v. Darrow (Ind. App.) 112 N. E. 257.

11. Application of proceeds.—In view of amounts transferred from state's general fund to drainage fund, there was no indebtedness from that fund to the drainage fund. No unsold swamp or indemnity lands belonged to the drainage fund, though one-half of lands and moneys realized on state's pending claims under Swamp Land and Indemnity Acts would belong to it. State v. Donald, 157 N. W. 794, 162 Wis. 609.

§ 4963. (R. S. § 2484.) Selection of lands confirmed.

Cited without definite application, Lee Wilson & Co. v. U. S., 38 S. Ct. 21, 245 U. S. 24, 62 L. Ed. 128.

§ 4968. (Act April 29, 1898, c. 229, § 3.) Title of purchasers of unconfirmed lands in Arkansas confirmed.

Land vested in state by Compromise Act.—Land within meander line, erroneously run in surveying township subsequently granted to the state under the Swamp Land Act of 1850, held not vested in the state by this and the following section. Lee Wilson & Co. v. U. S., 38 S. Ct. 21, 245 U. S. 24, 62 L. Ed. 128, affirming decree 227 F. 827, 142 C. C. A. 351, which affirmed U. S. v. Lee Wilson & Co. (D. C.) 214 F. 630.

By the compromise agreement between Arkansas and the United States, ratified March 10, 1897 (Laws 1897, p. 88), and by this act, title to land granted by the state was confirmed, though the same was later forfeited to the state for failure to pay taxes. Ballard v. Kansas City & Memphis Farms Co. (Ark.) 198 S. W. 527.

CHAPTER TEN E—DRAINAGE UNDER STATE LAWS

§ 4976a. (Act March 3, 1919, c. 113.) Lands in Minnesota made subject to state laws for drainage for agricultural purposes; erroneous cash entries validated.

That in all cases where Chippewa Indian lands in Minnesota, ceded under the Act of Congress approved January fourteenth, eighteen hundred and eighty-nine (Twenty-fifth Statutes at Large, page six hundred and forty-two), were assessed under the State drainage laws prior to the opening of the lands to entry, where the lands were subsequently opened to entry and were thereafter sold under the said drainage laws, and where cash entries for the lands were subsequently made as though authorized by the Act of Congress approved May twentieth, nineteen hundred and eight (Thirty-fifth Statutes at Large, page one hundred and sixty-nine), such erroneously allowed entries, if otherwise regular, be, and the same are hereby, validated and confirmed. (40 Stat. 1321.)

This section is an act entitled "An act to validate and confirm certain erroneously allowed entries in the State of Minnesota," cited above.

CHAPTER TEN F—PROTECTION OF TIMBER AND DEPREDATIONS

§ 4980. (R. S. § 2461.) Live-oak or red-cedar, penalty; cutting or destruction.

II. CIVIL ACTION FOR TRESPASS

12. Civil liability and remedy.—The cutting of timber on government land by a homestead entryman whose entry had been suspended held a willful trespass. International Lumber Co. v. U. S., 231 F. 873, 146 C. C. A. 69.

17. Measure of damages.—Whether interest should be included in damages for cutting timber from public land held in jury's discretion, and court erred in directing that interest should be allowed. Hammond v. U. S., 246 F. 40, 158 C. C. A. 266, reversing judgment U. S. v. Hammond (D. C.) 226 F. 849.

CITED WITHOUT DEFINITE APPLICATION

Union Naval Stores Co. v. U. S., 36 S. Ct. 308, 60 L. Ed. 644.

§ 4989. (Act June 3, 1878, c. 150, § 1.) Cutting timber on certain mineral lands.

II. ACTIONS FOR TRESPASS

19½. Questions for jury.—Whether facts and circumstances testified to, tending to show that defendant cut timber from public land, were true, held a question for the jury. Hammond v. U. S., 246 F. 40, 158 C. C. A. 266, reversing judgment U. S. v. Hammond (D. C.) 226 F. 849.

Where defendant offered evidence that public lands from which timber was cut were mineral lands, within Act June 3, 1878, this section, and Comp. St. 1916, §§ 4990, 4991, refusal of directed verdict on ground that cutting was justified under Act March 3, 1891, § 8, as amended by another act of that date (Comp. St. 1916, § 4992), held not error. Id.

20. Measure of damages.—Measure of damages for cutting timber from public land innocently held its value at the place where it was cut, and not the difference between the selling price and the expense of manufacturing it into lumber. Hammond v. U. S., 246 F. 40, 158 C. C. A. 266, reversing judgment U. S. v. Hammond (D. C.) 226 F. 849.

CITED WITHOUT DEFINITE APPLICATION

Caldwell v. U. S., 53 Ct. Cl. 33.

§ 4991. (Act June 3, 1878, c. 150, § 3.) Same; violations of Act punishable.

See Hammond v. U. S. (C. C. A.) 246 F. 40; notes, ante, § 4989.

§ 4992. (Act March 3, 1891, c. 561, § 8, as amended, Act March 3, 1891, c. 559, Act Feb. 13, 1893, c. 103, Act March 3, 1901, c. 855, Act March 3, 1919, c. 111, and Act March 3, 1919, c. 115.) Cutting timber on certain public lands for certain purposes.

It shall be lawful for the Secretary of the Interior to grant permits, under the provisions of the eighth section of the Act of March third, eighteen hundred and ninety-one, to citizens of Malheur County, Oregon, to cut timber in the State of Idaho for agricultural, mining, or other domestic purposes, and to remove the timber so cut to Malheur County, State of Oregon.

It shall be lawful for the Secretary of the Interior to grant permits under the provisions of the eighth section of the Act of March third, eighteen hundred and ninety-one, to citizens of Modoc County, California, to cut timber in the State of Nevada for agricultural, mining, or other domestic purposes, and to remove the timber so cut to Modoc County, State of California. (26 Stat. 1099, 1093. 27 Stat. 444. 31 Stat. 1436. 40 Stat. 1321, 1322.)

This section was again amended by Act March 3, 1919, c. 111, and Act March 3, 1919, c. 115, cited above, by adding thereto the last two paragraphs, as set forth above.

Notes of Decisions

Construction and purpose of statute.—Under this section residents of the states therein named were not authorized to traffic in timber on the public

lands, no matter what use may have been the purpose to make of it. Caldwell v. U. S., 53 Ct. Cl. 33.

Action for trespass.—Where defendant offered evidence that public lands from which timber was cut were mineral lands, within Act June 3, 1878 (Comp. St. 1916, §§ 4989–4991), refusal of directed verdict on ground that cutting was justified under this section as amended by another act of that date, held not error. Hammond v. U. S., 246 F. 40, 158 C. C. A. 266, reversing judgment U. S. v. Hammond (D. C.) 226 F. 849.

Cited without definite application, U. S. v. St. Paul, M. & M. Ry. Co., 38 S. Ct. 525, 62 L. Ed. 1130; Southern Oregon Co. v. U. S. (C. C. A.) 241 F. 16; U. S. v. Fletcher (C. C. A.) 242 F. 818; Chicago & N. W. Ry. Co. v. Zeibarth (C. C. A.) 245 F. 334.

CHAPTER TEN G—UNLAWFUL INCLOSURES OR OCCUPANCY; OBSTRUCTING SETTLEMENT OR TRANSIT

§ 4997. (Act Feb. 25, 1885, c. 149, § 1.) Inclosure of or assertion of right to public lands without title.

2. Construction and purpose of statute.—This section held not to forbid fencing by person holding land, by himself or his predecessors, under claim of right and color of title for over 20 years, nor authorize another to break such inclosure to initiate a homestead claim on inclosed land. Denee v. Ankeny, 38 S. Ct. 226, 246 U. S. 208, 62 L. Ed. 669, affirming judgments Morrison v. Gunning, 157 P. 1199, 91 Wash. 693, and Ridpath v. Denee, 148 P. 15, 85 Wash. 322.

Rev. Codes Idaho, § 6872, making it misdemeanor to pasture sheep on cattle ranges, is not, in its application to open public ranges, in violation of this section, declaring that assertion of right to exclusive use and occupancy of any part of public lands of United States is unlawful; this section being directed against assertion of rights which are equivalent to inclosure, while the Idaho statute was merely intended to prevent clashes between sheep herders and cattle rangers. Omaechevarria v. State of Idaho, 38 S. Ct. 323, 246 U. S. 343, 62 L. Ed. 763, affirming judgment State v. Omaechevviaria, 152 P. 280, 27 Idaho, 797.

3. Public right of pasturage.—It is the policy of the federal government as well as the state that public lands not pre-empted by actual settler shall not be inclosed and shall be used by all persons who desire to graze stock thereon. State v. Bradshaw (Mont.) 161 P. 710.

Under Act Feb. 25, 1885, court of equity will not at instance of owner of odd-numbered sections enjoin another owner of live stock from grazing them on odd-numbered sections in absence of legal fence maintained by plaintiff under Code N. M. 1915, § 39. Jastro v. Francis (N. M.) 172 P. 1139.

In exercise of right of way over sections held in private ownership, the utmost reasonable care is to be exercised by claimants of right so as to do least damage to servient estate, which, practically applied, would require herds to cross at section corners, and at no other place on servient sections. Id.

4. Possessory rights of settlers.—Under Code Civ. Proc. Cal. § 1925, in an action for possession of public land to which plaintiff had certificate of entry, held, that defendant's statement in answer that he was in adverse possession at inception of plaintiff's claim constituted a defense. Elliott v. Robbins (Cal. App.) 165 P. 1042.

7. Color of title to land inclosed.—Occupancy of public land within limits of the original survey of a Mexican land grant held not rendered unlawful by this act, after grant had been confirmed by Court of Private Land Claims. Smith v. Third Nat. Exch. Bank of Sandusky, Ohio, 37 S. Ct. 516, 244 U. S. 184, 61 L. Ed. 1071, affirming judgment Third Nat. Exch. Bank of Sandusky, Ohio, v. Smith, 148 P. 512, 20 N. M. 264.

Where title to land was in the government while plaintiff had possession under color of title, and never passed out of it until the issuance of defendant's patent, plaintiff had no paper title, and did not acquire title by adverse possession. Nance v. Walker (Ala.) 74 So. 339.

Holder of color of title to government land within original survey of Mexican land grant, not included in grant as finally confirmed, who had improved it in good faith had "claim or color of title made or acquired in good faith" within this section. Robinson v. Sawyer (N. M.) 170 P. 881.

§ 4998. (Act Feb. 25, 1885, c. 149, § 2.) Same; suits for violations of law.

Power of United States to protect its property.—The doctrine of equitable estoppel cannot be invoked against the United States, so far as to validate the unauthorized appropriation of public lands on the mere ground of occupation and improvements made and the presumption that the United States had knowledge thereof. Utah Power & Light Co. v. U. S. (C. C. A.) 230 F. 328.

The United States held entitled to maintain a suit in equity to enjoin trespass and waste on public lands by the extraction and removal of oil therefrom which constitutes their sole value and to obtain full relief therein. U. S. v. Midway Northern Oil Co. (D. C.) 232 F. 619.

Trespass on public lands and actions therefor.—A demand by the United States for spirits of turpentine and rosin manufactured from crude gum unlawfully taken from public lands is unnecessary, where defendant received the gum from the trespasser, mixed with other gum belonging to the trespasser, and has sold the entire product and accounted to the trespasser. Union Naval Stores Co. v. U. S., 36 S. Ct. 308, 240 U. S. 284, 60 L. Ed. 644, affirming judgment 202 F. 491, 123 C. C. A. 1.

The distillation by the trespasser of crude turpentine taken from government lands is a continuing trespass, that does not divest the United States of its property, but permits it to recover the manufactured product. Id.

One who enters as a trespasser upon public lands, drills wells and extracts and markets oil therefrom is not entitled to the benefit of the rule as to improvements in favor of occupying claimants in good faith under color of title requiring the government to pay for the same. U. S. v. Midway Northern Oil Co. (D. C.) 232 F. 619.

Damages.—United States held entitled to recover the reasonable value of the use of public land unlawfully appropriated by defendant. Utah Power & Light Co. v. U. S., 230 F. 328, 144 C. C. A. 470.

On recovery by the United States of public lands unlawfully appropriated to private use, but the right to which use could have been acquired under the statutes by complying with the regulations and conditions prescribed by the Secretary of the Interior and paying for the same, the United States is entitled to recover as damages the reasonable value of such use by defendant. Id.

Rule of damages stated on accounting in equity for trespass upon and the extracting and marketing of oil from public lands by parties entering in good faith and by mistake in law. U. S. v. Midway Northern Oil Co. (D. C.) 232 F. 619.

CHAPTER TEN H—ABANDONED MILITARY RESERVATIONS

§ 5012. (Act Feb. 11, 1903, c. 543.) Confirmation of selections by states in lieu of school sections; disposal of sections.

Provisions for the sale of lands in the Gig Harbor abandoned military reservation in the state of Washington are made by Act March 3, 1919, c. 108, 40 Stat. 1319.

CHAPTER TEN I—CEDED INDIAN RESERVATIONS

§ 5014. (Act Jan. 26, 1901, c. 180.) Commutation by settlers under free homestead law.

Fraud and misrepresentation.—Misrepresentations in final proof, under which an entryman, through mistake of law, was allowed to deduct time of military service, under Rev. St. §§ 2304, 2305 (Comp. St. 1916, §§ 4592, 4593), and this section, which deduction was contrary to Act Aug. 15, 1894, was misrepresentation as to an immaterial fact. U. S. v. Jones (D. C.) 232 F. 218.

Fraud in an application for commutation by an entryman not entitled to commute under Rev. St. § 2301 (Comp. St. 1916, § 4589), was not fraud as to a material matter. Id.

That an entryman effected his purpose by fraud in final proof, not entitling him to the land, does not estop him from denying the materiality of the misrepresentation. Id.

The question whether fraudulent misrepresentations, by which the entryman obtained patent to homestead, were material, is a question for the court, not the jury. Id.

The question of the damages recoverable for fraud of a homestead entryman will not be determined on demurrer to an answer relating wholly to the measure of damages. Id.

§ 5019. (Act Feb. 9, 1903, c. 531.) Town-site laws extended to ceded lands in Minnesota.

Provisions for the contesting and cancellation of certain homestead entries in the Kiowa, Comanche, and Apache Reservations, in Oklahoma, are made by Act March 3, 1919, c. 106, 40 Stat. 1318.

CHAPTER TEN J—PUBLIC LANDS IN OKLAHOMA

§ 5025. (Act May 2, 1890, c. 182, § 24.) Fraudulent settlement.

Conveyance after patent lawfully acquired.—This section, making void land entered by one for another, has no bearing, where the patent was lawfully acquired, but was conveyed to one disqualified from holding title. Ketchum Coal Co. v. Pleasant Valley Coal Co. (Utah) 168 P. 86.

Rights of heirs of entryman violating statute.—No equitable right to hold patentee as trustee held to have arisen in favor of heirs of a homestead entryman, where his entry had been canceled and patent issued to another because of his agreement contrary to this section, to make homestead entry for the benefit of another. Doepel v. Jones, 37 S. Ct. 645, 244 U. S. 305, 61 L. Ed. 1158, affirming judgment Jones v. Fearnow (Okl.) 156 P. 309.

Homestead entryman, who, contrary to this section, agreed with his mother to make the entry, comply with the homestead laws, and that patent should issue to her, and he would deed the land to her, derived no right from his entry which would vest in his heirs. Id.

CHAPTER TEN K—PUBLIC LANDS IN ALASKA

Sec.
5046. Homestead laws extended; amount to be entered; locations on unsurveyed lands; transfers.
5046a. Entry on unappropriated public lands.
5046aa. Same; unsurveyed lands.
5046b. Same; lands excepted.
5047. Mining laws extended to; mining on Bering Sea; regulations.
5049. Recording notices of location.
5053. Time for filing adverse claims, and for adverse suits.
5055. Power of attorney to locate placer-mining claim; restrictions.
5057. Area and shape of placer-mining claims.
5058. Placer-mining claims located in violation of law.
5059. Miner's labor lien on output; priority.
5060. Same; claim; filing; form.
5071. Location of lands on which coal mine has been opened or improved.
5091. Purchases for trade or manufacture; lands reserved; adverse claimants.
5093. Export of pulp wood or wood pulp.
5096. Allotment of land to native Indians or Eskimo as homesteads.
5096a. Annette Islands reserved for Meltakahtla Indians.

§ 5046. (Act March 3, 1903, c. 1002.) Homestead laws extended; amount to be entered; locations on unsurveyed lands; transfers.

4. Entry and settlement.—Provision of this section, added in conference, as to entering more than 160 acres in a single body, held intended to be germane to provision limiting distance which entry may extend along any navigable water. U. S. v. Poland, 231 F. 810, 145 C. C. A. 630.

The provision relative to entering more than 160 acres in single body held not violated by separate entries under separate surveys of adjoining tracts, only one of which touched any navigable water. Id.

Under this section defendant entered two separate tracts of 160 acres each, and paid for them with soldier's additional homestead scrip. On a suit to vacate the patent to the second entry for fraud, held, the law does not restrict one individual from acquiring title to two or more separate tracts under the act in question, even if the same be adjoining and contiguous. The limitation in the statute is that no more than 160 acres shall be entered in any single body, but it does not prohibit the location of two or more such bodies, and does not forbid the locations on contiguous and adjoining tracts of land. U. S. v. Poland, 5 Alaska, 246.

Defendant settled on a tract of unoccupied and unappropriated public nonmineral lands in Alaska, and built a home thereon, and resided there, with the expectation at some time of acquiring a legal title thereto. Held, the possessory right thus acquired is a property right, for the protection of which an appropriate action may be maintained by the occupant. Noble v. Melchoir, 5 Alaska, 729.

7. Shores or tide lands not subject to entry or sale.—Act Cong. May 14, 1898, c. 299, § 1, as to land in Alaska, held not to require reservation of 80 rods except between entries along the shore of a navigable water. U. S. v. Poland, 231 F. 810, 145 C. C. A. 630.

The land lying between high and low water mark at the foot of Seward street leading to Gastineaux Channel, in the town of Juneau, and shown to be essential to the use and convenience of said street, is public property held by the government in trust for the coming state. The defendants could not legally appropriate that portion of the beach between high and low water mark. Koehler and his coplaintiff had a right to sue for the purpose of redressing an injury to themselves by the obstruction of the street, and when their interest was made to appear they acted in the attitude of redressing a continuing trespass and wrong against themselves and acted in behalf of all others who were or might be injured by the wrongful acts of the defendants. U. S. v. McGlinchy, 5 Alaska, 4.

In 1882 plaintiff erected a T-shaped wharf extending out from the shore in front of Juneau, and used the same for landing its boats and vessels until 1894, when and always thereafter it abandoned the site, and the same was unoccupied and in a state of nature. In 1900 the defendant entered upon said tideland so formerly occupied by plaintiff, and improved it, and has ever since used and occupied it, without let or hindrance, until this suit was brought. Plaintiff claims right of possession under Act May 17, 1884, c. 53, § 8, 23 Stat. 24, providing "that Indians and other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them," etc.

Held, the act does not prohibit the persons mentioned therein from transferring the title thereto, or abandoning the same; that plaintiff did so abandon all claim or occupancy of said land before defendant entered thereon. Findings ordered for the defendant. Pacific Coast Co. v. James, 5 Alaska, 180.

On January 20, 1908, a patent for less than 160 acres of land, situate on the shore of Resurrection Bay, near Seward, Alaska, and designated as United States survey No. 241, was issued to the defendant Poland, as assignee of the rights of another qualified locator, under the soldier's additional homestead laws of the United States. On March 22, 1909, a second patent was issued to Poland, for another tract of 160 acres, known as United States survey No. 242. The second tract adjoins the first, on the northerly side, but does not reach to or abut on the waters of the bay. On a suit by the United States to vacate the second patent for fraud, held, that the second tract in this case is not along the shore of any navigable water, but is on the landward side of the first tract, and the statute does not forbid the second entry. U. S. v. Poland, 5 Alaska, 246.

A fish trap on the shores of Alaska is destroyed or carried away by the elements each fall or winter, and the tideland is thus left bare and without visible signs of possession. To maintain a continuous right to such a trap site, the one claiming it must see to it that his structures are kept in repair and used for the purpose for which they are intended. Columbia Salmon Co. v. Berg, 5 Alaska, 538.

One may lawfully acquire a right of possession on the tidelands in Alaska by going on the same when not in the actual possession of another. His pedis possessio would be good as against any one but the United States; but, if such structures as may be erected are destroyed, the one claiming the site must see to it that he again asserts his dominion over it by either an inclosure or by the erection of such improvements on the land as the nature of the situation or the purpose for which it is to be used requires. Id.

§ 5046a. (Act July 8, 1916, c. 228, § 1, as amended, Act June 28, 1918, c. 110.) Entry on unappropriated public lands.

Every person who is qualified under existing laws to make homestead entry of the public lands of the United States who has settled upon or who shall hereafter settle upon any of the public lands of the United States situated in the District of Alaska, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall, subject to the provisions and limitations of the Act approved March third, nineteen hundred and three, chapter one thousand and two, United States Statutes at Large, page one thousand and twenty-eight, be entitled to enter one hundred and sixty acres or a less quantity of unappropriated public land in said District of Alaska, and no more, and a former homestead entry in any other State or Territory shall not be a bar to a homestead entry in Alaska: Provided, That nothing herein contained shall be construed to limit or curtail the area of any homestead claim heretofore lawfully initiated. (39 Stat. 352. 40 Stat. 632.)

For section as originally enacted see U. S. Comp. St. 1916, § 5046a.

§ 5046aa. (Act July 8, 1916, c. 228, § 2, as added, Act June 28, 1918, c. 110.) Same; unsurveyed lands.

If the system of public surveys has not been extended over the land included in a homestead entry, the entryman may, after due compliance with the terms of the homestead law in the matter of residence, cultivation, and improvement, submit to the register and receiver a showing as to such compliance, duly corroborated by two witnesses, and if such evidence satisfactorily shows that the homesteader is in a position to submit acceptable final proof the surveyor general of the Territory will be so advised and will, not later than the next succeeding surveying season, issue proper instructions for the survey of the land so entered, without expense to the entryman, who may thereafter submit final proof as in similar entries of surveyed lands. So far as practicable, such survey shall follow the general system of public-land surveys, and the entryman shall conform his boundaries thereto: Provided, That nothing herein shall prevent the homesteader from securing earlier action on his entry

by a special survey at his own expense, if he so elects. (40 Stat. 633.)

This section was added to Act July 8, 1916, c. 228, by Act June 28, 1918, c. 110, cited above, in place of section 2 of said Act July 8, 1916, c. 228, and said section 2 was amended as section 3 by said Act June 28, 1918, c. 110. See § 5046b, post.

§ 5046b. (Act July 8, 1916, c. 228, § 3, as amended. Act June 28, 1918, c. 110.) Same; lands excepted.

There shall be excepted from homestead settlement and entry under this Act the lands in Annette and Pribilof Islands, the islands leased or occupied for the propagation of foxes, and such other lands as have been, or may be, reserved or withdrawn from settlement or entry. (39 Stat. 352. 40 Stat. 633.)

See note to § 5046aa, ante. For this section as originally enacted, see U. S. Comp. St. 1916, § 5046b.

§ 5047. (Act June 6, 1900, c. 786, § 26.) Mining laws extended to; mining on Bering Sea; regulations.

Custom of miners in describing claim.—The custom of miners in describing claims in reference to a "discovery claim," as "number —— above" or "below Discovery" and with regard to the creek claim, as "opposite No. —— on the right limit," or the "left," as the case may be, examined, and held a sufficient description by which to identify the property. Peca v. Huddleston, 5 Alaska, 241.

§ 5049. (Act June 6, 1900, c. 786, § 15.) Recording notices of location.

Record of unverified certificate of location of placer claim.—Under Laws Alaska 1913, c. 74, relating to the locating of placer claims, an unverified certificate of location should not be recorded, and furnishes no basis for claim. Cloninger v. Finlaison, 230 F. 98, 144 C. C. A. 396.

§ 5053. (Act June 7, 1910, c. 265.) Time for filing adverse claims, and for adverse suits.

Injunction and forfeiture.—The lessor demanded a forfeiture of the mining lease because of alleged neglect and violations of its terms. The evidence shows the ground is spotted and a low-grade proposition, that the lessee worked it in the usual way, with reasonable care and in a minerlike manner. Held. injunction and forfeiture denied. Cline v. Eastman, 5 Alaska, 264.

In his complaint the plaintiff claims to be the owner of the mining claim described therein. He prays for an injunction pendente lite, to prevent the defendant from dredging the gold from the claim and carrying it away before the title is settled. Held, the plaintiff is entitled to the relief demanded; but, owing to the peculiar hardship, that the injunction will stop the season's work of the dredge, the court offers to appoint a receiver for the gold dust, to hold it till the title to the claim can be settled in this suit, and thus allow the work to proceed. McMonigle v. Behring Dredging Co., 5 Alaska, 513.

The general equity doctrines govern injunctions with reference to mining claims. The granting or withholding of an injunction resting in the sound discretion of the court, the complainant's laches, the solvency or insolvency of the parties, and the relative inconvenience to the parties, which will ensue if a temporary injunction issues, must be considered. There is nothing peculiar in the application of the general equitable principles to mining claims, beyond the frequent urgent need of injunctive relief, because of the destructible nature of mineral deposits. Sundquist v. Halloran, 5 Alaska, 594.

Where one who claims to own a mining claim stands by for a period of years, and permits another on an adjoining claim to so conduct his workings as to cause slight damage by flooding the surface with tailings, and makes no objection till the other is in position where injunctive relief asked for would be of comparatively greater injury to the other than the injury complained of by the plaintiff, the court will not grant a temporary injunction, but will allow the condition to remain until the case can be disposed of on its merits. Id.

Where defendants' placer mine workings deposit large quantities of tailings and gravel on the plaintiff's property, and threaten to do so continuously, injunction will issue to prevent the continuance of the injury. Id.

Time for filing adverse claim.—When, pending a suit in ejectment for mining ground, the defendants gave proper notice through the United States General Land Office and applied for a patent

to the claim, and the first publication of the notice was on February 24, 1913, and the adverse claim was not filed until December 26, 1913, held under this section, that it was not filed within the time required by the statute to suspend the action of the land office, and the court lost jurisdiction when the time for adverse expired. Smith v. Wheeler, 5 Alaska, 282.

A complaint in an adverse suit regarding a mining claim in Alaska must allege the pendency of the patent proceedings by the defendant and the filing of the adverse by the plaintiff. Such allegations are necessary, that the court may determine whether or not it has jurisdiction of the cause. Id.

The mere pendency of an action of ejectment at the time patent application is made is not sufficient to suspend the proceedings. An adverse must be filed in the land office before instituting the action, and the filing of an adverse is essential to the sufficiency of the complaint. The allegation of an adverse claim, however, may be made in a supplementary complaint. Id.

§ 5055. (Act Aug. 1, 1912, c. 269, § 2.) Power of attorney to locate placer-mining claim; restrictions.

Power of attorney in general.—Where the locator makes a discovery of mineral within the boundaries of the claim, files and records a notice of location, marks the boundaries, so they can be readily traced, and files and records a power of attorney from his principal within the division, and does each of the acts before any other rights intervene or attach to the land, it is sufficient and the claim will be valid, as against subsequent locators and claimants, without regard to the order in which such necessary acts of location happen or are performed. Likaits v. Johnson, 5 Alaska, 63.

Record of power.—Under this section, held, that power of attorney to locate a placer claim in Alaska need not be recorded before location; it being sufficient if it is recorded before an adverse claim is made. Cloninger v. Finlaison, 230 F. 98, 144 C. C. A. 396.

Under this section the power of attorney to locate a placer claim for another need not be recorded before location; it being sufficient if it is recorded before an adverse claim is filed. Id.

Under this section and Comp. St. 1916, § 5058, location of Alaskan placer mining claim by attorney in fact for another before recordation of authorizing power of attorney is void. Sutherland v. Purdy, 234 F. 600, 148 C. C. A. 366.

On May 27, 1913, the defendant made and executed to one Wales a formal power of attorney, authorizing her to locate placer mines for him in Alaska. The power of attorney was recorded at Steel creek, outside of the division wherein the mines were located, on June 23, 1913. On June 30th the attorney in fact located the placer mines in question for defendant, posted notice on the claim, marked the boundaries, and made discovery. The location was in a distant, unexplored, and mountainous region, where there was no recording office. One was established there on July 20, 1913. The plaintiff located the same property on August 1, 1913. The defendant's power of attorney was recorded in that precinct on August 17, and his location notice on August 30, 1913. Held, the defendant made a valuable discovery of gold, by an attorney in fact duly authorized thereunto; the claim was properly staked and marked on the ground, so that the boundaries could be readily traced; the power of attorney was recorded in the proper recording office prior to the recording of the location notice or certificate, and within 90 days from the date of the discovery; the plaintiff was not misled or prejudiced by the failure to record the power of attorney sooner. Woodman v. Erikson, 5 Alaska, 93.

Evidence as to record.—In a suit over a placer mining claim in Alaska, which had been located for defendant by attorney in fact, evidence held insufficient to prima facie show that the power of attorney was not recorded before plaintiff's location. Cloninger v. Finlaison, 230 F. 98, 144 C. C. A. 396.

§ 5057. (Act Aug. 1, 1912, c. 269, § 4.) Area and shape of placer-mining claims.

Area of claim.—One claiming the right to make entry of a placer mining claim the boundaries of which contain an area in excess of the amount allowed by law, under permission of the owners thereof to stake the excess, should first determine the amount of such excess and stake the same in such manner that the original location thus reduced in area will not contain an additional course. Adams v. Yukon Gold Co., 5 Alaska, 391.

Rights under defective location.—A placer mining claim located in good faith is not void, because it exceeds 20 acres (an association placer claim 160 acres), but is void only as to the excess, which may be rejected from any portion the owner may select, and until he has been advised of the excess, and has had a reasonable time to make his selection, his possession extends to the entire claim, and another, who goes upon it and makes a location of any

part, is a trespasser, and his location a nullity and void for any purpose. Adams v. Yukon Gold Co., 5 Alaska, 391.

§ 5058. (Act Aug. 1, 1912, c. 269, § 5.) Placer-mining claims located in violation of law.

Void location.—Under this section and Comp. St. 1916, § 5055, location of placer mining claim by attorney in fact for another before recordation of authorizing power of attorney is void. Sutherland v. Purdy, 234 F. 600, 148 C. C. A. 366.

§ 5059. (Act June 25, 1910, c. 422, § 1.) Miner's labor lien on output; priority.

Constitutionality.—The miners' lien laws passed by Congress and the Legislature of Alaska are held to be constitutional, and within the power of Congress and the territorial Legislature, respectively. Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co., 5 Alaska, 210.

Liens in general.—The owner of a mining claim leased it to operators. The operators worked the claim and their employés filed liens. The lessor and owner posted two notices of nonliability for the debts of the lessees on the property. The notices were not kept continuously posted, and the lienors denied they saw them. Held, if the notices were actually posted in the first place in good-faith compliance with the statute, and within its terms, it is not necessary to show they were continuously maintained. Turner v. Enstrom, 5 Alaska, 118.

Knowledge that work and labor is being done on a mining claim, for which the laborers, under section 694, Comp. Laws Alaska 1913, are entitled to a lien, may be either positive or implied. The implication of knowledge arises when the party to be charged is shown to have had knowledge of such facts and circumstances as would lead him by the exercise of due diligence to a knowledge of the principal fact. This is the general rule especially applicable to the case here. Labay v. Northern Mining & Trading Co., 5 Alaska, 134.

The act passed by Congress relating to miners' liens in Alaska, as modified by the act of the Legislature of the territory, being in pari materia, are to be construed together, and, if possible, made to harmonize as one body of law. Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co., 5 Alaska, 210.

The act of the Legislature of Alaska approved April 30, 1913, entitled "An act to create, establish and provide for liens on mines," etc. (Sess. Laws 1913, p. 308), contains provisions in addition to and qualifying some of those in a prior act of Congress establishing mechanics' and miners' lien on mining claims and the product thereof in Alaska. Held, the territorial act should not be treated as an independent act. It is one relating to the same subject-matter as that legislated upon by Congress as found in section 691 et seq., Comp. Laws Alaska 1913, and the congressional and territorial legislation thereto must be treated as one harmonious whole. Id.

The safe and proper rule of construction of mechanic's lien statutes is that, while the remedial portions of these statutes should be liberally construed, with a view to avoid defeating the purpose of the statute, yet those parts upon which the right to the existence of a lien depend, being in derogation of the common law, should be strictly construed. Irvine v. McDougall, 5 Alaska, 300.

Lienable items.—In Alaska a lien can be had for labor performed upon a mine only when it tends to the improvement or development of the mine. Work done in the course of actual mining operations, involving the extraction of gold, not tending to the development or improvement of the mine, but rather to the lessening of the value by the extraction of the gold therefrom, is not lienable under the law. Turner v. Enstrom, 5 Alaska, 118.

The lienor was employed to work on defendant's tin mines. Part of the work performed was at the mill and on the water ditch leading thereto, located about two miles from the mines. The evidence showed that the ditch, the mill and the mines constitute one and the same plant, under the supervision and common ownership of the defendant; that the work done by the lienor was for the purpose of developing and opening up of the mine, and tended to assist in the separation of the commercial product of the mine from the gravels. The lien claim was laid on the two mining claims, and did not contain any separate statement showing how much time was charged for which was employed on the mill or ditch. On objection to the proofs and lien claim, held, under the statute of Alaska, the lien may attach for labor "on, in or about" such mine or mines, and the mill and ditch being so a part of the mining plant, the work done was "on, in or about" the mine, and the lien was sustained, and judgment for lienor. McConnell v. Empire Tin Mining Co., 5 Alaska, 506.

Amount and extent of lien.—Under the act of the Legislature of Alaska

approved April 30, 1913, a miner may have a lien upon gold dust extracted from a mine, and upon a mine itself, for labor performed in extracting the product from the mine, but not on a dredger used in the work of extracting the gold dust. Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co., 5 Alaska, 210.

A mechanic's lien on the mining claim and the product thereof extracted by the labor of the mechanic or miner cannot extend to or attach to the gold dust or mineral that shall have been extracted from the mine prior to the attaching of the lien. Id.

Assignment of claim before perfecting lien.—On the trial of a mechanic's lien case it appeared from the evidence that the lienors had assigned their claims for wages to the plaintiff prior to the perfection of the mechanic's lien. Held, in the absence of any statute to the contrary, the assignment of the claim before the perfection of the lien destroys the right to a lien. Irvine v. McDougall, 5 Alaska, 300.

Preferences.—The plaintiff lienors were laborers on a dredge belonging to the defendant Sivertsen-Johnsen Company, engaged in dredging gravels in their natural beds for the recovery of the gold and gold dust contents therein. They brought a consolidated suit to recover on liens, claiming prior lien on the gold and gold dust so extracted from the said gravels by the dredge as against prior attachments by the other creditors. Held, the priority of lien claims given by section 164, Comp. Laws Alaska 1913, over attachments, extends only to mineral-bearing gravels excavated, hoisted, or otherwise piled into "dumps," and the proceeds thereof, and not to gold or gold dust so extracted by the dredging process. Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co., 5 Alaska, 204.

Foreclosure of lien.—The sufficiency of the complaint in a suit to foreclose a mechanic's lien must be determined by the provisions of the statute creating the lien, and if there is substantial compliance therewith it will be sufficient. Labay v. Northern Mining & Trading Co., 5 Alaska, 134.

Cited without definite application, Spalding v. Martin (C. C. A.) 241 F. 372.

§ 5060. (Act June 25, 1910, c. 422, § 2.) Same; claim; filing; form.

Mistake in claim for services.—The fact that a lien claimant included in his claim, through an honest mistake, a claim for services for which the statute gives no lien, will not defeat the lien for other services within the statute also claimed, if the two can be separated. Irvine v. McDougal, 5 Alaska, 220.

Omission of name of co-owner.—While the act of Congress applicable to mechanics' liens in Alaska requires that the notice of the lien recorded shall contain the names of the owners, or reputed owners, of the ground upon which the lien is claimed, it is well established that failure to include the names of all the owners does not render the notice void, but that it may be enforced against the owners named, the only effect of the omission of the name of the omitted owner being to exempt his interest from the operation of the lien. The omission of the name of the co-owner from the lien notice does not render the lien ineffective as against the other owners. Turner v. Enstrom, 5 Alaska, 118.

The omission of the name of a co-owner from the notice of a mechanic's lien does not render the lien void as against the other owners named. The omitted owner is not a necessary party to the action to foreclose the lien. His interest in the property cannot be bound by any judgment given in the foreclosure suit from which he was omitted. Id.

Description of property.—A mechanic's lien, which describes the property upon which the lien is claimed as the Pioneer quartz mining claim, "situate at the head of Fairbanks creek on the left limit thereof, on the divide between said creek and Wolf creek," which is further aided by the allegation in the complaint that they are in "the Fairbanks precinct, Alaska," is a description of the property to be charged with the lien sufficient for identification. Irvine v. McDougal, 5 Alaska, 220.

A mechanic's lien described the property as "bench placer mining claim situate on left limit of No. 21 Goldstream creek," Fairbanks precinct, Fourth judicial division, territory of Alaska. Held, a sufficient description of the property. Peca v. Huddleston, 5 Alaska, 241.

§ 5071. (Act April 28, 1904, c. 1772, § 1.) Location of lands on which coal mine has been opened or improved.

Ruling of Secretary of Interior as to location.—A ruling of the Secretary of the Interior, after a hearing, that to constitute a valid location of coal land under this section a producing mine of coal must be opened, and rejecting an application for a patent on the showing as to the work, is not subject to review or control by mandamus. U. S. v. Lane, 46 App. D. C. 443.

§ 5091. (Act May 14, 1898, c. 299, § 10.) Purchases for trade or manufacture; lands reserved; adverse claimants.

Disposal of shore lands—Roadway reservation.—This section, relative to reserving land abutting on navigable waters in Alaska, and reserving a roadway across the reserved land, held not to reserve such roadway across mill site locations. Worthen Lumber Mills v. Alaska Juneau Gold Mining Co., 229 F. 966, 144 C. C. A. 248.

Authority to lease islands for propagation of foxes.—Under this section and Comp. St. 1916, §§ 6943, 8850, Secretary of Treasury had authority to lease unoccupied and unproductive Alaska Islands for propagation of foxes. Whelpley v. Grosvold (C. C. A.) 249 F. 812.

Although it may be true that prior to 1898 the Secretary of the Treasury, who had assumed authority to lease islands for the propogation of foxes, had no statutory authority to do so, nevertheless there is no question that, subsequently to that time, he had statutory authority to make such leases, as the above proviso, by excepting such islands from entry and sale, withdrew them from the public domain and set them apart for that purpose. Grosvold v. Whelpley, 5 Alaska, 529.

The defendant, for his principal, purchased the buildings, foxes, etc., of one Reed, who was engaged in raising foxes on Little Koniuji Island, Alaska, in 1913, and thereafter engaged in the business of raising foxes on that island. In 1914 the Secretary of Commerce offered the island for lease to the highest bidder. Defendant's principal bid; but, plaintiff's bid being the highest, he received the lease on July 30, 1914, for a term of five years. Defendant refused to vacate the island and claimed all the foxes then running wild thereon. Plaintiff brought suit for possession and for damages. The court held the defendant is a trespasser. The Secretary of Commerce had authority to lease the island to plaintiff, who is entitled to possession of the premises. Id.

Injunction to protect Indians.—The United States brought a suit to enjoin the defendant from occupying the area of waters around Annette Island, Alaska, with fish traps, or from fishing therein. Defendants deny the United States has any equity for an injunction, because it has no pecuniary interest in the cause of action. Held, the obligation and duty of the United States to protect the property interests and rights of its wards, the Indians on its reservations, is enough to give it a standing in equity, and a sufficient interest to authorize it to maintain jurisdiction. U. S. v. Alaska Pacific Fisheries, 5 Alaska, 484.

§ 5093. (Act Feb. 1, 1905, c. 288, § 2.) Export of pulp wood or wood pulp.

Cited without definite application, Utah Power & Light Co. v. U. S. (C. C. A.) 230 F. 328.

§ 5096. (Act May 17, 1906, c. 2469.) Allotment of land to native Indians or Eskimo as homesteads.

Right of occupancy.—The aboriginal tribes of Alaska have a right to occupy the public lands of the United States therein subject to the control of both the lands and the tribes by the United States. U. S. v. Cadzow, 5 Alaska, 125.

The defendants purchased the improvements of an Indian residing on the public lands and entered upon the same and claimed a right of possession thereof in a suit brought by the United States to recover possession. Held, defendant did not acquire any right whatever to the land by his purchase from the Indian, and can be removed therefrom at the suit of the United States as a trespasser. Id.

§ 5096a. (Act March 3, 1891, c. 561, § 15.) Annette islands reserved for Metlakahtla Indians.

Power of Congress to make reservations for Indians.—Congress had power, by this section, to make reservation of Annette Islands in Alaska, for Metlakahtla Indians, inclusive of adjacent waters and submerged land; the "reservation" not being in nature of private grant, but simply a setting apart, until otherwise provided, of designated public property for recognized public purpose to advance dependent Indian people. Alaska Pacific Fisheries v. U. S., 39 S. Ct. 40, 63 L. Ed. —.

Nature and extent of reservation.—In view of purpose of Indians in going to islands, character of islands, and purpose of creating reservation, reservation of Annette Islands in Alaska for Metlakahtla Indians, created by this section, includes adjacent waters and submerged land, to protect fish supply of Indians, principal source of their sustenance and industry. Alaska Pacific Fisheries v. U. S., 39 S. Ct. 40, 63 L. Ed. —.

Authority of President.—Congress having by this section set aside Annette Islands, etc., for a tribe of Alaskan natives and others who might join them, the President, though not ex-

pressly authorized, could reserve for the benefit of the Indians fishing rights in the surrounding waters. Alaska Pacific Fisheries v. U. S., 240 F. 274, 153 C. C. A. 200.

The President's reservation of fishing rights or Indians surrounding Alaskan islands reserved to them by this section held for the benefit of the whole people and for public purpose. Id.

The President to carry out an object of Congress held entitled to reserve Alaskan waters which were within maritime jurisdiction of the United States. Id.

By this section Congress set apart the body of lands known as Annette Islands, in Alaska, as a reservation for the use of the Metlakahtla and other Indians, and on the 28th day of April, 1916, the President of the United States issued his proclamation reserving the waters within 3,000 feet around the shore of said island for the same public use. Prior to the President's proclamation of April 28, 1916, the defendant had begun, and at its date had almost completed, a fish trap situate in navigable waters and within 2,000 feet of the shore of Annette Island. The United States brought this suit to enjoin the defendant from operating his said fish trap in said reserved waters and to compel its removal therefrom. Held, the President has power to reserve both land and waters belonging to the public domain for public purposes, and the reservation of the waters in question is sustained. Defendants are trespassers and may be removed from the locality. U. S. v. Alaska Pacific Fisheries, 5 Alaska, 484.

Injunction to protect Indians.—The United States brought a suit to enjoin the defendant from occupying the area of waters around Annette Island, Alaska, with fish traps, or from fishing therein. Defendants deny the United States has any equity for an injunction, because it has no pecuniary interest in the cause of action. Held, the obligation and duty of the United States to protect the property interests and rights of its wards, the Indians on its reservations, is enough to give it a standing in equity, and a sufficient interest to authorize it to maintain jurisdiction. U. S. v. Alaska Pacific Fisheries, 5 Alaska, 484.

CHAPTER ELEVEN—MISCELLANEOUS PROVISIONS RELATING TO THE PUBLIC LANDS

PATENTS FOR PRIVATE LAND CLAIMS

Sec.
5097. Patents for confirmed claims.
5098. Patents to persons dead before issue, effect of.

DISPOSITION OF SUSPENDED ENTRIES AND CLAIMS; INVALID AND DEFECTIVE CLAIMS AND PATENTS THEREFOR

5110a. Sale of isolated tracks in Minnesota.

Sec.
5113. Suspension of entries for correction of clerical errors; patents.
5114. Limitations of suits to annul patents.

TIMBER-CULTURE

5116. Repeal of laws.

ENFORCEMENT OF PROVISIONS

5120. Power of Commissioner of Land-Office to enforce this Title.

PATENTS FOR PRIVATE LAND CLAIMS

§ 5097. (R. S. § 2447.) Patents for confirmed claims.

Effect of confirmatory statute.—The acts of Congress providing for the confirmation and registry of colonial land grants refer only to inchoate titles, not to those which had matured before transfer of the colony to the United States. State v. New Orleans Land Co. (La.) 79 So. 515.

Act Congress passed April 17, 1828, held to confirm title in heirs of occupant of land which had been surveyed by government, and with reference to which commissioners had reported favorably to gift to heirs, and no patent was necessary to pass title, although patent was subsequently issued by government. Corby v. Thompson (Mich.) 163 N. W. 80.

Land in New Orleans occupied during Spanish régime.—Actual occupancy, for more than 30 years during Spanish régime, of land now within limits of New Orleans, then within mile of limits, brought to public attention by two notarial transfers at time, may be considered to have had the tacit, if not the express, confirmation of the Spanish régime. State v. New Orleans Land Co. (La.) 79 So. 515.

§ 5098. (R. S. § 2448.) Patents to persons dead before issue, effect of.

Construction and purpose of statute.—In view of special statutes relating to other public lands, held that this section does not indicate an intention on the part of Congress that entries on desert lands shall not be liable for the entryman's debts. In re Evans (D. C.) 235 F. 956.

Indian lands.—Patent issued after death of Indian selecting allotment under Act Aug. 7, 1882, c. 434, held not open to attack by anybody but the United States and the tribe, especially in view of this section. U. S. v. Chase, 38 S. Ct. 24, 245 U. S. 89, 62 L. Ed. 168, reversing judgment Chase v. U. S., 222 F. 593, 138 C. C. A. 117.

DISPOSITION OF SUSPENDED ENTRIES AND CLAIMS; INVALID AND DEFECTIVE CLAIMS AND PATENTS THEREFOR

§ 5110a. (Act Feb. 4, 1919, c. 13.) Sale of isolated tracts in Minnesota.

The provisions of section twenty-four hundred and fifty-five of the Revised Statutes of the United States as amended by the Act of March twenty-eighth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page seventy-seven), relating to the sale of isolated tracts of the public domain, be, and the same are hereby, extended and made applicable to ceded Chippewa Indian lands in the State of Minnesota: Provided, That the provisions of this Act shall not apply to lands which are not subject to homestead entry: Provided further, That purchasers of land under this Act must pay for the lands not less than the price fixed in the law opening the lands to homestead entry. (40 Stat. 1055.)

This section is an act entitled "An act for the sale of isolated tracts of the public domain in Minnesota," cited above.

§ 5113. (Act March 3, 1891, c. 561, § 7.) Suspension of entries for correction of clerical errors; patents.

Contest or protest or issuance of patent.—Under this section, where nothing is required of the Secretary of the Interior except to issue a patent mandamus will lie to compel action. Hoglund v. Lane, 44 App. D. C. 310.

§ 5114. (Act March 3, 1891, c. 561, § 8.) Limitations of suits to annul patents.

Application and construction of statute of limitation.—This section does not apply to action by United States to recover value of public lands described in a patent procured through fraud. U. S. v. Whited & Wheless, 38 S. Ct. 367, 246 U. C. 552, 62 L. Ed. 879, reversing judgment 232 F. 139, 146 C. C. A. 331.

This section had no application to an action at law for damages for the fraudulent acquisition of land by a patentee and for the subsequent fraudulent sale thereof by him to third parties, where it was not sought to vacate or annul the patent or recover the lands from the then owners. Bistline v. U. S. (C. C. A.) 229 F. 546.

This section bars an action by the United States to recover from the purchasers of the patent the value of lands alleged to have been fraudulently patented. U. S. v. Whited & Wheless, 232 F. 139, 146 C. C. A. 331.

An action by the United States against a fraudulent entryman of public land to recover damages is not subject to limitation under this section. Pitan v. U. S., 241 F. 364, 154 C. C. A. 244, affirming judgment U. S. v. Pitan (D. C.) 224 F. 604.

Government held entitled to sue for value of land procured from it through mistake or fraud, though suits to cancel patents would be barred under this section. U. S. v. Jones, 242 F. 609, 155 C. C. A. 299, reversing judgment (D. C.) 232 F. 218.

This section does not apply to a suit by the United States to recover the value of land erroneously patented. Union Coal & Coke Co. v. U. S., 247 F. 106, 159 C. C. A. 324.

A court of chancery cannot grant relief, in a suit by the United States to cancel a patent on account of fraud, after the expiration of six years, in the absence of reasonable care and diligence on its part to discover the same, for this section expressly forbids such suits, and to grant relief would be a species of judicial legislation. U. S. v. Diamond Coal & Coke Co. (C. C. A.) 254 F. 266.

A bill seeking cancellation of a patent to public land more than six years after issuance, despite this section, is insufficient, where it merely averred ig-

norance on the part of the United States at one time, and knowledge of the fraud at a later date, for such allegations are of no effect. Id.

In a suit to cancel a patent to public land, begun more than six years after issuance, held, that the bill, which showed defendant was and had been in possession, was insufficient to show such diligence on the part of the United States to discover the fraud as would relieve it of the bar of this section. Id.

Power to survey and dispose of public land erroneously excluded from survey by drawing of meander line held not barred by five-year limitation prescribed by this section. Lee Wilson & Co. v. U. S., 38 S. Ct. 21, 245 U. S. 24, 62 L. Ed. 128, affirming decree 227 F. 827, 142 C. C. A. 351, which affirmed U. S. v. Lee Wilson & Co. (D. C.) 214 F. 630.

Computation of period of limitation—Fraud.—Where patents to public lands were obtained through fraud, and fraud was concealed until more than six years after issuance, suit may be maintained thereafter, notwithstanding this section, as limitations do not begin until discovery of the fraud. Exploration Co. v. U. S., 38 S. Ct. 571, 247 U. S. 435, 62 L. Ed. 1200, affirming decree 235 F. 110, 148 C. C. A. 604, which affirmed U. S. v. Exploration Co. (D. C.) 225 F. 854.

Where the United States, after more than six years from the date of issuance, sues to cancel a patent and seeks equitable relief from the bar of this section, it has the burden of showing that it exercised reasonable care and diligence to discover the fraud before limitations ran, that it had no knowledge or notice of facts which would have incited an ordinarily prudent person to inquiry which would have led to a discovery of the fraud, and that defendant concealed the fraud. U. S. v. Diamond Coal & Coke Co. (C. C. A.) 254 F. 266.

Under this section, providing that suits to vacate patents hereafter issued shall be brought within six years after the date of issuance, where the fraud is concealed, the cause of action is not deemed to accrue until discovery; but, whether the fraud is concealed, or is committed so that it conceals itself, reasonable care and diligence by the United States to discover it are indispensable conditions to a suit to vacate a patent after the bar of the statute has fallen. Id.

The six-year limitation prescribed by this section, in which suit to cancel patents must be commenced, does not, as to a patent secured through fraud, in that the patentee was acting for speculative purposes and under an agreement to convey when he should receive his patent, begin to run until those facts are discovered. U. S. v. Albright (D. C.) 234 F. 202.

The limitation of six years for the bringing of suits for the cancellation of patents, imposed by this section, is subject to the equitable rule that, where there is concealed fraud, the limitation does not begin to run until the fraud is discovered. U. S. v. Booth-Kelly Lumber Co. (D. C.) 246 F. 970.

Facts considered, and held not such as to charge the United States with notice that an entry of a stone and timber claim was fraudulent until within six years prior to the bringing of a suit for cancellation of the patent. Id.

Cited without definite application, U. S. v. Poland (C. C. A. 1916) 231 F. 810.

TIMBER-CULTURE

(R. S. §§ 2464–2468. Repealed.)

Repealed timber culture laws construed and applied.—See Clare v. Fricke (Neb.) 167 N. W. 727.

§ 5116. (Act March 3, 1891, c. 561, § 1, as amended, Act March 3, 1893, c. 208.) Repeal of laws.

Cited without definite application, U. S. v. Morehead, 37 S. Ct. 458, 61 L. Ed. 926.

ENFORCEMENT OF PROVISIONS

§ 5120. (R. S. § 2478.) Power of Commissioner of Land-Office to enforce this Title.

Validity and effect of regulations.—Regulation requiring affidavit to soldier's homestead declaration giving him preferential right under Homestead Law, Rev. St. §§ 2304–2309, this section, and Comp. St. 1916, §§ 4592–4594, 4602, 4603, 4605, could be adopted by the Land Department under Rev. St. §§ 161, 441, 453 (Comp. St. 1916, §§ 235, 681, 699), notwithstanding reference to pre-emption cases in section 2309 (Comp. St. 1916, § 4605). U. S. v. Morehead, 37 S. Ct. 458, 243 U. S. 607, 61 L. Ed. 926.

Departmental regulation that soldier's homestead declaratory statement may

be executed before any officer authorized to administer oaths held not inconsistent with act providing for administering of oaths by certain United States official in district in which land is situated, or provision of Rev. St. § 2293 (Comp. St. 1916, § 4545. Id.

Jurisdiction of land department.—The land department has jurisdiction on application for a patent to a mining claim to decide as to whether a location is nonmineral, though after location the land was taken into a national forest reserve. Cameron v. Bass, 168 P. 645, 19 Ariz. 246.

TITLE XXXII A—THE NATIONAL FORESTS

Sec.
5121. Establishment of forest reserves.
5122. Reserves to be known as national forests.
5123. Revocation of orders or proclamations establishing reserves.
5124–5128. Surveys; plats and field notes; maps; etc.
5129. Egress or ingress of actual settlers; prospecting.
5130–5134. Sites for schools and churches, etc.
5135. No reserves created, and no additions made except by act of Congress.
5138. Export of timber and other forest products.
5138aa. Nebraska National Forest; trees from for homestead settlers.
5141a. Use and occupation of lands for summer homes, hotels, and stores.
5142. Disposition of money received from sale of products or use of land.
5150aa. Appropriations for roads and trails.
5151a. Timber for war purposes.
5159. Game breeding; areas in Grand Canyon Forest Reserve.
5174. Consent to agreement by States for conservation of forests and water supply.
5180. Purchase of lands approved by Commission; consent of State.
5181. Title to lands to be acquired.
5187a. Regulations as to mineral resources.
5187aa. Disposition of moneys received for certain permits.

§ 5121. (Act March 3, 1891, c. 561, § 24.) Establishment of forest reserves.

Public lands—Meaning.—No right of selection of indemnity lands accrued to the Northern Pacific Railway Company under July 2, 1864, § 6, until the lands had been surveyed and platted by the United States, because they are not "public lands," within this section, until surveyed. Northern Pac. Ry. Co. v. Lane, 46 App. D. C. 434.

Reservation of unsurveyed lands by President.—Unsurveyed lands might be reserved by the President, under this section and Act June 4, 1897 (Comp. St. 1916, § 5123 et seq.), empowering him to establish forest reservations on the public domain. U. S. v. Morrison, 36 S. Ct. 326, 240 U. S. 192, 60 L. Ed. 599, reversing judgment Morrison v. U. S., 212 F. 29, 128 C. C. A. 485.

Effect of withdrawal.—Temporary withdrawal by direction of Secretary of Interior of land with view of creation of forest reserve under this section held an obstacle to acquisition of railroad right of way over such lands under Comp. St. 1916, § 4925. Chicago, M. & St. P. Ry. Co. of Idaho v. U. S., 37 S. Ct. 625, 244 U. S. 351, 61 L. Ed. 1184, affirming decree 218 F. 288, 134 C. C. A. 84.

§ 5122. (Act March 4, 1907, c. 2907.) Reserves to be known as national forests.

Reservations authorized in 1891 identical with "national forests."—Forest reservations authorized in 1891 are identical with "national forests," as they are called in this section, and in St. Cal. 1917, p. 1218, authorizing reselection when lands once selected as lieu lands are closed on account of the release of base lands from national forests, and neither act requires that the land shall have been permanently included in a national forest as a prerequisite to reselection. Walker v. Kingsbury (Cal. App.) 173 P. 95.

§ 5123. (Act June 4, 1897, c. 2, § 1.) Revocation of orders or proclamations establishing reserves.

Reservation of unsurveyed lands by President.—Unsurveyed lands might be reserved by the President, under Act March 3, 1891, § 24, and Act June 4, 1897, empowering him to establish forest reservations on the public domain. U. S. v. Morrison, 36 S. Ct. 326, 240 U. S. 192, 60 L. Ed. 599, reversing judgment Morrison v. U. S., 212 F. 29, 128 C. C. A. 485.

Cited without definite application, Chicago, M. & St. P. R. Co. v. U. S., 37 S. Ct. 625, 61 L. Ed. 1184.

§§ 5124–5128. (Act June 4, 1897, c. 2, § 1.) Surveys; plats and field notes; maps; etc.

Cited without definite application, Chicago, M. & St. P. R. Co. v. U. S., 37 S. Ct. 625, 61 L. Ed. 1184; 30 Op Atty. Gen. 263.

§ 5129. (Act June 4, 1897, c. 2, § 1.) Egress or ingress of actual settlers; prospecting.

Selection of lieu lands authorized by repealed provisions.—As to selection of lieu lands, see State v. Hyde, 169 P. 757, 88 Or. 1, rehearing denied 171 P. 582, 88 Or. 1; State v. Hyde, 169 P. 774, 88 Or. 61; State v. Hyde, 169 P. 775, 88 Or. 66, opinion modified on rehearing 171 P. 583, 88 Or. 66; State v. Hyde, 169 P. 777, 88 Or. 73; State v. Hyde, 169 P. 778, 88 Or. 75; State v. Hyde, 169 P. 779, 88 Or. 81; State v. Hyde, 171 P. 582, 88 Or. 1, denying rehearing 169 P. 757, 88 Or. 1.

Cited without definite application, Chicago, M. & St. P. R. Co. v. U. S., 37 S. Ct. 625, 61 L. Ed. 1184; Eastern Oregon Land Co. v. Deschutes R. Co. (C. C. A.) 246 F. 400.

§§ 5130–5134. (Act June 4, 1897, c. 2, § 1.) Sites for schools and churches, etc.

Cited without definite application, Chicago, M. & St. P. R. Co. v. U. S., 37 S. Ct. 625, 61 L. Ed. 1184; Eastern Oregon Land Co. v. Deschutes R. Co., 246 F. 400, 158 C. C. A. 464.

§ 5135. (Act March 4, 1907, c. 2907.) No reserves created, and no additions made except by act of Congress.

Lands within certain described boundaries may, with the approval of the Secretary of the Interior, be made a part of the Wyoming National Forest by proclamation of the President, by Act Feb. 25, 1919, c. 20, 40 Stat. 1152.

The Secretary of the Interior is authorized to accept from certain named persons certain described lands and to give in exchange therefor patents to other certain described lands, said lands so received to become a part of the Cache National Forest, subject to all laws and regulations applicable to said forest, by Act Feb. 28, 1919, c. 73, 40 Stat. 1204, and by Act Feb. 28, 1919, c. 77, 40 Stat. 1209.

Lands within certain described boundaries may be included within the Modoc National Forest of California by proclamation of the President, by Act March 3, 1919, c. 102, 40 Stat. 1316.

Certain described lands are included within the Minam' National Forest, Oregon, by Act March 3, 1919, c. 107, 40 Stat. 1319.

Certain lands within the grant by the United States to the Oregon and California Railroad Company, revested in the United States pursuant to a decree of the Supreme Court of the United States and Act June 9, 1916, c. 137, 39 Stat. 218, are reserved and set aside as a part of the Oregon National Forest, by Act Oct. 21, 1918, c. 192, 40 Stat. 1015.

§ 5138. (Act Oct. 1, 1918, c. 178.) Export of timber and other products.

The Secretary of Agriculture may, in his discretion, permit timber and other forest products cut or removed from the national forests to be exported from the State or Territory in which said forests are respectively situated. (40 Stat. 985.)

This was a provision of the agricultural appropriation act for the fiscal year 1919, cited above. It has been repeated in prior appropriation acts.

§ 5138aa. (Act Oct. 1, 1918, c. 178.) Nebraska National Forest; trees from for homestead settlers.

Nebraska National Forest, Nebraska: * * Provided, That from the nurseries on said forest the Secretary of Agriculture, under such rules and regulations as he may prescribe, may furnish young trees free, so far as they may be spared, to residents of the territory covered by "An Act increasing the area of homesteads in a portion of Nebraska," approved April twenty-eighth, nineteen hundred and four. (40 Stat. 987.)

This was a provision of the agricultural appropriation act for the fiscal year 1919, cited above.

§ 5141a. (Act March 4, 1915, c. 144.) Use and occupation of lands for summer homes, hotels, and stores.

The Secretary of the Interior is authorized to sell and convey to the Oregon Short Line Railroad Company for hotel and other purposes certain described lands in Gallatin county, Montana, within the boundaries of the Madison National Forest, any hotels erected on said lands to be operated under rules and regulations to be prescribed by the Secretary of the Interior, by Act Feb. 25, 1919, c. 19, 40 Stat. 1152.

§ 5142. (Act Feb. 1, 1905, c. 288, § 5.) Disposition of money received from sale of products or use of land.

Cited without definite application,
Utah Power & Light Co. v. U. S. (C. C. A.) 230 F. 328.

§ 5150aa. (Act Feb. 28, 1919, c. 69, § 8.) Appropriations for roads and trails.

There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1919, the sum of $3,000,000, for the fiscal year ending June 30, 1920, the sum of $3,000,000, and for the fiscal year ending June 30, 1921, the sum of $3,000,000, available until expended by the Secretary of Agriculture in cooperation with the proper officials of the State, Territory, insular possession, or county, in the survey, construction, and maintenance of roads and trails within or partly within the national forests, when necessary for the use and development of resources of the same or desirable for the proper administration, protection, and improvement of any such forest. Out of the sums so appropriated the Secretary of Agriculture may, without the cooperation of such officials, survey, construct, and maintain any road or trail within a national forest which he finds necessary for the proper administration, protection, and improvement of such forest, or which in his opinion is of national importance. In the expenditure of this fund for labor preference shall be given, other conditions being equal, to honorably discharged soldiers, sailors, and marines.

The Secretary of Agriculture shall make annual report to Congress of the amounts expended hereunder. (40 Stat. 1201.)

This section is § 8 of the postal service appropriation act for the fiscal year 1920, cited above. Section 9 of said act provides that no officer or enlisted man of the Army, Navy, or Marine Corps shall be detailed for work on the roads which come within the provisions of the act except by his own consent. See post, § 7477l. Said section 9 also requires the Secretary of Agriculture to report to Congress as to work on roads by soldiers, sailors, or marines. See post, § 7477m. Said section 9 also requires that the pay of soldiers, sailors, or marines working on roads shall be equalized with the pay of civilian employés in the same or like employment. See post, § 7477n.

§ 5151a. (Act Oct. 1, 1918, c. 178.) Timber for war purposes.

Hereafter during the existing state of war, the Secretary of Agriculture is authorized, under regulations to be prescribed by him, to permit the War Department, or any other Department, Board, or Commission, of the Government, to take from the national forests such timber as may be needed in the prosecution of the war, and the Secretaries of the Departments, Boards, or the Commissions which may obtain such timber, are severally authorized to sell, or otherwise dispose of, any timber necessarily cut in carrying out the provisions of this paragraph and any materials manufactured therefrom which are not necessary for war purposes. (40 Stat. 990.)

This was a provision of the agricultural appropriation act for the fiscal year 1919, cited above.

§ 5159. (Act June 29, 1906, c. 3593, § 1.) Game breeding areas in Grand Canyon Forest Reserve.

Certain parts of the Grand Canyon National Game Preserve, established under authority of this section, are included in the Grand Canyon National Park and excluded from said Preserve, by Act Feb. 26, 1919, c. 44, § 9, post, § 5249zz.

§ 5174. (Act March 1, 1911, c. 186, § 1.) Consent to agreement by States for conservation of forests and water supply.

Cited without definite application,
In re Condemnation Suits by United States (D. C.) 234 F. 443.

§ 5180. (Act March 1, 1911, c. 186, § 7.) Purchase of lands approved by Commission; consent of State.

Authority of Secretary of Agriculture.—In view of Act Aug. 1, 1888 (Comp. St. 1916, §§ 6909, 6910), this section must be deemed to authorize the Secretary of Agriculture to condemn land for a forest reservation. U. S. v. Graham & Irvine (D. C.) 250 F. 499.

That this section allows Secretary of Agriculture to acquire lands only at prices fixed by National Forest Reservation Commission does not preclude condemnation of lands for forest reservations. Id.

Consent of state.—Where a state has given its consent to acquisition of land for forest reservation, the United States has constitutional authority to condemn land desired for such reservation in accordance with this section and Act Aug. 1, 1888 (Comp. St. 1916, §§ 6909, 6910). U. S. v. Graham & Irvine (D. C.) 250 F. 499.

Award of commissioners.—As objecting defendants will be entitled to jury trial if dissatisfied with award of commissioners in condemnation proceedings, such commissioners, in proceeding by United States under this section to acquire land for forest reservation, may find full value of land and are not restricted to value agreed on between government and some claimants, for if deeming valuation too high National Forest Reservation Commission may refuse to pay money into court. U. S. v. Graham & Irvine (D. C.) 250 F. 499.

§ 5181. (Act March 1, 1911, c. 186, § 8.) Title to lands to be acquired.

Liability for taxes.—Under contract to sell timber land to United States, held, there had been no passing of title so as to relieve vendor from taxes under the statute as to listing property, in view of this section, as to furnishing satisfactory title to land purchased by the United States. Caldwell Land & Lumber Co. v. Board of Com'rs of Caldwell County (N. C.) 94 S. E. 406.

§ 5187a. (Act March 4, 1917, c. 179.) Regulations as to mineral resources.

The Secretary of Agriculture is authorized, under general regulations to be prescribed by him, to permit the prospecting, development, and utilization of the mineral resources of the lands acquired under the Act of March first, nineteen hundred and eleven (Thirty-sixth Statutes, page nine hundred and sixty-one), known as the Weeks law, upon such terms and for specified periods or otherwise, as he may deem to be for the best interests of the United States; and all moneys received on account of charges, if any, made under this Act shall be disposed of as is provided by existing law for the disposition of receipts from national forests. (39 Stat. 1150.)

This was a provision of the agricultural appropriation act for the fiscal year 1918, cited above.

§ 5187aa. (Act March 4, 1917, c. 179.) Disposition of moneys received for certain permits.

Hereafter, all moneys received on account of permits for hunting, fishing, or camping, on lands acquired under authority of said Act, or any amendment or extension thereof, shall be disposed of as is provided by existing law for the disposition of receipts from national forests. (39 Stat. 1149.)

This was a further provision of the agricultural appropriation act for the fiscal year 1918, cited above.

TITLE XXXII B—THE NATIONAL PARKS, RESERVATIONS, AND MONUMENTS

Sec.
5196. Compensation of commissioner, marshals, and United States attorneys for Yellowstone Park.
5201. Yellowstone Park; road extensions.
5225. Grant of lands to Northern Pacific Railroad in lieu of lands relinquished; lieu lands to settlers.
5227i. Mount Rainier National Park; commissioner; salary; residence; fees.
5227l. Same; donations of patented lands or rights of way.
5230i. Salary of commissioner; residence in park; disposition of fees collected.
5230l. Crater Lake National Park; donations of patented lands or rights of way.
5242a. Mesa Verde National Park; donations of patented lands or rights of way.
5248aa. Glacier National Park; exchange of timber for private holdings in.
5248aaa. Same; exchange of timber for private holdings in; valuations.
5248aaaa. Same; exchange of timber for private holdings in; removal of timber.
5248i. Same; commissioner; salary; residence; fees.
5248mm. Same; donations of buildings and other property.
5248n. Same; sale of land to Hotel Company.
5249aa. Rocky Mountain National Park; boundaries changed.
5249d. Rocky Mountain National Park; control of; regulations; leases; sale and removal of timber; automobiles.
5249dd. Same; donations of lands or rights of way.
5249r. Mount McKinley National Park; establishment; boundaries.
5249rr. Same; entries under land laws not affected.
5249s. Same; rights of way in.
5249ss. Same; mineral land laws applicable.
Sec.
5249t. Same; control of; rules and regulations.
5249tt. Same; game refuge; killing game in.
5249u. Same; leases; appropriations.
5249uu. Same; violations of act; punishment.
5249v. Donations of land for park purposes, near or adjacent to Forest Reserve in North Carolina.
5249vv. Grand Canyon National Park; establishment; boundaries.
5249w. Same; administration of Park, concessions and privileges.
5249ww. Same; rights of Havasupai Indians.
5249x. Same; entries under land laws; toll road.
5249xx. Same; laws applicable to Park; easements and rights of ways.
5249y. Same; development of mineral resources.
5249yy. Same; reclamation projects.
5249z. Same; buildings on privately owned lands.
5249zz. Same; Executive order revoked; Grand Canyon Game Preserve included in Park.
5249⅛a. Lafayette National Park; establishment; lands included.
5249⅛b. Same; administration of Park.
5249⅛c. Same; acceptance of property on Mount Desert Island.
5250a. Revenues of national parks covered into Treasury; estimates for care of parks.
5250aa. Limit on cost of buildings erected in national parks increased.
5261. Hot Springs Reservation; operation of laws of United States.
5278. American antiquities; appropriation, etc., or destruction of objects of antiquity on lands of United States without permission; punishable; penalty.
5279. American antiquities; setting apart as national monuments; reservation of land; relinquishment of private claims.

§ 5196. (Act May 7, 1894, c. 72, § 7.) Compensation of commissioner, marshals, and United States attorneys for Yellowstone Park.

For salary of Commissioner of Yellowstone National Park, see ante, § 1451a.

§ 5201. (Act July 1, 1918, c. 113, § 1.) Yellowstone Park; road extensions.

Hereafter road extensions and improvements shall be made in said park under and in harmony with the general plan of roads and im-

provements to be approved by the Secretary of the Interior. (40 Stat. 678.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. It supersedes a similar provision of Act June 6, 1900, c. 791, § 1, 31 Stat. 625.

§ 5225. (Act March 2, 1899, c. 377, § 3.) Grant of lands to Northern Pacific Railroad in lieu of lands relinquished; lieu lands to settlers.

Lieu lands to railroad company.—Northern Pacific Railway Company, successor of the Northern Pacific Railroad Company, cannot avail itself of right granted by this act to original company to select public lands in lieu of others relinquished. West v. Edward Rutledge Timber Co., 37 S. Ct. 587, 244 U. S. 90, 61 L. Ed. 1010, affirming decree 221 F. 30, 136 C. C. A. 556.

Designation by section number, township, and range of unsurveyed public lands selected under this act in lieu of other lands relinquished to the United States, held to satisfy requirement that list filed describe such tract so as to designate the same with reasonable certainty. Id.

—— **Mineral character of land selected.**—Report of deputy surveyor accepted by the Land Department held a description of land as nonmineral, within this act, giving Northern Pacific Railroad Company right to select as lieu lands nonmineral public lands. West v. Edward Rutledge Timber Co., 37 S. Ct. 587, 244 U. S. 90, 61 L. Ed. 1010, affirming decree 221 F. 30, 136 C. C. A. 556.

§ 5227i. (Act June 30, 1916, c. 197, § 9.) Mount Rainier National Park; commissioner; salary; residence; fees.

For salary of Commissioner of Mount Rainier National Park, see ante, § 1451a.

§ 5227*l*. (Act June 12, 1917, c. 27, § 1.) Same; donations of patented lands or rights of way.

Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Mount Ranier National Park that may be donated for park purposes. (40 Stat. 152.)

This was a provision of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 5230i. (Act Aug. 21, 1916, c. 368, § 9.) Salary of commissioner; residence in park; disposition of fees collected.

For salary of Commissioner of Crater National Park, see ante, § 1451a.

§ 5230*l*. (Act June 12, 1917, c. 27, § 1.) Crater Lake National Park; donations of patented lands or rights of way.

Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Crater Lake National Park that may be donated for park purposes. (40 Stat. 152.)

This was a provision of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 5242a. (Act June 12, 1917, c. 27, § 1.) Mesa Verde National Park; donations of patented lands or rights of way.

Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Mesa Verde National Park that may be donated for park purposes. (40 Stat. 152.)

This was a provision of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 5248aa. (Act March 3, 1917, c. 164, § 1.) Glacier National Park; exchange of timber for private holdings in.

The Secretary of the Interior, for the purpose of eliminating private holdings within the Glacier National Park and the preservation intact of the natural forest along the roads in the scenic portions of the park, both on patented and park lands, is hereby em-

powered, in his discretion, to obtain for the United States the complete title to any or all of the lands held in private or State ownership within the boundaries of said park within townships thirty-two and thirty-three north, ranges eighteen and nineteen west of Montana principal meridian, by the exchange of dead, decadent, or matured timber of approximately equal values that can be removed from any part of the park without injuriously affecting the scenic beauty thereof; or upon the approval of the Secretary of Agriculture, the timber to be selected or exchanged may be taken from the Government lands within the metes and bounds of the national forests within the State of Montana. (39 Stat. 1122.)

This section and the two sections next following were an act entitled "An act to authorize an exchange of lands with owners of private holdings within the Glacier National Park," cited above.

§ 5248aaa. (Act March 3, 1917, c. 164, § 2.) Same; exchange of timber for private holdings in; valuations.

The value of all patented lands within said park, including the timber thereon, offered for exchange, and the value of the timber on park lands, or on Government lands within the metes and bounds of the national forests within the State of Montana, proposed to be given in exchange for such patented lands, shall be ascertained in such manner as the Secretary of the Interior and the Secretary of Agriculture may jointly in their discretion direct, and all expenses incident to ascertaining such values shall be paid by the owners of said patented lands; and such owners shall, before any exchange is effective, furnish the Secretary of the Interior evidence satisfactory to him of title to the patented lands offered in exchange; and if the value of timber on park lands or on the Government lands in the national forests within the State of Montana exceeds the value of the patented lands deeded to the Government in exchange, such excess shall be paid to the Secretary of the Interior by the owners of the patented lands before any timber is removed, and shall be deposited and covered into the Treasury as miscellaneous receipts: Provided, That the lands conveyed to the Government under this Act shall become a part of the Glacier National Park. (39 Stat. 1122.)

See note to § 5248aa, ante.

§ 5248aaaa. (Act March 3, 1917, c. 164, § 3.) Same; exchange of timber for private holdings in; removal of timber.

All timber on Government lands in the park must be cut and removed under regulations to be prescribed by the Secretary of the Interior, and any damage which may result to the roads or any part of the park or the national forests in consequence of the cutting and removal of the timber therefrom shall be borne by the owners of the patented lands, and bonds satisfactory to the Secretary of the Interior and the Secretary of Agriculture, jointly, must be given for the payment of such damages, if any, as shall be determined by the Secretary of the Interior so far as the same relates to lands within a national park and by the Secretary of Agriculture where the same relates to lands in the national forests: Provided further, That the Secretary of Agriculture and the Secretary of the Interior shall jointly report to Congress in detail the factors upon which valuations were made. (39 Stat. 1122.)

See note to § 5248aa, ante.

§ 5248i. (Act Aug. 22, 1914, c. 264, § 9.) Same; Commissioner; salary; residence; fees.

For salary of Commissioner of Glacier National Park, see ante, § 1451a.

§ 5248mm. (Act June 12, 1917, c. 27, § 1.) Same; donations of buildings and other property.

The Secretary of the Interior is authorized, in his discretion, to accept buildings, moneys, or other property which may be useful in the betterment of the administration and affairs of the Glacier National Park under his supervision, and which may be donated for park purposes. (40 Stat. 151.)

This was a provision of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 5248n. (Act March 2, 1917, c. 147.) Same; sale of land to Hotel Company.

That the Secretary of the Interior be, and hereby is, authorized to sell and convey to the Glacier Park Hotel Company, a corporation organized under the laws of the State of Minnesota and authorized to do business in the State of Montana, its successors and assigns, for hotel purposes, and at a price to be fixed by appraisement at not less than $25 per acre, and under such terms, conditions, and regulations as the Secretary of the Interior may prescribe, all that part of the south half of the northwest quarter of section thirty-six, in township thirty-two north, of range nineteen west, Montana principal meridian, within the following described area: Beginning at a point on the southerly line of the right of way of the Great Northern Railway Company, one hundred feet southerly from and at right angles to the center line of the main track of said railway at a point in said center line four hundred and eighty-four feet easterly from its intersection with the west line of said section thirty-six; thence southerly at right angles to said center line three hundred and thirty feet, this course following approximately the line of the westerly fence constructed by the United States Forestry Service in nineteen hundred and nine; thence easterly at right angles to the last-described course six hundred and seventy-two feet; thence northerly at right angles to the last-described course to the said southerly line of right of way, this course following, approximately, the line of the easterly fence constructed by the United States Forestry Service in nineteen hundred and nine; thence westerly along the said southerly line of the right of way of the Great Northern Railway to the place of beginning, excepting therefrom that portion within lot eight, containing five acres, more or less, within the Flathead National Forest, at or near Belton, Montana: Provided, however, That any hotel erected on said land shall be operated by the said Glacier Park Hotel Company, its successors and assigns, under such rules and regulations as the Secretary of the Interior may prescribe for the conduct and operation of hotels within the Glacier National Park. (39 Stat. 994.)

This was an act entitled "An act to authorize the sale of certain lands at or near Belton, Montana, for hotel purposes," cited above.

§ 5249aa. (Act Feb. 14, 1917, c. 61.) Rocky Mountain National Park; boundaries changed.

The eastern boundary line of the Rocky Mountain National Park between the section corner common to sections two and three, township three north, and sections thirty-four and thirty-five, township four north, range seventy-three west, and the township corner common to townships five and six north, ranges seventy-two and seventy-three west, is hereby changed so as to read as follows:

"Beginning at a point on the present eastern boundary line of the Rocky Mountain National Park, Colorado, which is the northwest corner of section two and the northeast corner of section three, township three north, range seventy-three west of the sixth princi-

pal meridian, Colorado, running thence east along the township line to its intersection with the main hydrographic divide east of Cow Creek, between section thirty-one, township four north, and section six, township three north, range seventy-two west; thence northwesterly following along said hydrographic divide, passing over Twin Sisters, The Crags, passing west of Lily Lake, and continuing along said hydrographic divide, now between Aspen Brook and Fish Creek and passing over Lily Mountain and Gianttrack Mountain to a point which is the southeast corner of section thirty-four and the southwest corner of section thirty-five, township five north, range seventy-three west; thence north along the section lines between sections thirty-four and thirty-five, twenty-six and twenty-seven, twenty-two and twenty-three, fourteen and fifteen, to the quarter corner common to sections fourteen and fifteen, all in township five north, range seventy-three west; thence east along quarter-section line, through sections fourteen and thirteen, township five north, range seventy-three west and along the continuation of said quarter-section line through section eighteen to the quarter corner common to sections eighteen and seventeen, township five north, range seventy-two west; thence north along the section line between sections eighteen and seventeen, seven and eight, five and six, all in township five north, range seventy-two west, to that point which is the northeast corner of section six and the northwest corner of section five in said township and range; thence west along the township line to the township corner common to townships five and six north, ranges seventy-two and seventy-three west, which is on the present eastern boundary line of the Rocky Mountain National Park, Colorado."

And the lands lying between the present existing eastern boundary and the eastern boundary as changed by this Act between said section corner common to sections two and three, township three north, and sections thirty-four and thirty-five, township four north, range seventy-three west, and said township corner common to townships five and six north, ranges seventy-two and seventy-three west, are hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States, and said tracts are hereby made a part of and included in the Rocky Mountain National Park, and all the provisions of the Act to establish the Rocky Mountain National Park in the State of Colorado, and for other purposes, approved January twenty-sixth, nineteen hundred and fifteen, are hereby made applicable to and extended over the lands hereby added to the park. (39 Stat. 916.)

This was an act entitled "An act to add certain lands to the Rocky Mountain National Park, Colorado," cited above.

§ 5249d. (Act Jan. 26, 1915, c. 19, § 4, as repealed in part by Act March 1, 1919, c. 88.) Rocky Mountain National Park; control of; regulations; leases; sale and removal of timber; automobiles.

The said park shall be under the executive control of the Secretary of the Interior, and it shall be the duty of the said executive authority, as soon as practicable, to make and publish such reasonable rules and regulations, not inconsistent with the laws of the United States, as the said authority may deem necessary or proper for the care, protection, management, and improvement of the same, the said regulations being primarily aimed at the freest use of the said park for recreation purposes by the public and for the preservation of the natural conditions and scenic beauties thereof. The said authority may, in his discretion, execute leases to parcels of ground not exceeding twenty acres in extent in any one

place to any person or company for not to exceed twenty years whenever such ground is necessary for the erection of establishments for the accommodation of visitors, may grant such other necessary privileges and concessions as he deems wise for the accommodation of visitors, and may likewise arrange for the removal of such mature or dead or down timber as he may deem necessary and advisable for the protection and improvement of the park. The regulations governing the park shall include provisions for the use of automobiles therein. (38 Stat. 800. 40 Stat. 1270.)

The following provision, originally contained in this section, as follows: "Provided, That no appropriation for the maintenance, supervision, or improvement of said park in excess of $10,000 annually shall be made unless the same shall have first been expressly authorized by law," was repealed by Act March 1, 1919, c. 88, cited above.

§ 5249dd. (Act June 12, 1917, c. 27, § 1.) Same; donations of lands or rights of way.

Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Rocky Mountain National Park that may be donated for park purposes. (40 Stat. 152.)

This was a provision of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 5249r. (Act Feb. 26, 1917, c. 121, § 1.) Mount McKinley National Park; establishment; boundaries.

The tract of land in the Territory of Alaska particularly described by and included within the metes and bounds, to wit: Beginning at a point as shown on Plate III, reconnoissance map of the Mount McKinley region, Alaska, prepared in the Geological Survey, edition of nineteen hundred and eleven, said point being at the summit of a hill between two forks of the headwaters of the Toklat River, approximate latitude sixty-three degrees forty-seven minutes, longitude one hundred and fifty degrees twenty minutes; thence south six degrees twenty minutes west nineteen miles; thence south sixty-eight degrees west sixty miles; thence in a southeasterly direction approximately twenty-eight miles to the summit of Mount Russell; thence in a northeasterly direction approximately eighty-nine miles to a point twenty-five miles due south of a point due east of the point of beginning; thence due north twenty-five miles to said point; thence due west twenty-eight and one-half miles to the point of beginning, is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States, and said tract is dedicated and set apart as a public park for the benefit and enjoyment of the people, under the name of the Mount McKinley National Park. (39 Stat. 938.)

This section and the seven sections next following were an act entitled "An act to establish the Mount McKinley National Park, in the Territory of Alaska," cited above.

§ 5249rr. (Act Feb. 26, 1917, c. 121, § 2.) Same; entries under land laws not affected.

Nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land. (39 Stat. 938.)

See note to § 5249r, ante.

§ 5249s. (Act Feb. 26, 1917, c. 121, § 3.) Same; rights of way in.

Whenever consistent with the primary purposes of the park, the Act of February fifteenth, nineteen hundred and one, applicable to the location of rights of way in certain national parks and national

forests for irrigation and other purposes, shall be and remain applicable to the lands included within the park. (39 Stat. 938.)

See note to § 5249r, ante.

§ 5249ss. (Act Feb. 26, 1917, c. 121, § 4.) Same; mineral land laws applicable.

Nothing in this Act shall in any way modify or effect the mineral land laws now applicable to the lands in the said park. (39 Stat. 938.)

See note to § 5249r, ante.

§ 5249t. (Act Feb. 26, 1917, c. 121, § 5.) Same; control of; rules and regulations.

The said park shall be under the executive control of the Secretary of the Interior, and it shall be the duty of the said executive authority, as soon as practicable, to make and publish such rules and regulations not inconsistent with the laws of the United States as the said authority may deem necessary or proper for the care, protection, management, and improvement of the same, the said regulations being primarily aimed at the freest use of the said park for recreation purposes by the public and for the preservation of animals, birds, and fish and for the preservation of the natural curiosities and scenic beauties thereof. (39 Stat. 938.)

See note to § 5249r, ante.

§ 5249tt. (Act Feb. 26, 1917, c. 121, § 6.) Same; game refuge; killing game in.

The said park shall be, and is hereby, established as a game refuge, and no person shall kill any game in said park except under an order from the Secretary of the Interior for the protection of persons or to protect or prevent the extermination of other animals or birds: Provided, That prospectors and miners engaged in prospecting or mining in said park may take and kill therein so much game or birds as may be needed for their actual necessities when short of food; but in no case shall animals or birds be killed in said park for sale or removal therefrom, or wantonly. (39 Stat. 939.)

See note to § 5249r, ante.

§ 5249u. (Act Feb. 26, 1917, c. 121, § 7.) Same; leases; appropriations.

The said Secretary of the Interior may, in his discretion, execute leases to parcels of ground not exceeding twenty acres in extent for periods not to exceed twenty years whenever such ground is necessary for the erection of establishments for the accommodation of visitors; may grant such other necessary privileges and concessions as he deems wise for the accommodation of visitors; and may likewise arrange for the removal of such mature or dead or down timber as he may deem necessary and advisable for the protection and improvement of the park: Provided, That no appropriation for the maintenance of said park in excess of $10,000 annually shall be made unless the same shall have first been expressly authorized by law. (39 Stat. 939.)

§ 5249uu. (Act Feb. 26, 1917, c. 121, § 8.) Same; violations of act; punishment.

Any person found guilty of violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and shall be subjected to a fine of not more than $500 or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings. (39 Stat. 939.)

See note to § 5249r, ante.

§ 5249v. (Act June 12, 1917, c. 27, § 1.) Donations of land for park purposes near or adjacent to Forest Reserve in North Carolina.

Hereafter the Secretary of the Interior is authorized to accept for park purposes any lands and rights of way, including the Grandfather Mountain, near or adjacent to the Government forest reserve in western North Carolina. (40 Stat. 152.)

This was a provision of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 5249vv. (Act Feb. 26, 1919, c. 44, § 1.) Grand Canyon National Park; establishment; boundaries.

There is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States and dedicated and set apart as a public park for the benefit and enjoyment of the people, under the name of the "Grand Canyon National Park," the tract of land in the State of Arizona particularly described by and included within metes and bounds, as follows, to wit:

Beginning at a point which is the northeast corner of township thirty north, range one east, of the Gila and Salt River meridian, Arizona; thence west on township line between townships thirty and thirty-one north, range one east, to section corner common to sections one and two, township thirty north, range one east, and thirty-five and thirty-six, township thirty-one north, range one east; thence north on section lines to the intersection with Tobocobya Spring-Rowe Well Road; thence northwesterly along the southwesterly side of said Tobocobya Spring-Rowe Well Road, passing and in relation to United States Geological Survey bench marks stamped "Canyon" and numbered 6340, 6235, 6372, 6412, 6302, 6144, and 6129, through townships thirty-one and thirty-two north, ranges one east and one and two west, to its intersection with the section line between sections nine and sixteen in township thirty-two north, range two west; thence west along the section lines through townships thirty-two north, ranges two and three west, to its intersection with upper westerly rim of Cataract Canyon; thence northwesterly along upper rim of Cataract Canyon, crossing Hualapai Canyon and continuing northwesterly along said upper rim to its intersection with range line, township thirty-three north, between ranges four and five west; thence north on said range line, townships thirty-three and thirty-four north, ranges four and five west, to north bank of the Colorado River; thence northeasterly along the north bank of the Colorado River to junction with Tapeats Creek; thence easterly along north bank of Tapeats Creek to junction with Spring Creek; thence easterly along the north bank of Spring Creek to its intersection with Gila and Salt River meridian, township thirty-four north, between ranges one east and one west and between section six, township thirty-four north, range one east, and section one, township thirty-four north, range one west; thence south on range line between ranges one east and one west to section corner common to sections seven and eighteen, township thirty-four north, range one east, and sections twelve and thirteen, township thirty-four north, range one west; thence east on section lines to section corner common to sections seven, eight, seventeen, and eighteen, township thirty-four north, range two east; thence south on section lines to township line between townships thirty-three and thirty-four north, range two east, at section corner common to sections thirty-one and thirty-two, township thirty-four north, range two east, and sections five and six, township thirty-three north, range two east; thence

east on township line to section corner common to sections thirty-one and thirty-two, township thirty-four north, range three east, and sections five and six, township thirty-three north, range three east; thence south on section lines to section corner common to sections seventeen, eighteen, nineteen, and twenty, township thirty-three north, range three east; thence east on section lines to section corner common to sections thirteen, fourteen, twenty-three, and twenty-four, township thirty-three north, range three east; thence north on section lines to section corner common to sections one, two, eleven, and twelve, township thirty-three north, range three east; thence east on section lines to the intersection with upper rim of Grand Canyon; thence northerly along said upper rim of Grand Canyon to main hydrographic divide north of Nankoweap Creek; thence easterly along the said hydrographic divide to its intersection with the Colorado River, approximately at the mouth of Nankoweap Creek; thence easterly across the Colorado River and up the hydrographic divide nearest the junction of Nankoweap Creek and Colorado River to a point on the upper east rim of the Grand Canyon; thence by shortest route to an intersection with range line, townships thirty-three and thirty-four north, between ranges five and six east; thence south on said range line, between ranges five and six east, to section corner common to sections eighteen and nineteen, township thirty-three north, range six east, and sections thirteen and twenty-four, township thirty-three north, range five east; thence east on section lines to section corner common to sections sixteen, seventeen, twenty, and twenty-one, township thirty-three north, range six east; thence south on section lines to section corner common to sections eight, nine, sixteen, and seventeen, township thirty-one north, range six east; thence west on section line to section corner common to sections seven, eight, seventeen, and eighteen, township thirty-one north, range six east; thence south on section lines to township line between townships thirty and thirty-one north at section corner common to sections thirty-one and thirty-two, township thirty-one north, range six east, and sections five and six, township thirty north, range six east; thence west on township line to section corner common to sections thirty-four and thirty-five, township thirty-one north, range five east, and sections two and three, township thirty north, range five east; thence south on section line to section corner common to sections two, three, ten, and eleven, township thirty north, range five east; thence west on section lines to range line, township thirty north, between ranges four and five east, at section corner common to sections six and seven, township thirty north, range five east, and one and twelve, township thirty north, range four east; thence south on range line, township thirty north, between ranges four and five east, to section corner common to sections seven and eighteen, township thirty north, range five east, and sections twelve and thirteen, township thirty north, range four east; thence west on section line to section corner common to sections eleven, twelve, thirteen, and fourteen, township thirty north, range four east; thence south on section line to section corner common to sections thirteen, fourteen, twenty-three, and twenty-four, township thirty north, range four east; thence west on section lines to section corner common to sections fifteen, sixteen, twenty-one, and twenty-two, township thirty north, range four east; thence south on section line to section corner common to sections twenty-one, twenty-two, twenty-seven, and twenty-eight, township thirty north, range four east; thence west on section lines to range line, township thirty north, between ranges three and four east, at section cor-

ner common to sections nineteen and thirty, township thirty north, range four east, and sections twenty-four and twenty-five, township thirty north, range three east; thence north on range line to section corner common to sections eighteen and nineteen, township thirty north, range four east, and sections thirteen and twenty-four, township thirty north, range three east; thence west on sections lines to section corner common to sections fourteen, fifteen, twenty-two, and twenty-three, township thirty north, range three east; thence north on section line to section corner common to sections ten, eleven, fourteen, and fifteen, township thirty north, range three east; thence west on section lines to range line at section corner common to sections seven and eighteen, township thirty north, range three east, and sections twelve and thirteen, township thirty north, range two east; thence north on range line to section corner common to sections six and seven, township thirty north, range three east, and sections one and twelve, township thirty north, range two east; thence west on section line to section corner common to sections one, two, eleven, and twelve, township thirty north, range two east; thence north on section line to township line at section corner common to sections thirty-five and thirty-six, township thirty-one north, range two east, and sections one and two, township thirty north, range two east; thence west on township line to the northeast corner of township thirty north, range one east, the place of beginning. (40 Stat. 1175.)

This section, and the eight sections next following, are an act entitled "An act to establish the Grand Canyon National Park in the State of Arizona," cited above.

§ 5249w. (Act Feb. 26, 1919, c. 44, § 2.) Same; administration of Park, concessions and privileges.

The administration, protection, and promotion of said Grand Canyon National Park shall be exercised, under the direction of the Secretary of the Interior, by the National Park Service, subject to the provisions of the Act of August twenty-fifth, nineteen hundred and sixteen, entitled "An Act to establish a National Park Service, and for other purposes": Provided, That all concessions for hotels, camps, transportation, and other privileges of every kind and nature for the accommodation or entertainment of visitors shall be let at public bidding to the best and most responsible bidder. (40 Stat. 1177.)

See note to § 5249vv, ante.

§ 5249ww. (Act Feb. 26, 1919, c. 44, § 3.) Same; rights of Havasupai Indians.

Nothing herein contained shall affect the rights of the Havasupai Tribe of Indians to the use and occupancy of the bottom lands of the Canyon of Cataract Creek as described in the Executive order of March thirty-first, eighteen hundred and eighty-two, and the Secretary of the Interior is hereby authorized, in his discretion, to permit individual members of said tribe to use and occupy other tracts of land within said park for agricultural purposes. (40 Stat. 1177.)

See note to § 5249vv, ante.

§ 5249x. (Act Feb. 26, 1919, c. 44, § 4.) Same; entries under land laws; toll road.

Nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land and nothing herein contained shall affect, diminish, or impair the right and au-

thority of the county of Coconino, in the State of Arizona, to levy and collect tolls for the passage of live stock over and upon the Bright Angel Toll Road and Trail, and the Secretary of the Interior is hereby authorized to negotiate with the said county of Coconino for the purchase of said Bright Angel Toll Road and Trail and all rights therein, and report to Congress at as early a date as possible the terms upon which the property can be procured. (40 Stat. 1177.)

See note to § 5249vv, ante.

§ 5249xx. (Act Feb. 26, 1919, c. 44, § 5.) Same; laws applicable to Park; easements and rights of ways.

Whenever consistent with the primary purposes of said park the Act of February fifteenth, nineteen hundred and one, applicable to the locations of rights of way in certain national parks and the national forests for irrigation and other purposes, and subsequent Acts shall be and remain applicable to the lands included within the park. The Secretary of the Interior may, in his discretion and upon such conditions as he may deem proper, grant easements or rights of way for railroads upon or across the park. (40 Stat. 1178.)

See note to § 5249vv, ante.

§ 5249y. (Act Feb. 26, 1919, c. 44, § 6.) Same; development of mineral resources.

Whenever consistent with the primary purposes of said park, the Secretary of the Interior is authorized, under general regulations to be prescribed by him, to permit the prospecting, development, and utilization of the mineral resources of said park upon such terms and for specified periods, or otherwise, as he may deem to be for the best interests of the United States. (40 Stat. 1178.)

See note to § 5249vv, ante.

§ 5249yy. (Act Feb. 26, 1919, c. 44, § 7.) Same; reclamation projects.

Whenever consistent with the primary purposes of said park, the Secretary of the Interior is authorized to permit the utilization of areas therein which may be necessary for the development and maintenance of a Government reclamation project. (40 Stat. 1178.)

See note to § 5249vv, ante.

§ 5249z. (Act Feb. 26, 1919, c. 44, § 8.) Same; buildings on privately owned lands.

Where privately owned lands within the said park lie within three hundred feet of the rim of the Grand Canyon no building, tent, fence, or other structure shall be erected on the park lands lying between said privately owned lands and the rim. (40 Stat. 1178.)

See note to § 5249vv, ante.

§ 5249zz. (Act Feb. 26, 1919, c. 44, § 9.) Same; Executive order revoked; Grand Canyon Game Preserve included in Park.

The Executive order of January eleventh, nineteen hundred and eight, creating the Grand Canyon National Monument, is hereby revoked and repealed, and such parts of the Grand Canyon National Game Preserve, designated under authority of the Act of Congress, approved June twenty-ninth, nineteen hundred and six, entitled "An Act for the protection of wild animals in the Grand Canyon Forest Reserve," as are by this Act included with the Grand Canyon National Park are hereby excluded and eliminated from said game preserve. (40 Stat. 1178.)

See note to § 5249vv, ante.

§ 5249⅓a. (Act Feb. 26, 1919, c. 45, § 1.) Lafayette National Park; establishment; lands included.

The tracts of land, easements, and other real estate heretofore known as the Sieur de Monts National Monument, situated on Mount Desert Island, in the county of Hancock and State of Maine, established and designated as a national monument under the Act of June eighth, nineteen hundred and six, entitled "An Act for the preservation of American antiquities," by presidential proclamation of July eighth, nineteen hundred and sixteen, is hereby declared to be a national park and dedicated as a public park for the benefit and enjoyment of the people under the name of the Lafayette National Park, under which name the aforesaid national park shall be entitled to receive and to use all moneys heretofore or hereafter appropriated for Sieur de Monts National Monument. (40 Stat. 1178.)

This section, and the two sections next following, are an act entitled "An act to establish the Lafayette National Park in the State of Maine," cited above.

§ 5249⅓b. (Act Feb. 26, 1919, c. 45, § 2.) Same; administration of Park.

The administration, protection, and promotion of said Lafayette National Park shall be exercised under the direction of the Secretary of the Interior by the National Park Service, subject to the provision of the Act of August twenty-fifth, nineteen hundred and sixteen, entitled "An Act to establish a National Park Service, and for other purposes," and Acts additional thereto or amendatory thereof. (40 Stat. 1179.)

See note to § 5249⅓a, ante.

§ 5249⅓c. (Act Feb. 26, 1919, c. 45, § 3.) Same; acceptance of property on Mount Desert Island.

The Secretary of the Interior is hereby authorized, in his discretion, to accept in behalf of the United States such other property on said Mount Desert Island, including lands, easements, buildings, and moneys, as may be donated for the extension or improvement of said park. (40 Stat. 1179.)

See note to § 5249⅓a, ante.

§ 5250a. (Act June 12, 1917, c. 27, § 1.) Revenues of national parks covered into Treasury; estimates for care of parks.

From and after July first, nineteen hundred and eighteen, all revenues of the national parks, except Hot Springs Reservation, Arkansas, shall be covered into the Treasury to the credit of miscellaneous receipts; and the Secretary of the Interior is directed to submit, for the fiscal year nineteen hundred and nineteen and annually thereafter, estimates of the amounts required for the care, maintenance, and development of the said parks. (40 Stat. 153.)

This was a provision of the sundry civil appropriation act for the fiscal year 1918, cited above.

§ 5250aa. (Act July 1, 1918, c. 113, § 1.) Limit on cost of buildings erected in national parks increased.

The limitation of cost upon the construction of any administration or other building in any national park without express authority of Congress, contained in the sundry civil appropriation Act approved August twenty-fourth, nineteen hundred and twelve, is increased from $1,000 to $1,500. (40 Stat. 677.)

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited above. For Act Aug. 24, 1912, c. 355, § 1, referred to, see U. S. Comp. St. 1916, § 5250.

§ 5261. (Act April 20, 1904, c. 1400, § 1.) Hot Springs Reservation; operation of laws of United States.

Service of process.—Where federal industrial mediator, resident of Colorado, voluntarily went from California to Hot Springs, Ark., to secure treatment, and there was served with process from Arkansas court by plaintiffs, guilty of no fraud in inducing him to go to Arkansas, though all witnesses were residents of Colorado, Wyoming, and California, plaintiff was properly sued in Arkansas, action being transitory, and it was not abuse of process. Fitzhugh v. Reid (D. C.) 252 F. 234.

§ 5278. (Act June 8, 1906, c. 3060, § 1.) American antiquities; appropriation, etc., or destruction of objects of antiquity on lands of United States without permission, punishable; penalty.

Cited without definite application,
United States ex rel. Palmer v. Lapp
(C. C. A.) 244 F. 377.

§ 5279. (Act June 8, 1906, c. 3060, § 2.) American antiquities; setting apart as national monuments; reservation of land; relinquishment of private claims.

Proclamations issued under this section:

June 18, 1917, El Morro National Monument, New Mexico.

June 29, 1917, Verendrye National Monument, North Dakota.

The Sieur de Monts National Monument, established under the authority conferred by this section, is made a National Park, to be known as the Lafayette National Park, by Act Feb. 26, 1919, c. 45, ante, §§ 5249⅓a–5249⅓c.

TITLE XXXIII—DUTIES UPON IMPORTS

CHAPTER A—TARIFF SCHEDULES

Sec.
5291. Articles dutiable, and rates; schedules and free list.
5291d. Articles for Red Cross free of duty.
5291e. Same; regulations.
5293. Reciprocity treaty with Cuba not affected, except as to proviso.
5296. Countervailing duty on articles on which export bounty was paid.
5299–5301. Importation of obscene books, lottery tickets, etc., forfeiture.
5302. Importation of neat cattle and hides prohibited; suspension of prohibition, in part.
5308. Admission, without payment of duty, under bond for exportation.
5309. Importation in bond of materials for construction of vessels and of materials for building their machinery, and articles for outfit and equipment; use free of duty.
5310. Withdrawal from bond, of articles for repair of vessels.
5311. Discount on duties on goods imported in United States vessels.
5326. Reciprocity with Canada.

§ 5291. (Act Oct. 3, 1913, c. 16, § 1, as amended, Act April 27, 1916, c. 93, and Act Sept. 8, 1916, c. 463, §§ 500–502, 600.) Articles dutiable, and rates; schedules and free list.

4. Foreign country — Canada.—The Tariff Act of 1913 was designed to be a complete revision of the tariff laws of the country, and its wording very clearly shows that it was intended as a substitute for all prior tariff legislation not saved by the act itself. The rule seems to be well settled that an act of that character must be held to have repealed all prior laws not expressly continued in force and relating to the same subject. And, so, the Tariff Act of 1913 repealed section 2 of the Canadian Reciprocity Act. Dow Co. v. U. S., 7 Ct. Cust. App. 343.

11. Imported.—An international railway may bring its cars into the United States free of duty in the due course of international and incidental local traffic only, but not to engage for any period in domestic traffic only. U. S. v. Duluth, W. & P. Ry. Co., 7 Ct. Cust. App. 234.

A railway car brought into the United States and used in domestic traffic only is not saved from a dutiable status by its owner's intention to return it ultimately to international traffic. Id.

A railway car which travels only within the United States does not acquire an international character by carrying international mail. Id.

15. Rules for construction of tariff laws—In general.—Words in the tariff act must be given the meaning they had at the time of the law's enactment. Auffmordt & Co. v. U. S., 7 Ct. Cust. App. 56.

In determining the value of each constituent of an article only those expenses incurred in producing the constituent, and not those assignable to the article, can be considered. U. S. v. Fondeville & Von Iderstine, 7 Ct. Cust. App. 135.

Where the language of a statute is plain and unambiguous it must be followed. U. S. v. Hensel, Bruckmann & Lorbacher, 7 Ct. Cust. App. 391.

The Tariff Act classifies merchandise according to the method of its production as well as according to the nature of the product. Id.

16. —— Commercial or technical sense.—Commercial designation is a matter of fact, not within the judicial knowledge, and the collector's finding is presumptively correct. The interpretation of words of common speech, however, seems to be a matter of law and within the judicial knowledge. American Bead Co. v. U. S., 7 Ct. Cust. App. 18.

The caprice of fashion or the advantages of trade may vary commercial designations, while common acceptance may remain the same. Id.

An established administrative practice cannot overcome full proof of a commercial designation, for, if so, it would lie in the power of the administrative to defeat the legislative, since tariff acts are held to be enacted in the sense of the commercial meanings of their terms. Straus & Co. v. U. S., 7 Ct. Cust. App. 414.

17. —— Long-continued practice.—The language of successive tariff acts shows that Congress has regarded beads and articles made of beads as separate tariff entities from jewelry. American Bead Co. v. U. S., 7 Ct. Cust. App. 18.

An administrative practice contrary

to a rule of law established by judicial decision would not justify the court in departing from the rule of law. Auffmordt & Co. et al. v. U. S., 7 Ct. Cust. App. 56.

18. —— **General and specific enumeration.**—The rule that an eo nomine designation prevails over a general description must give way to an expressed intention of Congress to the contrary. Rosenberg & Co. v. U. S., 7 Ct. Cust. App. 213.

The rule of eo nomine application is but a rule of construction designed to aid in ascertaining the legislative intent, and, while of high importance, is never controlling when it clearly appears that Congress intended a particular article to be otherwise classifiable. U. S. v. Ducommun Hardware Co., 7 Ct. Cust. App. 353.

The power of Congress to select and legislate exclusively for a group of articles and rate them for a particular duty is unquestioned; and when that purpose is clearly evidenced by all pertinent parts of the law, it becomes the duty of the courts to give effect to that intent even in cases where other competing provisions may be more specific in terms. U. S. v. Park & Tilford, 7 Ct. Cust. App. 422.

The existence of the eo nomine rule implies that there is sometimes reasonable ground to claim that merchandise is embraced in the language of more than one paragraph, and its effect is to classify such merchandise under the one which more precisely describes it. The question considered is not whether one overlaps the other or whether one is a genus and the other a species, although incidentally either of these questions may arise; but the controlling factor is always whether the language of the one more accurately describes the merchandise than that of the other, and when so found, unless something appears which indicates that it was the intention of Congress that the merchandise should be classified without regard to the eo nomine rule, it is applied. Levi, Sondheimer & Co. v. U. S., 7 Ct. Cust. App. 447.

22. —— **Construction in favor of importer.**—When there is a doubt as to the construction of the law, the doubt should be resolved in favor of the importer. U. S. v. Britt, Loeffler & Weil, 7 Ct. Cust. App. 63; U. S. v. Gavin & Co., 7 Ct. Cust App. 292; U. S. v. Ducommun Hardware Co., 7 Ct. Cust. App. 353.

All other things being equal, the importer is entitled to the benefit of the doubt. Illfelder & Co. v. U. S., 7 Ct. Cust. App. 53.

23. —— **Use of article.**—Classification by use will prevail over an eo nomine designation, if it appears that Congress so intended. Roger & Gallet v. U. S., 7 Ct. Cust. App. 89.

31. —— **"Not otherwise provided for" or "not specially provided for."**—The presence of the n. s. p. f. clause in each of two competing paragraphs leaves their relative applicability the same as if these words had not been employed. U. S. v. McKesson & Robbins, 7 Ct. Cust. App. 13.

The presence of n. s. p. f. in a paragraph advises customs authorities that merchandise otherwise within it may be classified under some other paragraph, and if the other paragraph contains an eo nomine provision, and the paragraph in which n. s. p. f. is found is general, and not eo nomine, the former controls. An eo nomine provision is not necessarily shorn of its controlling force because coupled with n. s. p. f. Where one of two competing paragraphs contains n. s. p. f., and the other does not, the description in each being in other respects equally specific, the presence in the one and the absence from the other of such provision determines the classification of merchandise equally within either paragraph. Bischoff & Co. v. U. S., 7 Ct. Cust. App. 138.

35. —— **Separation of article into parts.**—It is well settled that goods claimed and invoiced as entireties may, for dutiable purposes, be segregated, and the different parts rated for duty under separate provisions of the law applicable to such parts. U. S. v. Borgfeldt & Co., 7 Ct. Cust. App. 367.

In re-enacting in substantially the same words the provision for lead pencils in successive tariff acts, Congress sanctioned the administrative and judicial construction which rated them and their holders separately for dutiable purposes. Id.

36. —— **Presumptions.** — Congress, when it passed the Tariff Act of 1913, must be presumed to have known that immortelles had been administratively and judicially classified otherwise than as artificial and ornamental flowers, and could have written the paragraph to include them had it so desired. Bayersdorfer & Co. v. U. S., 7 Ct. Cust. App. 66.

Presumptively, commercial and common usage are the same. American Bead Co. v. U. S., 7 Ct. Cust. App. 161.

37. —— **Evidence.**—He who contends that a term used in a tariff act has a commercial meaning, which is different from its common meaning, assumes the burden of maintaining his contention by a fair balance of the evidence. Straus & Co. v. U. S., 7 Ct. Cust. App. 414.

38. —— **Questions for jury.**—Whether or not a fabric is veiling is a matter of commercial designation, and a question of fact. Auffmordt & Co. v. U. S., 7 Ct. Cust. App. 56.

Either party may establish, if he can

by proper proof, what he conceives to be the commercial meaning of a tariff term, even though it may differ from the commercial meaning which has been judicially attached thereto in another case litigated by a different importer. A commercial meaning established in one case will not be conclusively presumed to exist in another case where the parties are not the same. Straus & Co. v. U. S., 7 Ct. Cust. App. 414.

Cited without definite application, U. S. v. One Blue Taffeta Evening Coat (D. C.) 241 F. 926.

DUTIABLE LIST

SCHEDULE A.—CHEMICALS, OILS, AND PAINTS

5. Alkalies, alkaloids, and all chemical compounds, etc.

Chemical compound or salt.—Antimony sulphide is not a salt or compound of antimony oxide, and cannot be dutiable under paragraph 144, Tariff Act of 1913; not being more specifically provided for elsewhere, it is relegated to the residuary provision for chemical salts and compounds in paragraph 5. U. S. v. Innis, Speiden & Co., 7 Ct. Cust. App. 3.

13. Caffein, $1 per pound; compounds of caffein, etc.

Tea sweepings.—Tea sweepings, when mixed with lime and asafetida to make them unfit for beverage use imported, for making caffeine, have not ceased to be tea sweepings. The mixture is not classifiable as a drug under either paragraph 27 or 477; as waste not specially provided for, under paragraph 384; or as a nonenumerated article under paragraph 385. Whether or not the merchandise may be considered as segregable mixed goods is not decided; but, in the absence of any such claim or evidence by which segregation might be made, its classification as tea sweepings under paragraph 13 is affirmed. Schaefer Alkaloid Works v. U. S., 7 Ct. Cust. App. 128.

The presumption of correctness attaching to the collector's classification of denatured tea sweepings (a mixture of tea sweepings, lime, and asafetida) as an entirety (tea sweepings) under this paragraph is not overcome by a claim that the lime content is dutiable separately, unless it be shown that the lime and tea sweepings have each maintained their identity in the mixture, and unless it be shown how much is tea sweepings and how much is lime. U. S. v. Monsanto Chemical Co., 7 Ct. Cust. App. 340.

17. Chemical and medicinal compounds, combinations, etc.

Medicinal compounds.—The fact that preparations designed to cure or alleviate, or to palliate or prevent, a disease of the human body, also afford nourishment to the patient, does not necessarily exclude them from the classification of medicinal compounds or articles similar thereto. Britt, Loeffler & Weil v. U. S., 7 Ct. Cust. App. 118.

Packages of less than 2½ pounds of Loeflund's malt soup stock, a preparation of 57 per cent. maltose and 12 per cent. dextrin, with a certain percentage of potassium carbonate, designed to be given, in combination with milk, wheat flour, and water to marantic infants for their nourishment, and to counteract their intestinal acid intoxication, are dutiable under this paragraph, as being similar to medicinal compounds, and not under paragraph 385 as a nonenumerated manufacture. Loeflund's food maltose, a preparation 60 per cent. dextrin and 40 per cent. maltose, designed to be given to patients in enfeebled states, the result of malnutrition, is subject to the same classification. Id.

The addition, in the tariff acts of 1909 and 1913 to the provision for medicinal preparations already existing in former acts, of a provision for similar substances shows that Congress intended to include within this paragraph certain other articles which are not strictly and exclusively medicinal, but which nevertheless possess some therapeutic value. Id.

20–23. (Repealed.)

12. Thioindigo.—Colors known as thioindigo, which are shown to be derived from napthalene, a coal-tar product, and not from indigo are dutiable as coal-tar dyes or colors under paragraph 20. The fact that indigo may be derived from napthalene, and the fact that colors chemically and practically similar to or identical with the ones at bar may be derived from indigo, will not suffice to make the ones at bar classifiable as "dyes obtained from indigo," under paragraph 514. U. S. v. Hensel, Bruckmann & Lorbacher, 7 Ct. Cust. App. 391.

27. Drugs, such as barks, beans, berries, etc.

½. In general.—The language in successive prior tariff acts of the provisions corresponding to paragraphs 27 and 477, Tariff Act of 1913, shows that Congress gradually narrowed their scope until they include those articles

only which are drugs within the limitations set by the paragraphs. U. S. v. Maine Cent. R. Co., 7 Ct. Cust. App. 114.

18. Spruce gum.—Spruce gum held not dutiable as a drug. See paragraph 385. There being no evidence in the record that spruce gum is a drug, it cannot be classified under either paragraph 27 or 477. U. S. v. Eastern Drug Co., 7 Ct. Cust. App. 210.

Tea sweepings.—Tea sweepings mixed with lime and asafetida held not dutiable as a drug. See paragraph 13.

48. Perfumery, including cologne and other toilet waters, etc.

Powdered talc.—Powdered talc, to which a small quantity of boric acid has been added, the use and purpose of which are as a toilet preparation for application to the skin, is dutiable according to that use under this paragraph, and not as ground talc under paragraph 69. Roger & Gallet v. U. S., 7 Ct. Cust. App. 89.

63. Enamel paints, and all paints, colors, pigments, etc.

1. Artists' colors.—Merchandise consisting of small boxes containing water colors of good quality and articles incidental to their use, designed, adapted, and used for elementary instruction in art, and used to some extent also by artists, is not dutiable as toys under paragraph 342, but as artists' paints or colors under paragraph 63. Ilfelder & Co. v. U. S., 7 Ct. Cust. App. 53.

69. Talcum, ground talc, etc.

Ground or powdered talc.—Powdered talc, to which boric acid has been added, held not dutiable as ground talc. See paragraph 48.

SCHEDULE B.—EARTHS, EARTHENWARE, AND GLASSWARE

72. Tiles, plain unglazed, one color, etc.

Semivitrified.—The fact that the Board of United States General Appraisers had decided the expression "semivitrified," as applied to tiles, Tariff Act of 1897, to be "indefinite, meaningless, and incapable of a uniform understanding" does not justify a conclusion that, by repeating the expression in the Tariff Acts of 1909 and 1913, Congress deliberately continued to use the term as one which was "indefinite, meaningless, and incapable of a uniform understanding." This action by Congress should be taken to mean that, notwithstanding the board's decision, the term in question aptly applied, at the time of the later enactments at least, to certain kinds of tiles which were known to the trade of this country. The court should not impute to Congress the deliberate use of terms known and designed by it to be "indefinite, meaningless, and incapable of a uniform understanding." U. S. v. Vandegrift & Co., 7 Ct. Cust. App. 77.

A preponderance of the evidence establishes that the term "semivitrified," as applied to tiles, had a well-known meaning in the trade at the time of the enactment of the Tariff Act of 1913 (which meaning, after all, was simply the ordinary or dictionary meaning of the word itself), and that the merchandise at bar aptly responds to it. Accordingly, it is dutiable eo nomine under paragraph 72. Id.

79. Earthenware and crockery ware, etc.

Ornamented or decorated earthenware.—Earthenware molded in imitation of cameos is dutiable as "earthenware * * * ornamented or decorated in any manner, and manufactures in chief value of such ware not specially provided for," and not as "imitation precious stones" (paragraph 357). Wedgwood v. U. S., 7 Ct. Cust. App. 434.

82. Gas retorts, 10 per centum ad valorem; lava tips, etc.

Carbon.—Flaming arc-lamp carbons in chief value of lampblack or retort carbon, with or without a core impregnated with chemical salts, are dutiable under this paragraph, as composed chiefly of lampblack or retort carbon, at 40 cents per hundred feet, and not as carbons for flaming arc lamps not specially provided for, at 30 per cent. ad valorem. Hirschberg v. U. S., 7 Ct. Cust. App. 40.

The addition in the Tariff Act of 1913 of the words "carbons for flaming arc lamps, not specially provided for," to the provisions of the act of 1909 for carbons entirely of petroleum coke and carbons chiefly of lampblack or retort carbon, does not cover all carbons for flaming arc lamps, but only such of them as are not made chiefly of lampblack or retort carbon or entirely of petroleum coke. Id.

84. Glass bottles, decanters, etc.

2. Blown glassware.—Plain stemmed glassware, with blown bowl and molded stem and foot, the stem and foot being chief value, like that in United States v. Gredelue, 5 Ct. Cust. App. 298, T. D. 34476, is dutiable as a manufacture of glass under paragraph 109 or 95, Tariff Acts of 1909 and 1913, and not as being in chief value of blown glass under paragraph 98 or 84. U. S. v. Fondeville & Von Iderstine, 7 Ct. Cust. App. 135.

When an article is made of blown glass and molded glass, the one of chief value is the one which had the greatest value at the time it became blown glass or molded glass. Id.

When an article is made of blown glass bowl and molded glass stem and foot, and the removal of the boss-shaped top blown on the bowl is necessary to the completion of the article, the cost of such removal, having been incurred after the bowl had become blown glass, is not a part of the value of the blown glass, but of the article. Id.

9½. Glass articles colored and sand-blasted.—Glass signs made of cylinder glass, sand-blasted and colored, their edges ground, bearing the word "Exit" stenciled by sand-blasting or etched with acid, ready for use, are too far advanced or processed to be dutiable as glass under paragraphs 85 and 90. They are dutiable as glass articles, colored and sand-blasted, under this paragraph. U. S. v. Bache & Co., 7 Ct. Cust. App. 445.

85. Unpolished, cylinder, crown and common window glass, etc.

Glass signs.—Glass signs made of cylinder glass held not dutiable as glass. See paragraph 84.

86. Cylinder and crown glass, polished, etc.

Wind shields.—Wind shields held not dutiable as polished cylinder glass. See paragraph 95.

90. Cast polished plate glass, silvered or unsilvered, etc.

Cylinder glass polished.—Wind shields held not dutiable as polished cylinder glass. See paragraph 95.

Glass signs.—Glass signs made of cylinder glass held not dutiable as glass. See paragraph 84.

93. Opera and field glasses, optical instruments, etc.

Optical instruments.—If a projection lens mounted in its frame and ready for use be regarded as an optical instrument, its frame and mountings are none the less the frame and mountings of a projection lens; and, as "frames and mountings" for projection lenses are specifically provided for in paragraph 94, that provision must be preferred for the purposes of classification to the broader enumeration, "optical instruments and frames and mountings for the same" contained in paragraph 93. U. S. v. American Exp. Co., 7 Ct. Cust. App. 169.

Pathescope frames and mountings.—Pathescope frames and mountings held not dutiable as optical instruments and frames and mountings for the same. See paragraph 94.

94. Surveying instruments, telescopes, etc.

Pathescope frames and mountings.—A metal structure, designed to serve as a support for the motive machinery, film reels, lamp house, and projection lenses of a moving picture machine known as a "pathescope," is not dutiable under paragraph 93 ("optical instruments and frames and mountings for the same"), but under paragraph 94 ("projection lenses, and frames and mountings for the same"). U. S. v. American Exp. Co., 7 Ct. Cust. App. 169.

Optical instruments.—If a projection lens, mounted in its frame and ready for use, be regarded as an optical instrument, its frame and mountings are none the less the frame and mountings of a projection lens; and, as "frames and mountings" for projection lenses are specifically provided for in paragraph 94, that provision must be preferred for the purposes of classification to the broader enumeration, "optical instruments and frames and mountings for the same," contained in paragraph 93. U. S. v. American Exp. Co., 7 Ct. Cust. App. 169.

95. Stained or painted glass windows, etc.

Manufactures of glass.—Glassware of blown glass and molded glass held not dutiable as manufacture of glass. See paragraph 84.

Penholder racks or stands in chief value of glass, with gold or silver plated metal rims, are dutiable as manufactures of glass, under paragraph 95, and not as gold or silver plated metal articles, under paragraph 167. Cross Co. v. U. S., 7 Ct. Cust. App. 43.

Polished cylinder glass sheets which have been so far advanced or processed as to lose the character of polished cylinder glass under paragraph 86, Tariff Act of 1913, have concurrently lost the right of classification under that and paragraph 90, and may be classified under paragraph 95 as "all glass or manufactures of glass, * * * not specially provided for," whether or not they have been so far advanced or processed as to constitute "manufactures." U. S. v. Schrenk & Co., 7 Ct. Cust. App. 451.

Merchandise consisting of two polished cylinder glass sheets glued together, with a rim of adhesive substance to keep dampness from between the sheets, designed for use as material for automobile wind shields, is too far processed or advanced for classification as polished cylinder glass under paragraphs 86 and 90. It is dutiable as "all glass or manufactures of glass * * * or of which glass is the component material of chief value not specially provided for" under paragraph 95. Id.

Mirrors.—Small mirrors suitable for use in fitting out vanity cases are not dutiable as parts of vanity cases under paragraph 356, but as mirrors under paragraph 95. Rumpp & Sons v. U. S., 7 Ct. Cust. App. 203.

98. Marble, breccia, onyx, etc.

Manufactures of marble.—A marble font and marble seats, the work of a sculptor and incidentally embellished by him with artistic carvings, are not sculpture or works of art under paragraph 376, but manufactures of marble under paragraph 98. U. S. v. Olivotti & Co., 7 Ct. Cust. App. 46.

SCHEDULE C.—METALS AND MANUFACTURES OF

102. Chrome or chromium, metal ferrochrome, etc.

Ferrosilicon.—Taut iron, being iron in the form of pigs, held not dutiable as ferrosilicon. See paragraph 518.

104. Beams, girders, joists, angles, channels, etc.

Structural shapes.—It was not the legislative purpose to include in paragraph 104 structural shapes of steel containing nickel alloy. Kuyper & Co. v. U. S., 7 Ct. Cust. App. 212.

110. Steel bars, and tapered or beveled bars, mill shafting, etc.

Pressed or stamped shapes.—Structural shapes of nickel-alloyed steel are dutiable as pressed shapes composed of steel and containing nickel as an alloy under paragraph 110, and not as structural shapes of steel under paragraph 104. Kuyper & Co. v. U. S., 7 Ct. Cust. App. 212.

114. Round iron or steel wire; wire composed of iron, steel, etc.

1½. Base-metal safety pins and hair pins coated with lacquer.—Base-metal safety pins and hair pins coated with lacquer held not dutiable as manufactures of wire. See paragraph 158.

10½. All other wire not specially provided for.—Wire of platinum and iridium is not admissible free of duty under paragraph 517, Tariff Act of 1913. It is an artificial combination, while the call of the paragraph is for native combinations only. Bosch Magneto Co. v. U. S., 7 Ct. Cust. App. 50.

Platinum in wire is not the same thing as platinum wire. Platinum in wire is a metal in a certain form, and can contain no substantial quantity of any other metal. Platinum wire is an article, and the record shows that it usually contains a substantial quantity of iridium. Platinum in wire describes a material—platinum. Id.

Wire, 80 per cent. platinum and 20 per cent. iridium, is not admissible free of duty under paragraph 578 as "platinum * * * in wire," notwithstanding its commercial designation as platinum wire. It is dutiable under paragraph 114 as "all other wire not specially provided for." Id.

123. Nuts or nut blanks, and washers, etc.

Bolts and nuts for pruning shears.—Bolts and nuts for pruning shears held not dutiable as bolts and nuts. See paragraph 391.

128. Pen knives, pocket knives, clasp knives, etc.

Scissors and shears.—Sheep shears held not dutiable as shears. See paragraph 391.

Shears for pruning vineyards and orchards held not dutiable as shears. See paragraph 391.

Congress intended that those shears which are chiefly used agriculturally should not be dutiable as "shears" under paragraph 128, but admissible free under paragraph 391. U. S. v. Ducommun Hardware Co., 7 Ct. Cust. App. 353.

Razor blades.—Razor blades, designed to become parts of razors, valued at more than $1 per dozen, are dutiable at 55 per cent. ad valorem under paragraph 128, and not as metal articles under paragraph 167. U. S. v. Witte Cutlery Co., 7 Ct. Cust. App. 181.

Parts of knives, etc.—The proviso to paragraph 128 ("that blades, handles, or other parts of any of the foregoing knives, razors, or erasers shall be dutiable at not less than the rate imposed upon the knives, razors, and erasers of which they are parts") does not mean that parts, to be included in the proviso, must be imported with the other parts of the article. The expressions "foregoing knives, razors, or erasers" and "of which they are parts" refer to knives, razors or erasers generically, and not to the particular ones which might be entered under the paragraph. U. S. v. Witte Cutlery Co., 7 Ct. Cust. App. 181.

144. Antimony, as regulus or metal, and matter containing, etc.

Antimony sulphide.—Antimony sulphide held not dutiable as a salt or compound of antimony oxide. See paragraph 5.

Antimony oxide, salts and compounds of.—The words "antimony oxide, salts and compounds of," in paragraph 144, Tariff Act of 1913, are plain and unambiguous. It is not apparent that they are either inoperative or in conflict with other provisions indicating a congressional intent at variance with the chosen phrase, and it cannot be said that Congress intended a comma after "antimony." U. S. v. Innis, Speiden & Co., 7 Ct. Cust. App. 3.

150. Tinsel wire, lame, or lahn, etc.

Ribbons, galloons, gimps, braids, and bands.—This paragraph does not now include ribbons, galloons, gimps, braids, and bands. Siegman & Weil v. U. S., 7 Ct. Cust. App. 195.

154. Metallic mineral substances in a crude state, etc.

Unwrought metals.—Taut iron, being iron in the form of pigs, held not dutiable as unwrought metal. See paragraph 518.

158. Pins with solid heads, without ornamentation, etc.

Metal coated with lacquer.—An article made of metal and coated with lacquer for purposes of preservation and appearance is "composed wholly of" that metal within the meaning of paragraph 158. Hague & Co. v. U. S., 7 Ct. Cust. App. 75.

The fact that pins answering to the description of paragraph 158 are coated with lacquer does not take them without the operation of the words "composed wholly of" certain named metals in that paragraph, and make them dutiable as manufactures of wire under paragraph 114. Id.

162. Zinc-bearing ores of all kinds, including calamine, etc.

Zinc-bearing ores.—The fact that paragraph 162, Tariff Act of 1913, provides a special method of appraising zinc ores, does not relieve them from being entered upon invoice as other importations, nor does it relieve their importer from the consequences of undervaluation. National Zinc Co. v. U. S., 7 Ct. Cust. App. 145.

165. All steam engines, steam locomotives, printing presses, etc.

Machine tools.—An attachment called "Dronsfield patent traverse wheel grinder," designed to fit on a carding machine, held not dutiable as machine tool. See paragraph 167.

Paragraph 165, though providing for machine tools, does not provide for parts of them. U. S. v. Leigh & Butler, 7 Ct. Cust. App. 228.

Marine engine.—A marine engine is not admissible free of duty under Comp. St. 1916, § 5309, as shipbuilding materials or articles, but is dutiable under this paragraph as a steam engine. U. S. v. Outerbridge & Co., 7 Ct. Cust. App. 223.

167. Articles and wares not specially provided for, etc.

19. **Braids.**—"Lead and cotton clo-clo braids," merchandise consisting of pieces of lead molded upon a flax cord, the whole being covered by tubular cotton braiding, lead being the component material of chief value, are not dutiable as being in part of braids under paragraph 358, but as being in chief value of lead under paragraph 167. U. S. v. Macy & Co., 7 Ct. Cust. App. 8.

41½. **Foxtail, rope, tombac, and snake chain.**—Foxtail, rope, tombac, and snake chain, material for making jewelry, held not dutiable as metal articles. See paragraph 356.

57. **Machines and appliances.**—A machine used to convert crystalline into amorphous sugar for making chocolate is not admissible free of duty as "machinery for use in the manufacture of sugar" under paragraph 391, but dutiable as a manufacture of metal not specially provided for under paragraph 167. It is a machine for use in the manufacture of chocolate rather than sugar. Whether or not it would be admissible free of duty if used in this country for manufacturing amorphous sugar directly from cane or beet juice, and if amorphous sugar were in ordinary use in this country, is not decided. Downing & Co. v. U. S., 7 Ct. Cust. App. 287.

Two centrifugal machines and a pump and tank for use in connection with them were imported for use in the manufacture of sugar, and are being actually so used. It was shown, however, that about 90 per cent. of such machines are used otherwise. They are dutiable under the residuary provision for manufactures of metal (paragraph 167), and not admissible free of duty as machinery for use in the manufacture of sugar (paragraph 391). Brown & Co. v. U. S., 7 Ct. Cust. App. 309.

58¼. **Metal frames.**—Metal frames in which parabolic mirrors are set are dutiable as metal articles or wares not specially provided for under paragraph 199, Tariff Act of 1909. General Electric Co. v. U. S., 7 Ct. Cust. App. 157.

58½. **Metal handles.**—Metal handles for small articles of personal convenience (such as buttonhooks), pin and needle boxes, button hooks, tweezers, manicuring implements, pin or hairpin boxes, and perfume or smelling salt flasks, are shown by the testimony and by their shape, size, and construction not to be articles designed to be carried on or about or attached to the person. They are not dutiable as such under paragraph 356, Tariff Act of 1913, but as articles or wares of metal under paragraph 167. Rumpp & Sons v. U. S., 7 Ct. Cust. App. 203.

59½. **Metal triangles.**—Metal triangles held not dutiable as composed in chief value of iron or other metal. See paragraph 373.

69¼. **Pathescope frames and mountings.**—Pathescope frames and mountings held not dutiable as articles of metal. See paragraph 94.

69½. **Pedometers.**—Pedometers having a catch by which they are attached to the vest pocket, used principally by practical people for utilitarian purposes, are not like the articles named in the third clause of paragraph 356, Tariff Act of 1913. They are not dutiable under paragraph 356, but are dutiable as metal articles not specially provided for under paragraph 167. U. S. v. Sussfeld, Lorsch & Co., 7 Ct. Cust. App. 126.

69¾. **Penholder racks.**—Penholder racks or stands in chief value of glass, with gold or silver plated metal rims, held not dutiable as gold or silver plated metal articles. See paragraph 95.

72¼. **Policemen's whistles.**—Policemen's whistles of metal are not dutiable under paragraph 356, Tariff Act of 1913, as metal articles designed to be carried on or about or attached to the person, but under paragraph 167, as articles or wares composed wholly or in chief value of metal. Schoverling, Daly & Gales et al. v. U. S., 7 Ct. Cust. App. 172.

72½. **Powder boxes and vanity boxes.**—Powder boxes and vanity boxes of metal held not dutiable as articles of metal. See paragraph 356.

72¾. **Railway car.**—Railway car held not dutiable as manufacture in chief value of metal. See paragraph 176.

72⅞. **Razor blades.**—Razor blades held not dutiable as metal articles. See paragraph 128.

74½. **Rosaries.**—Rosaries held not dutiable as articles of metal. See paragraph 356.

Rosaries in chief value of silver-plated metal, which are not designed for use as jewelry, which are not intended to be carried on or about or attached to the person, or worn on or as a part of the attire, and which have only a devotional use, are not dutiable under the "jewelry paragraph" (356), tariff act of 1913, but are dutiable as articles plated with silver under paragraph 167. U. S. v. American Bead Co., 7 Ct. Cust. App. 132.

77½. **Shovels.**—Shovels chiefly used by farmers held not dutiable as metal articles. See paragraph 391.

78. **Silver hand bags.**—Hand bag or purse frames with a substantial portion of their surfaces plated with gold or silver are dutiable under the first clause of paragraph 167, as "articles or wares plated with gold or silver" at 30 per cent. ad valorem, and not under the last clause as metal articles not plated with gold or silver at 20 per cent. ad valorem. Cross Co. v. U. S., 7 Ct. Cust. App. 43.

The last clause of paragraph 167, taxing articles or wares of certain metals when not plated with gold or silver, excludes from its operation not only such articles as are entirely plated but also such as have a substantial portion of their surfaces plated, and relegates them to the provision in the same paragraph for articles or wares plated with gold or silver. Id.

91½. Traverse wheel grinder.—An attachment called "Dronsfield's patent traverse wheel grinder," designed to fit on a carding machine by means of bearings provided for it on the carding machine and to sharpen the teeth of the card clothing of the carding machine by the incidental use of the power which operates the carding machine, is not a machine, but a part of one. It is not dutiable as a machine tool under paragraph 165, but as a manufacture of metal not specially provided for under paragraph 167. U. S. v. Leigh & Butler, 7 Ct. Cust. App. 228.

97¼. Wireless apparatus.—Wireless apparatus for American vessels held not dutiable as being in chief value of metal. See post, § 5310.

97½. Wooden lead pencils with metal holders or attachments.—Wooden lead pencils with metal holders are not dutiable as entireties. The pencils are dutiable as such under paragraph 378, and the holders as metal articles under paragraph 167. U. S. v. Borgfeldt & Co., 7 Ct. Cust. App. 367.

Lead pencils composed in the larger part of wood, but having an attachment of metal, the metal attachment constituting the chief value of the article, are not dutiable under paragraph 356 as "articles * * * designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles," etc. They are dutiable as manufactures of metal under paragraph 167. U. S. v. Faber, 7 Ct. Cust. App. 406.

SCHEDULE D.—WOOD AND MANUFACTURES OF

169. Cedar commercially known as Spanish cedar, lignum-vitæ, etc.

Japanese white oak lumber.—In paragraphs 203, Tariff Act of 1909, and 169, Tariff Act of 1913, Congress levied duty upon certain and all-sawed forms of specified woods, in which oak is not included, and all "cabinet woods not further manufactured than sawed." Manifestly what are "cabinet woods" besides the ones named is left to common understanding or proof. In view of the well-known and multitudinous uses to which oak is devoted we cannot say as a matter of common knowledge that all oak is a cabinet wood. Mitsui & Co. v. U. S., 7 Ct. Cust. App. 307.

The fact that railroad ties are cut from Japanese white oak is not sufficient to prevent Japanese white oak lumber from being cabinet wood. The evidence shows that the larger portion of Japanese white oak lumber introduced into the commerce of this country is used as cabinet wood; and, upon the evidence in this case, the decision of the Board of United States General Appraisers sustaining the collector's classification of this sawed Japanese white oak as cabinet wood under paragraph 203, Tariff Act of 1909, or 169, Tariff Act of 1913, is affirmed. Mitsui & Co. v. U. S., 7 Ct. Cust. App. 307.

173. Chair cane or reeds wrought or manufactured, etc.

Reeds manufactured from rattans.—Reeds made from rattan, used, sometimes after being further processed and sometimes without such further treatment, in the manufacture of furniture, chairs, baby carriages, brooms, and some other articles, are not admissible free of duty as rough rattan sticks cut into lengths only under paragraph 648, Tariff Act of 1913, and, so far as this record shows, the collector's classification of them under paragraph 173 as chair canes manufactured from rattan is correct. Graser-Rothe v. U. S., 7 Ct. Cust. App. 142.

176. House or cabinet furniture wholly or in chief value of wood, etc.

2½. Bamboo-chip hats.—Unfinished bamboo-chip hat held not dutiable as manufacture of wood. See paragraph 335.

18¼. Railway car.—Railway car held dutiable as manufacture in chief value of wood. U. S. v. Duluth, W. & P. Ry. Co., 7 Ct. Cust. App. 234.

18½. Ropings of wood chip.—Ropings made of wood chip held not dutiable as manufactures of wood. See paragraph 368.

SCHEDULE F.—TOBACCO AND MANUFACTURES OF

181. Wrapper tobacco, and filler tobacco, etc.

Cited without definite application, St. Elmo Cigar Co. v. U. S., 7 Ct. Cust. App. 153.

182. The term wrapper tobacco as used in this section means, etc.

Cited without definite application, St. Elmo Cigar Co. v. U. S., 7 Ct. Cust. App. 153.

SCHEDULE G.—AGRICULTURAL PRODUCTS AND PROVISIONS

200. Vegetables, if cut, sliced or otherwise reduced in size, etc.

8½. Seaweed.—Hoshinora, or dried seaweed, though edible, held not dutiable as a vegetable. See paragraph 552.

Nori, or dried seaweed, though edible held not dutiable as a vegetable. See paragraph 552.

210. Orchids, palms, azalia indica, and cut flowers, etc.

3. Bulbs.—The enacting clause of this paragraph provides for begonia, Iris Kaempferri, canna, and dahlia bulbs. Such types of plant life are not true bulbs. The term "bulbs," as used in the proviso, cannot be given a meaning different from that which it has in the enacting clause, and from that it follows that the designation "bulbs," as used in the proviso, is broad enough to cover plant growths which, though not true bulbs botanically speaking, are nevertheless either popularly or commercially known as bulbs. Maltus & Ware v. U. S., 7 Ct. Cust. App. 320.

4. —— Mature mother flowering bulbs.—Orchid plants, known as Cattleyas, which at the time of importation had already flowered, would never flower again, and were useful for no commercial purpose except propagating, and which, although not true bulbs, were known to the trade as orchid bulbs, were entitled to free entry under the proviso to this paragraph as mature mother flowering bulbs imported exclusively for propagating purposes. Maltus & Ware v. U. S., 7 Ct. Cust. App. 320.

A "mature mother flowering bulb" is a bulb which has reached its full development and has no function to perform save that of throwing out other bulbs, which, under normal conditions, will flower and in their turn develop daughter bulbs. Id.

When Congress limited the proviso of this paragraph to "bulbs imported exclusively for propagating purposes," it had in mind the use of the bulbs and not the business of the importer; and so the fact that bulbs fit only for such purpose were sold, and not used, by the importer would not prevent their falling within the proviso. Id.

4½. Cut flowers.—Wreaths of dried and dyed immortelles, with straw frames, the frames being of minor value are, by virtue of paragraph 386, which provides that certain mixed-material articles shall be assessed at the rate borne by the material of chief value, dutiable at the same rate as are preserved cut flowers under paragraph 210. Bayersdorfer & Co. v. U. S., 7 Ct. Cust. App. 66.

Dried and dyed immortelles are not dutiable as unenumerated articles under paragraph 385, or as artificial and ornamental flowers under paragraph 347, but are dutiable by similitude as preserved cut flowers under paragraph 210. Id.

212. Seeds: Castor beans or seeds, 15 cents per bushel, etc.

Star anise seed.—Star anise seed held not dutiable as anise seed, or its oil as other oil seeds not specially provided for. See paragraph 477.

217. Apples, peaches, quinces, etc.

4. Berries.—Currants which have been ground to a pulp for use in making wine have lost their identity. They are not dutiable as "currants" under paragraph 218, but as "fruits, including berries, when dried, desiccated, evaporated, or prepared in any manner" under paragraph 217. Stone & Co. v. U. S., 7 Ct. Cust. App. 173.

14½. Stuffed olives.—Stuffed olives held not dutiable as edible fruits. See paragraph 218.

218. Figs, 2 cents per pound, plums, prunes, etc.

Currants.—Currants, ground, held not dutiable as currants. See paragraph 217.

Olives.—Olives pitted and stuffed with sweet red peppers are within the designation "olives," as that term is commonly and popularly used and understood. It is not shown that they are without that term commercially. They are dutiable as olives (paragraph 218), and not as edible fruits (paragraph 217) or nonenumerated articles (paragraph 385). Mawer Co. v. U. S., 7 Ct. Cust. App. 493.

226. Nuts of all kinds, etc.

Nuts in general.—Decisions by the Board of United States General Appraisers that the expression "nuts of all kinds" included inedible as well as edible nuts have stood apparently unchallenged until legislative sanction of the view may be presumed. This construction must be given to this expression in paragraph 226. Sheldon & Co. v. U. S., 7 Ct. Cust. App. 454.

The expression "nuts * * * shelled or unshelled" (paragraph 226) does not include only those nuts which are capable of being shelled. Id.

Betel nuts.—Betel nuts are dutiable as nuts (paragraph 226) and not as crude drugs (paragraph 477) or nonenumerated articles (paragraph 385). Sheldon & Co. v, U. S., 7 Ct. Cust. App. 454.

SCHEDULE H.—SPIRITS, WINES, AND OTHER BEVERAGES

246. Malt extract, fluid, etc.

Malt extract.—Congress, in using the expression "solid or condensed" as applied to malt extract (paragraph 246), must be presumed to have known that it had been administratively and judicially interpreted under successive prior tariff acts to mean solid only. U. S. v. Britt, Loeffler & Weil, 7 Ct. Cust. App. 63.

If there is any doubt as to whether or not "solid or condensed" (paragraph 246), means solid only, the doubt should be resolved in favor of the importer by holding that it does. Id.

To hold that the expressions "fluid" and "solid or condensed," in paragraph 246, describe malt extract in three states of density, would make it impossible to determine what degree of concentration would transform it from the fluid to the condensed state. Id.

Malt extract of the consistency of thick molasses is dutiable as fluid, and not condensed, malt extract under paragraph 246. Id.

SCHEDULE I.—COTTON MANUFACTURES

250. Cotton thread and carded yarn, warps, or warp yarn, etc.

Cotton thread and carded yarn warp or warp yarn.—Machine embroidery cottons held not dutiable as cotton thread and carded yarn warp or warp yarn. See paragraph 251.

251. Spool thread of cotton, crochet, darning, etc.

Embroidery cottons.—Cotton yarns used in an embroidery machine to lock the embroidery stitch on the back of the fabric are in fact used as "embroidery cottons." An importation of such yarn, wound upon bobbins so that it can be used only for this purpose, is dutiable as "embroidery cottons" (paragraph 251), notwithstanding that the larger part of such yarns is used for other purposes. Straus & Co. v. U. S., 7 Ct. Cust. App. 414.

The term "embroidery cottons," as used in paragraph 251, does not include only those used in hand embroidery, nor is it limited to a commodity imported only in skeins. Id.

Cotton yarns used in an embroidery machine for executing the embroidery design on the face of the fabric are dutiable as "embroidery cottons" (paragraph 251), and not as "cotton thread and carded yarn, warps or warp yarn" (paragraph 250). Straus & Co. v. U. S., 7 Ct. Cust. App. 415.

255. Handkerchiefs or mufflers composed of cotton, etc.

Handkerchiefs.—Handkerchiefs, embroidered or scalloped, held not dutiable as handkerchiefs composed of cotton. See paragraph 358.

256. Clothing ready-made, and articles of wearing apparel, etc.

Raincoats.—Goods made by cementing with rubber a cotton cloth to a cotton and wool cloth, and goods made by cementing with rubber a cotton and silk cloth to a cotton and wool cloth, the rubber in each case being negligible in

value, are composed in chief value of cotton, wool, or silk, according to which represents the greatest value as yarn, plus its proportion, on the basis of quantity, of the cost of weaving and other expenses incurred in making the cloth and bringing it to the condition it had immediately prior to its combination with the other materials in order to form the goods in question (paragraph 386). For this purpose that cloth which is composed in chief value of one of these fibers should not be regarded as made entirely of it. Field & Co. v. U. S., 7 Ct. Cust. App. 332, T. D. 36876. Raincoats made from such goods are dutiable under paragraph 256, 266, or 291, according to the material of chief value as found by this rule, and not as wearing apparel not specially provided for (paragraph 261). True Fit Waterproof Co. v. U. S., 7 Ct. Cust. App. 489.

258. Curtains, table covers, and all articles manufactured of cotton chenille, etc.

Jacquard figured manufactures of cotton.—Jacquard figured cotton laces held not dutiable as "all other Jacquard figured manufactures of cotton." See paragraph 358.

Jacquard figured upholstery goods.—Jacquard figured flax laces, chiefly used in making lace curtains, are dutiable under paragraph 258 as Jacquard figured upholstery goods, and not under paragraph 358 as "laces." U. S. v. Snow's United States Sample Exp. Co., 7 Ct. Cust. App. 312.

With the evidence in hopeless conflict as to whether or not certain Jacquard figured nets and nettings, made of cotton, and intended for use in the making of window curtains, and chiefly so used, are known commercially as upholstery goods, the board's classification of them as upholstery goods under paragraph 258, and not as nets or nettings under paragraph 358, is affirmed. U. S. v. Mills & Gibb, 7 Ct. Cust. App. 388.

261. Shirts and drawers, pants, vests, union suits, etc.

Wearing apparel not specially provided for.—Raincoats held not dutiable as wearing apparel not specially provided for. See paragraph 256.

266. All articles made from cotton cloth, etc.

1. In general.—Goods made by cementing with rubber a cotton cloth to a cotton and wool cloth, and goods made by cementing with rubber a cotton and silk cloth to a cotton and wool cloth, the rubber in each case being negligible in value, are composed in chief value of cotton, wool, or silk, according to which represents the greatest value as yarn, plus its proportion, on the basis of quantity, of the cost of weaving and other expenses incurred in making the cloth and bringing it to the condition it had immediately prior to its combination with the other materials in order to form the goods in question (paragraph 386, Tariff Act of 1913). For this purpose that cloth which is composed in chief value of one of these fibers should not be regarded as made entirely of it. Field & Co. v. U. S., 7 Ct. Cust. App. 332, T. D. 36876. Raincoats made from such goods are dutiable under paragraph 256, 266, or 291, Tariff Act of 1913, according to the material of chief value as found by this rule, and not as wearing apparel not specially provided for (paragraph 261). True Fit Waterproof Co. v. U. S., 7 Ct. Cust. App. 489.

30½. Stuffed chicks and ducklings.—Stuffed chicks and ducklings held not dutiable as manufactures of cotton. See paragraph 347.

SCHEDULE J.—FLAX, HEMP, AND JUTE, AND MANUFACTURES OF

282. Handkerchiefs composed of flax, hemp, or ramie, etc.

Handkerchiefs.—Handkerchiefs, embroidered or scalloped, held not dutiable as handkerchiefs composed of flax. See paragraph 358.

283. Plain woven fabrics, etc.

Woven fabrics.—Following a long and consistent line of decisions of the board and courts, legislatively approved, this court has held, and does hold, that the test of whether or not a fabric is "plain woven" (paragraph 283) is the appearance its weave presents, and not the manner of its weaving. Stone & Downer Co. v. U. S., 7 Ct. Cust. App. 365.

Card cloth in chief value of flax, known in the textile industry as a "plain double weave," woven double by an intricate and elaborate method for the purpose of increasing its weight and strength, but presenting by its weave a plain, as distinguished from a figured or twilled, effect, is dutiable as "plain woven fabrics" (paragraph 283), and not as "manufactures of flax" (paragraph 284). Id.

284. All woven articles, finished or unfinished, etc.

2. Flax in general.—Card cloth, plain double woven, in chief value of flax, held not dutiable as plain woven fabrics. See paragraph 283.

3½. Jute pieces for patching cotton bags.—Jute pieces for patching cotton bags held not dutiable as a woven article or manufacture of vegetable fiber. See paragraph 408.

SCHEDULE K.—WOOL, AND MANUFACTURES OF

288. Cloths, knit fabrics, felts not woven, etc.

11. Manufactures of wool in general.—Cloth invoiced as "sateen" or "standard," with a warp yarn of wool and a weft yarn of mohair and wool, the wool in the two yarns being more valuable than the mohair, is dutiable under paragraph 288 as cloth in chief value of wool, and not under paragraph 308 as cloth in chief value of the hair of the Angora goat. Field & Co. v. U. S., 7 Ct. Cust. App. 332.

A textile fabric, the distinguishing feature of which is an even, unbroken surface, ornamented in the making with figures and designs in colored threads or yarns, is tapestry, and is not dutiable as embroidery under paragraph 358, Tariff Act of 1913. It is dutiable as "cloths, * * * and all manufactures of every description made, by any process, wholly or in chief value of wool, not specially provided for" (paragraph 288). Sloane v. U. S., 7 Ct. Cust. App. 463.

290. Women's and children's dress goods, coat linings, etc.

Coat linings.—Angora goat hair coat linings in the piece held not dutiable as coat linings of wool. See paragraph 308.

291. Clothing, ready made, and articles of wearing apparel, etc.

Wearing apparel in general.—Goods made by cementing with rubber a cotton cloth to a cotton and wool cloth, and goods made by cementing with rubber a cotton and silk cloth to a cotton and wool cloth, the rubber in each case being negligible in value, are composed in chief value of cotton, wool, or silk, according to which represents the greatest value as yarn, plus its proportion, on the basis of quantity, of the cost of weaving and other expenses incurred in making the cloth and bringing it to the condition it had immediately prior to its combination with the other materials in order to form the goods in question (paragraph 386). For this purpose that cloth which is composed in chief value of one of these fibers should not be regarded as made entirely of it. Field & Co. v. U. S., 7 Ct. Cust. App. 332, T. D. 36876. Raincoats made from such goods are dutiable under paragraph 256, 266, or 291, Tariff Act of 1913, according to the material of chief value as found by this rule, and not as wearing apparel not specially provided for (paragraph 261). True Fit Waterproof Co. v. U. S., 7 Ct. Cust. App. 489.

294. Saxony, Wilton, and Tournay velvet carpets, etc.

Seamless Wilton and tapestry Brussels rugs.—Seamless Wilton and tapestry Brussels rugs, cut from long rolls of "carpet or carpeting" and fringed or bound, are not dutiable under paragraph 300, as "similar rugs" to the rugs named in paragraph 300, because they are machine made, whereas the rugs named in paragraph 300 are hand made or hand tufted. They are by virtue of paragraph 303 dutiable, respectively, at the rate prescribed by paragraph 294 for Wilton carpets or carpeting, and at the rate prescribed by paragraph 297 for tapestry Brussels carpets or carpeting. Beuttell & Sons v. U. S., 7 Ct. Cust. App. 356.

297. Tapestry Brussels carpets, figured or plain, etc.

Seamless Wilton and tapestry Brussels rugs.—Seamless Wilton and tapestry Brussels rugs, cut from long rolls of "carpet or carpeting" and fringed or bound, are not dutiable under paragraph 300 as "similar rugs" to the rugs named in paragraph 300, because they are machine made, whereas the rugs named in paragraph 300 are hand made or hand tufted. They are by virtue of paragraph 303 dutiable, respectively, at the rate prescribed by paragraph 294 for Wilton carpets or carpeting, and at the rate prescribed by paragraph 297 for tapestry Brussels carpets or carpeting. Beuttell & Sons v. U. S., 7 Ct. Cust. App. 356.

300. Carpets of every description, etc.

In general.—The language "carpets of every description, woven whole for rooms," paragraph 300, shows, by the express inclusion of this class of "car-

pets" or carpeting, that the other enumerations therein would not otherwise have included it; in other words, that carpets and carpeting and things made therefrom were not otherwise embraced within paragraph 300. Beuttell & Sons v. U. S., 7 Ct. Cust. App. 356.

Seamless Wilton and tapestry Brussels rugs.—Seamless Wilton and tapestry Brussels rugs held not dutiable as similar rugs to rugs mentioned. See paragraph 303.

Similar rugs.—All the rugs named in this paragraph are hand made or hand tufted. Hence, a rug not hand made or hand tufted is not a "similar rug" within the paragraph. Beuttell & Sons v. U. S., 7 Ct. Cust. App. 356.

303. Mats, rugs for floors, screens, covers, hassocks, etc.

Rugs in general.—Paragraph 303, Tariff Act of 1913 ("rugs for floors"), includes only those rugs made from carpets or carpeting. Beuttell & Sons v. U. S., 7 Ct. Cust. App. 356.

Brussels and Wilton rugs.—Seamless Wilton and tapestry Brussels rugs, cut from long rolls of "carpet or carpeting" and fringed or bound, are not dutiable under paragraph 300 as "similar rugs" to the rugs named in paragraph 300, because they are machine made, whereas the rugs named in paragraph 300 are hand made or hand tufted. They are, by virtue of paragraph 303, dutiable, respectively, at the rate prescribed by paragraph 294 for Wilton carpets or carpeting, and at the rate prescribed by paragraph 297 for tapestry Brussels carpets or carpeting. Beuttell & Sons v. U. S., 7 Ct. Cust. App. 356.

304. Whenever in this section the word "wool" is used, etc.

Wool.—In the Tariff Acts of 1897 (paragraph 383) and 1909 (paragraph 395) it was provided that when the word "wool" is used in connection with a manufactured article of which it is a component material it shall be held to include the wool or hair of the sheep, camel, goat, alpaca, or other animal. The corresponding provision in the Tariff Act of 1913 (par. 304) omits the words "goat, alpaca," and changes the broad provision "other animal" to the narrower one "other like animals." To hold that a manufacture of wool, under the Tariff Act of 1913, includes a manufacture of Angora goat hair, would be to deny any meaning to this change in legislative language. Rosenberg & Co. v. U. S., 7 Ct. Cust. App. 213.

308. Cloth and all manufactures of every description, etc.

Goat hair.—Wool and mohair fabrics held not dutiable as cloth in chief value of hair of Angora goat. See paragraph 288.

The language of successive tariff acts shows that Congress has always either considered the hair of the Angora goat not to be wool, or has thought it best, for purposes of greater certainty, to refer specially to it and treat it independently of wool as a subject of classification. Rosenberg & Co. v. U. S., 7 Ct. Cust. App. 213.

Angora goat hair coat linings, not cut to form or shape, are dutiable as a manufacture of Angora goat hair under paragraph 308, Tariff Act of 1913, and not as coat linings of wool under paragraph 290. Id.

The history of the passage of the Tariff Act of 1913 indicates that Congress intended to impose a higher rate of duty upon the products, fabrics, and manufactures of the hair of the Angora goat than upon similar articles when composed of the hair of certain other animals. Id.

310. The provisions of this schedule (K) shall be effective, etc.

Construction of former acts.—Paragraph 310, Tariff Act of 1913, kept in full force and effect until January 1, 1914, not only the rates, but also the enumerations, of Schedule K, Tariff Act of 1909, except as otherwise specifically provided by the Act of 1913. Consequently, the provision of paragraph 381, Tariff Act of 1909, in relation to "women's and children's dress goods * * * composed in whole or in part of wool," remained in full force and effect until January 1, 1914. U. S. v. Salfner, 7 Ct. Cust. App. 371.

With reference to women's and children's dress goods, composed in part of wool but in chief value of silk, the language "dress goods composed in part of wool" (paragraph 381, Tariff Act of 1909) is more specific than the language "woven fabrics, in the piece or otherwise, of which silk is the component material of chief value" (paragraph 318, Tariff Act of 1913). Id.

Women's and children's dress goods, composed in part of wool, but in chief value of silk, imported in November, 1913, were dutiable as "women's and children's dress goods * * * composed wholly or in part of wool" (paragraph 381, Tariff Act of 1909). Id.

SCHEDULE L.—SILKS AND SILK GOODS

315. Handkerchiefs or mufflers composed wholly or in chief value of silk, etc.

Handkerchiefs.—This paragraph does not include handkerchiefs embroidered or scalloped. See paragraph 358.

317. Clothing, ready made, and articles of wearing apparel, etc.

Wearing apparel.—Automobile and chiffon veils held not dutiable as wearing apparel. See paragraph 358.

318. Woven fabrics, in the piece or otherwise, etc.

6½. Comfortables.—Comfortables in chief value of silk, edged with a silk cord, are not classifiable as appliquéd, under paragraph 358, but as a manufacture of silk not specially provided for, under paragraph 318. U. S. v. McGibbon & Co., 7 Ct. Cust. App. 290.

8. Crapes.—Goods known commercially as silk mourning crapes, varying in width from 19 to 42 inches, are dutiable under the general provision for woven fabrics of silk in paragraph 318. The fact that the narrow pieces are to be cut up and made into trimmings does not make them dutiable as trimmings under paragraph 358. The wide pieces, at the time of importation and at the time of the enactment of the Tariff Act of 1913, were little used for making veils, and were not commercially designated veilings. They are not dutiable as veilings under paragraph 358, even though they had been more largely used for making veils, and had been classified as veilings by customs officers. Auffmordt & Co. v. U. S., 7 Ct. Cust. App. 56.

9½. Dress goods.—Dress goods of wool and silk, silk chief value, held not dutiable as woven fabrics in the piece. See paragraph 310.

23½. Paper boxes lined with silk.—Paper boxes lined with silk held not dutiable as manufactures in chief value of silk. See paragraph 324.

SCHEDULE M.—PULP, PAPERS, AND BOOKS

322. Printing paper, etc.

Canadian Reciprocity Act.—The Tariff Act of 1913 was designed to be a complete revision of the tariff laws of the country, and its wording very clearly shows that it was intended as a substitute for all prior tariff legislation not saved by the act itself. The rule seems to be well settled that an act of that character must be held to have repealed all prior laws not expressly continued in force and relating to the same subject, and so the Tariff Act of 1913 repealed section 2 of the Canadian Reciprocity Act. Dow Co. v. U. S., 7 Ct. Cust. App. 343.

Cited without definite application, U. S. v. Murphy & Co., 7 Ct. Cust. App. 35.

324. Papers wholly or partly covered with metal leaf, etc.

In general.—Paragraph 324, calling for certain kinds of paper, "by whatever names known," includes typewriter paper of such kinds, and prevents it from being dutiable as typewriter paper under paragraph 326. Stone & Co. v. U. S., 7 Ct. Cust. App. 124.

Papier-mâché.—Paragraph 324 provides for two classes of papier-mâché, paper, or wood boxes: (1) Those "covered with any of the foregoing papers," whether or not lined; and (2) those "covered or lined with cotton or other vegetable fiber." It was the congressional purpose to make this part of the paragraph exclusive within its carefully prescribed scope. U. S. v. Park & Tilford, 7 Ct. Cust. App. 422.

Surface coated paper.—Merchandise invoiced as "gold borders," consisting of metal-coated paper cut into strips each about 2½ feet long and a quarter of an inch wide, embossed with a small ornamental design and with the letters "P" and "T," left attached to a very narrow border at each end for convenience in handling, used for fancy wrapping around candy boxes or similar packages, is dutiable as a manufacture of metal-coated paper, and not as metal-coated paper itself, under paragraph 324. It is not dutiable as paper or a manufacture thereof, under paragraph 332. Kupfer Bros. Co. v. U. S., 7 Ct. Cust. App. 86.

Strips of paper made up so that nothing remains to be done to them before using but to detach their ends are so far advanced in condition that they are no longer simply paper, but have become a manufacture of it. Id.

Paper boxes covered with surface-coated paper and lined with silk, the

silk lining constituting the chief value of the merchandise, are not dutiable as manufactures in chief value of silk (paragraph 318), but as "all boxes of paper * * * covered with any of the foregoing papers" (paragraph 324), by reason of the obvious purpose of Congress to make that provision exclusive. U. S. v. Park & Tilford, 7 Ct. Cust. App. 422.

328. Jacquard designs on ruled paper, or cut on Jacquard cards, etc.

Wrapping paper.—Paper imported from Norway, answering to the description of section 2 of the Canadian Reciprocity Act and imported under the conditions therein set out, is not, by virtue of the favored nation clause in a subsisting treaty with Norway, admissible free of duty under said section, because said section was repealed by the Tariff Act of 1913. The paper is dutiable as "wrapping paper not specially provided for" under paragraph 328. Dow Co. v. U. S., 7 Ct. Cust. App. 343.

332. Papers or cardboard, cut, die cut, etc.

½. In general.—The words "plain, decorated, embossed, or printed, except by lithographic process," relate back to all that precedes them in paragraph 332, Tariff Act of 1913. Kupfer Bros. Co. v. U. S., 7 Ct. Cust. App. 86.

In enacting paragraph 332, Tariff Act of 1913, Congress struck from the corresponding paragraph 415, Tariff Act of 1909, the terms "bands" and "strips." This evidences a congressional intention to exclude bands and strips from the operation of the paragraph, and restrict it to the shapes or designs named and such as are ejusdem generis in the strictest sense. Id.

Gold borders, consisting of metal-coated paper cut into strips, held not dutiable as paper or a manufacture thereof. See paragraph 324.

SCHEDULE N.—SUNDRIES

333. Beads and spangles of all kinds, including imitation pearl, etc.

½. In general.—Paragraph 333, Tariff Act of 1913, is exhaustive as to its subject matter—beads and spangles and articles made wholly or in chief value of them. It can be invaded only by some other clearly and more specifically expressed intention of Congress. American Bead Co. v. U. S., 7 Ct. Cust. App. 18.

Context, legislative history, administrative practice, and judicial decision are in harmony with the theory that Congress intended paragraph 333, Tariff Act of 1913, to include articles wholly or in chief value of beads, spangles, or both. Consequently the words "composed wholly or in chief value of beads or spangles" must be construed as if written "composed wholly or in chief value of beads or spangles or beads and spangles." U. S. v. Gavin & Co., 7 Ct. Cust. App. 292.

4. Curtains.—The language "curtains, and other articles not embroidered nor appliquéd" (paragraph 333), does not exclude such articles as are not susceptible of being embroidered or appliquéd. U. S. v. Morimura Bros., 7 Ct. Cust. App. 285.

Curtains composed in chief value of glass or rice paste beads strung on cotton threads suspended from a horizontal bar or rod are dutiable as "curtains * * * composed wholly or in chief value of beads * * *" (paragraph 333). Id.

9½. Necklaces.—Necklaces, with or without base metal clasps, in chief value of beads, the beads being made of wood, gelatin, or paste, and china or colored glass, some in imitation of jet and amber, are dutiable as articles in chief value of beads under paragraph 333, and not as jewelry under paragraph 356. American Bead Co. v. U. S., 7 Ct. Cust. App. 18.

Necklaces substantially of imitation jet beads with imitation jet pendants are not dutiable as jewelry under paragraph 356, but as beaded articles under paragraph 333. Wolff & Co. v. U. S., 7 Ct. Cust. App. 156.

10. Rosaries.—Rosaries held not shown to be in chief value of beads. U. S. v. Malhami & Co., 7 Ct. Cust. App. 175.

13. Silk netting ornamented with beads and spangles.—Silk netting, ornamented with beads and spangles, the netting being more valuable than either and less valuable than both, is dutiable as "composed wholly or in chief value of beads or spangles" under paragraph 333, and not as "trimmings * * * of whatever yarns, threads, or filaments composed" under paragraph 358. U. S. v. Gavin & Co., 7 Ct. Cust. App. 292.

335. Braids, plaits, laces, and willow sheets, etc.

10½. Unblocked and untrimmed bamboo hats.—Unblocked and untrimmed hats made of thin, narrow shavings of bamboo are dutiable as "hats * * * of * * * chip, * * * not blocked or trimmed" under paragraph 335, and not as manufactures of wood under paragraph 176. Isler & Guye v. U. S., 7 Ct. Cust. App. 578.

342. Dolls, and parts of dolls, doll heads, toy marbles, etc.

2. Toys—In general.—An article designed, adapted, and used for serious instruction, no matter how elementary, and not for the amusement of children at play, is not a toy. Illfelder & Co. v. U. S., 7 Ct. Cust. App. 53.

22. —— Stuffed skins of chicks and ducklings.—Stuffed chicks and ducklings held not dutiable as toys. See paragraph 347.

25. —— Water color boxes.—Water color boxes used for elementary instruction held not dutiable as toys. See paragraph 63.

347. Feathers and downs, on the skin or otherwise, etc.

1. Artificial and ornamental flowers in general.—Immortelles, dried and dyed, held not dutiable as artificial and ornamental flowers. See paragraph 210.

The expression "artificial and ornamental," as applied to flowers (paragraph 347), is plain and unambiguous. A literal interpretation—giving the word "and" its proper conjunctive, and not a disjunctive, meaning—is not repugnant to the manifest legislative purpose and produces no absurd or unjust results. It means what it says, viz. that an article to be dutiable thereunder must be both artificial and ornamental. Bayersdorfer & Co. v. U. S., 7 Ct. Cust. App. 66.

8. Downs on the skin, dressed.—Dried skins of chicks and ducklings with the heads and feet attached, stuffed with cotton, fitted with bead eyes and wired so as to give them a natural appearance, and having a wire attachment apparently for the purpose of fastening them to other objects as decorations, were classified by the collector as "down dressed on the skin, * * * not suitable for use as millinery ornaments" (paragraph 347). The Board of General Appraisers affirmed the collector's decision, overruling protests claiming them to be "birds and land and water fowls" (paragraph 416), feathers and downs not advanced (paragraph 347), articles manufactured in whole or in part and not provided for (paragraph 385), manufactures of cotton (paragraph 266), and toys (paragraph 342). The decision of the board is affirmed. Morimura Bros. v. U. S., 7 Ct. Cust. App. 378.

349. Fans of all kinds, etc.

In general.—The language of paragraph 349, "fans of all kinds, except common palm-leaf fans," means that all fans except common palm-leaf fans are dutiable under that paragraph, even though they may respond also to the description of some other. U. S. v. Field & Co., 7 Ct. Cust. App. 430.

Embroidered fans.—With respect to embroidered silk fans, paragraph 349 ("fans of all kinds, except common palm-leaf fans") is more specific than paragraph 358 ("articles * * * embroidered * * * by whatever name known"), and classifies them for duty. U. S. v. Field & Co., 7 Ct. Cust. App. 430.

356. Jewelry, commonly or commercially so known, etc.

1. Construction of paragraph in general.—In the last sentence of paragraph 356, Tariff Act of 1913, the words "separate or in strips or sheets" are not words of limitation, inserted to narrow the scope of the sentence, but words of amplification, to make certain that, whether imported in the form of strips or sheets or as separate entities cut therefrom, stampings, galleries, mesh, and other materials of metal capable of such forms should not escape the duty prescribed by the paragraph. French Import Co. et al. v. U. S., 7 Ct. Cust. App. 460.

2. Articles designed to be worn on apparel or on or about the person.—Small mirrors, suitable for use in fitting out vanity case, held not dutiable as parts of vanity cases. See paragraph 95.

Pedomoters, to be attached to the vest pocket, held not dutiable as articles to be worn on apparel. See paragraph 167.

Pencils with metal attachment held not dutiable as articles designed to be worn about the person. See paragraph 167.

Policemen's whistles, of metal, held not dutiable as articles designed to be worn about the person. See paragraph 167.

Various articles, such as button hooks, smelling salt flasks, manicuring implements, etc. held not dutiable as

articles designed to be worn about the person. See paragraph 167.

An article, to be dutiable under the third clause of paragraph 356, Tariff Act of 1913, must be designed to be worn on apparel or carried on or about or attached to the person, and, if not enumerated in the clause, must be like the articles enumerated. The word "designed" should not be construed to mean susceptible of being so worn or carried. U. S. v. American Bead Co., 7 Ct. Cust. App. 132.

Cigar lighters, designed to be carried on the person, are within paragraph 356 ("articles * * * such as * * * cigars cutters, cigar holders," etc.), and also within paragraph 381 ("all smokers' articles whatsoever, not specially provided for in this section"). By virtue of paragraph 386 ("if two or more rates of duty shall be applicable to any imported article it shall pay duty at the highest of such rates") they are dutiable under paragraph 356. Bischoff & Co. v. U. S., 7 Ct. Cust. App. 138.

Since, the evidence does not show that the rosaries at bar are not "designed to be worn on apparel or carried on or about or attached to the person," the collector's classification of them as such articles under paragraph 356 must stand. U. S. v. Malhami & Co., 7 Ct. Cust. App. 175.

Small brass-bound memorandum books, with brass-capped lead pencil so fitted to the binding as to keep the book closed when not in use, and small metal pencil cases and holders, having an individuality of their own, in that they are suitable to be carried as separate entities, as well as in hand bags, belong to the class of articles which are designed to be carried on or about or attached to the person, and are dutiable as such under paragraph 356. Rumpp & Sons v. U. S., 7 Ct. Cust. App. 203.

Metal powder boxes, powder puff boxes, eyebrow pencil cases, and lipstick boxes are suitable containers for vanity articles and preparations, and were, so far as the record shows, properly classified by the collector under paragraph 356, Tariff Act of 1913. Id.

In the expression of paragraph 356, Tariff Act of 1913, "articles valued above 20 cents per dozen designed to be worn on apparel or carried on or about or attached to the person," the words "designed to be" mean something more than susceptible of being. By the use of the word "designed" it must be assumed that Congress intended to include only such articles as were peculiarly and specially fitted for being carried on or about the person and devoted to such use. U. S. v. Faber, 7 Ct. Cust. App. 406.

3½. Beaded necklaces.—Beaded necklaces, with or without real or imitation precious metal or real or imitation precious or semiprecious stones, held not dutiable as jewelry. See paragraph 333.

11. Jewelry in general.—Imitation jet bead necklace held not dutiable as jewelry. See paragraph 333.

The words "composed of metal," in the fourth clause of paragraph 356, do not modify "jewelry" in the first. American Bead Co. v. U. S., 7 Ct. Cust. App. 18.

In as much as Congress, in paragraph 357, has not classed amber as a precious or semiprecious stone or material for use in the manufacture of jewelry, and in paragraph 356 has expressly avoided its enumeration among the imitations of settings rated at 60 per cent., the purpose seems obvious not to have so rated for duty imitations of amber. Id.

Jewelry is commonly composed of the precious metals or imitations thereof, or of precious or semiprecious stones, pearls, or imitations thereof, or cameos, coral, or amber, including artificial, synthetic or reconstructed pearls, rubies, or other precious stones strung or set. Id.

Jewelry may be useful as well as ornamental, and all articles of personal adornment are not jewelry. Id.

Necklaces and chains in imitation of precious stones and precious metals are commonly characteristic of jewelry. Id.

The jewelry paragraph (448), Tariff Act of 1909, embraced imitation amber; the jewelry paragraph (356), Tariff Act of 1913, does not. American Bead Co. v. U. S., 7 Ct. Cust. App. 161.

Foxtail, rope, tombac, and snake chain, wound on reels in 100-meter lengths, chiefly used in the manufacture of jewelry, and not shown to be used for any other purpose, and worth less than 30 cents a yard, is dutiable as materials of metal suitable for use in the manufacture of jewelry (paragraph 356), and not as metal articles not specially provided for (paragraph 167). French Import Co. v. U. S., 7 Ct. Cust. App. 460.

17½. Rosaries.—Rosaries in chief value of silver-plated metal held not dutiable as jewelry. See paragraph 167.

357. Diamonds and other precious stones, rough or uncut, etc.

3½. Cameos in general.—The lexicographic meaning of cameo does not depend upon whether the substance of which the completed article is composed is a precious stone or a shell. It is the product of cutting in a certain form, wrought upon either shell or precious stone. The process of conversion of a piece of shell into an article like a cameo cannot entitle the

completed article to be called in any just sense a precious stone simply because cameos may be, and often are, made of precious stones. Wedgwood v. U. S., 7 Ct. Cust. App. 434.

The language of paragraph 357, Tariff Act of 1913 ("diamonds, coral, rubies, cameos, and other precious stones"), cannot be construed to mean that a cameo cut on shell is a precious stone. Id.

5. Imitation precious stones in general.—Inasmuch as Congress, in paragraph 357, has not classed amber as a precious or semiprecious stone or material for use in the manufacture of jewelry, and in paragraph 356 has expressly avoided its enumeration among the imitations of settings rated at 60 per cent., the purpose seems obvious not to have so rated for duty imitations of amber. American Bead Co. v. U. S., 7 Ct. Cust. App. 18.

The provision in paragraph 357 for imitation precious stones may well be related to the first provision in the paragraph for precious stones rather than to the clause in which the word cameo appears, and it was not intended to relate to anything other than stones which in their natural state are precious stones. Wedgwood v. U. S., 7 Ct. Cust. App. 434.

5½. Imitation cameos molded of earthenware.—Imitation cameos molded of earthenware held not dutiable as imitation precious stones. See paragraph 79.

10. Opals.—Opals, no samples being submitted, were described by the evidence as having one surface cut and polished. The court cannot judicially know that they are "rough or uncut, and not advanced in condition or value from their natural state by cleaving, splitting, cutting, or other process" (paragraph 555, Tariff Act of 1909). The board's decision sustaining the collector's classification of them under paragraph 449 ("other precious stones and semiprecious stones, cut but not set, and suitable for use in the manufacture of jewelry") must be affirmed. Wells, Fargo & Co. v. U. S., 7 Ct. Cust. App. 346.

358. Laces, lace window curtains not specially provided for, etc.

½. In general.—Paragraph 179, Tariff Act of 1909, contained a provision for laces, embroideries, braids, galloons, trimmings, and ornaments. Its successor, paragraph 150, Tariff Act of 1913, omitted these words. The intention must have been to exclude from the operation of the paragraph laces, embroideries, braids, galloons, trimmings, and ornaments made wholly or in chief value of tinsel wire, lame, bullions, or metal threads. This intention is emphasized by the fact that paragraph 358, Tariff Act of 1913 was made comprehensive enough to include all laces, embroideries, galloons, and ornaments, and braids and trimmings not specially provided for, whatever might be the yarns, threads, or filaments of which they were composed. Siegman & Weil v. U. S., 7 Ct. Cust. App. 195.

1. Appliquéd articles.—Silk comfortables, with silk cord edgings, held not dutiable as appliquéd articles. See paragraph 318.

"Appliquéd" means ornamented with a pattern, which has been cut out of another color or stuff, applied or transferred to a foundation. U. S. v. McGibbon & Co., 7 Ct. Cust. App. 290.

A silk cord attached around the edges of a comfortable as or simulating a binder or fancy edge, without being cut from another article, and without being laid on the comfortable in or to form any motif or figure, does not constitute an appliqué. U. S. v. McGibbon & Co., 7 Ct. Cust. App. 290.

2½. Bead curtains.—Bead curtains, how dutiable. See paragraph 333.

4. Braids.—Clo-clo braids held not dutiable as being in part made of braids. See paragraph 167.

An article having a cover made on it by braiding threads or filaments is not made partly of braids; to be made partly of braids, an article must be made in part of an article which has had a separate existence as braid. U. S. v. Macy & Co., 7 Ct. Cust. App. 8.

The designation of the merchandise by the invoice and the record as "clo-clo braids" is not sufficient to make it braids. Id.

11. Embroideries in general.—A textile fabric which is a tapestry held not dutiable as embroidery. See paragraph 288.

The comparatively high duties imposed upon embroideries and the comparatively low duty imposed upon "embroidery cottons" by the Tariff Act of 1913 indicate a congressional purpose to encourage the embroidery manufacturing industry of this country, whether by hand or machinery. Straus & Co. v. U. S., 7 Ct. Cust. App. 414.

By the language of paragraph 358, "embroideries * * * and all articles or fabric or fabrics embroidered in any manner by hand or machinery," Congress discloses a purpose to place hand embroideries and machine embroideries on a certain parity with each other. Id.

As commonly used, the term "embroidery" signifies a form of ornamental work produced by the needle on a completed textile or other existing suitable surface, and necessarily implies the ornamentation and not the creation of the textile or other surface which it is designed to embellish. Embroidery is in its very nature a stitching, not a weaving, process. Sloane v. U. S., 7 Ct. Cust. App. 463.

11½. Embroidered silk fans.—Embroidered silk fans held not dutiable as embroidered articles. See paragraph 349.

14. Handkerchiefs.—With reference to embroidered or scalloped, hemmed or unhemmed, linen or cotton handkerchiefs, paragraph 358 ("handkerchiefs, * * * embroidered * * * or * * * scalloped, * * * of whatever yarns, threads, or filaments composed") is more specific than paragraph 255 ("handkerchiefs * * * composed of cotton"), or paragraph 282 ("handkerchiefs composed of flax"), and classifies them for duty. Field & Co. v. U. S., 7 Ct. Cust. App. 30.

In paragraph 358 both "handkerchiefs" and "all articles or fabrics" are modified by "embroidered" and "scalloped," and an unfinished embroidered or scalloped handkerchief, even if not far enough advanced to be a handkerchief, would be dutiable thereunder. Id.

16. Laces in general.—Jacquard figured flax laces, used for making curtains, held not dutiable as laces. See paragraph 258.

The words "by whatever name known," in the third clause of paragraph 358, do not modify the word "laces" in the first. U. S. v. Snow's United States Sample Express Co., 7 Ct. Cust. App. 312.

17. —— Cotton laces.—With reference to Jacquard figured cotton laces not upholstery goods, the provision for laces in paragraph 358 is more specific than "all other Jacquard figured manufactures of cotton" (paragraph 258), and classifies them for duty. Levi, Sondheimer & Co. v. U. S., 7 Ct. Cust. App. 447.

22. Net.—Jacquard figured nets and netting held not dutiable as nets or netting. See paragraph 258.

25½. Ribbons.—A straight selvage is characteristic of ribbons as that term is commonly understood. Siegman & Weil v. U. S., 7 Ct. Cust. App. 195.

29. "Trimmings."—Silk mourning crapes held not dutiable as trimmings. See paragraph 318.

Beaded and spangled silk netting held not dutiable as trimmings. See paragraph 333.

Goods in the piece which are not commercially known as trimmings and which are not adapted, in the form in which imported, for use as such, but require to be cut into forms or made into rosettes or bows before being applied to a garment, are not to be classified as trimmings. On the other hand, goods which are known commercially as trimmings or which are imported in a form in which they are intended to be used directly as trimmings, without anything further being done than a mere cutting of the goods, may be and should be classified as trimmings unless otherwise more specifically provided for. Auffmordt & Co. v. U. S., 7 Ct. Cust. App. 56.

In their common meaning, trimmings is a less specific term than ribbons, galloons, gimps, braids, or bands. Siegman & Weil v. U. S., 7 Ct. Cust. App. 195.

30. Veils.—Long and narrow light-textured silk fabrics, known variously in the trade as veils, scarfs, automobile and chiffon veils, and automobile scarfs, chiefly used by women as a covering for their hats or faces or both while riding in automobiles or, in the evening, to cover their heads and keep their hair intact or to throw around their shoulders, are dutiable eo nomine as veils under paragraph 358, and not generally as wearing apparel under paragraph 317. Van Raalte v. U. S., 7 Ct. Cust. App. 299.

359. Chamois skins, etc.

Glove leather.—Chamois skins (invoiced as glove leather, natural dole and white dole) which have been subjected to a special treatment to fit them for use as glove leather, such treatment being shown to render them not adaptable in a commercial sense to any of the other uses to which chamois skins are commercially put, are dutiable as "glove leathers" and not as "chamois skins." U. S. v. Stiner & Son, 7 Ct. Cust. App. 485.

360. Bags, baskets, belts, satchels, card cases, etc.

13. Manufactures of leather.—Strips of leather partly dressed, to be converted into razor strops, held not dutiable as manufactures of leather. See paragraph 530.

Leather cut to forms to be manufactured into picker straps held not dutiable as manufactures of leather. See paragraph 530.

Cue tips, made by cutting with a round stamp a sheet of soft and a sheet of hard leather glued together, most of them having the soft-leather side rounded on the lathe, are too far advanced in condition to be admissible free under paragraph 530, Tariff Act of 1913, as "* * * leather not specially provided for * * * and leather board or compressed leather." Since they are a manufacture of leather, they are more specifically provided for by paragraph 360, as such, than by paragraph 385 as a manufacture not specially provided for, and, in accordance

with the administrative practice under the Tariff Act of 1909, sanctioned by re-enactment in the act of 1913, they are so dutiable. Brunswick-Balke-Collender Co. v. U. S., 7 Ct. Cust. App. 1.

Leather cue tips are a manufacture of leather, citing Tilge & Co. v. U. S., 3 Ct. Cust. App. 97, T. D. 32360, and Devoy v. U. S., 3 Ct. Cust. App. 444, T. D. 33034. Id.

14. "Permanently fitted" with traveling, etc., sets.—Paragraph 360 should not, on account of the fact that it levies a higher rate of duty on the articles it names if "permanently fitted" with certain other articles, be construed to mean that an article, to be dutiable under it, must be susceptible of being so fitted. Brunswick-Balke-Collender Co. v. U. S., 7 Ct. Cust. App. 84.

368. Manufactures of bone, chip, grass, etc.

3. Baskets.—This case held that baskets made of "such wood shavings as are called chip" were dutiable eo nomine as baskets of wood, rather than as manufactures of chip. It did not hold that a manufacture of wooden chip was dutiable as a manufacture of wood. U. S. v. Kronfeld, Saunders & Co., 7 Ct. Cust. App. 93.

12½. Roping.—With respect to ropings made of wood chip, paragraph 368 ("manufactures of * * * chip") is more specific than paragraph 176 ("manufactures of wood"). U. S. v. Kronfeld, Saunders & Co., 7 Ct. Cust. App. 93.

373. Musical instruments or parts thereof, etc.

Musical instruments in general.—It is no part of the definition of a musical instrument that it can be used to produce a continuous melody and that a chromatic scale can be played upon it. U. S. v. Sears, Roebuck & Co., 7 Ct. Cust. App. 60.

Metal triangle.—A metal triangle, with a wooden-handled hammer or striker, is dutiable as a musical instrument under paragraph 373, and not as composed wholly or in chief value of iron, steel, or other metal under paragraph 167. U. S. v. Sears, Roebuck & Co., 7 Ct. Cust. App. 60.

376. Works of art, including paintings, etc.

Works of art in general.—"Works of art," in paragraph 376, does not cover the whole range of the beautiful and artistic, but only those productions of the artist which are something more than ornamental and decorative, and which may be properly ranked as examples of the free fine arts, or, possibly, that class only of the free fine arts imitative of natural objects as the artist sees them, and appealing to the emotions through the eye alone. U. S. v. Olivotti & Co., 7 Ct. Cust. App. 46.

Professional production of sculptor.—Marble font on seats, embellished by sculptor with artistic carvings, held not sculptures or works of art. See paragraph 98.

A work is not necessarily sculpture because artistic and beautiful and fashioned by a sculptor from solid marble. Sculpture as an art is that branch of the free fine arts which chisels or carves out of stone or other solid material or models in clay or other plastic substance, for subsequent reproduction by carving or casting, imitations of natural objects, chiefly the human form, and represents such objects in their true proportions of length, breadth, and thickness, or of length and breadth only. U. S. v. Olivotti & Co., 7 Ct. Cust. App. 46.

Utilitarian articles do not become sculpture by reason of being adorned by the carving of a sculptor, unless the sculptural decorations be so compelling that the utilitarian achievement of the artisan is lost in the realized sentiment of the artist. Id.

378. Pencils of paper or wood, etc.

Lead pencils.—Wooden lead pencils with metal holders are not dutiable as entireties. The pencils are dutiable as such under paragraph 378, and the holders as metal articles under paragraph 167. U. S. v. Borgfeldt & Co., 7 Ct. Cust. App. 367.

380. Photographic cameras, and parts thereof, etc.

Moving picture films.—Articles 572 and 573 of the Customs Regulations of 1908, pursuant to paragraph 500, Tariff Act of 1909, and containing the regulations under which returned American goods may be exempted from duty under the paragraph, are reasonable, and therefore have the force of law. Under article 573, the collector and naval officer may waive the production of evidence of outward shipment prescribed by article 572 only when two things concur: First, they must be satisfied that the goods are of domestic origin; and, second, there must be a showing that it is impracticable to produce such evidence. Upon the refusal of the collector to waive compliance with article 572, with a showing that it was impracticable to produce the evi-

dence of outward shipment therein prescribed, the only just inference is that he was not satisfied with the showing made; and it is quite reasonable to infer that he was not satisfied from an examination of the goods that they were of domestic origin. The assessment of duty on the merchandise (positive moving picture films) as photographic film positives (paragraph 474, Tariff Act of 1909) is affirmed. Stone & Co. v. U. S., 7 Ct. Cust. App. 439.

381. Pipes and smokers' articles: Common tobacco pipes, etc.

5. Cigar lighters.—Pocket cigar lighters held not dutiable as smokers' articles not otherwise provided for. See paragraph 356.

384. Waste, not specially provided for, etc.

12½. Tea sweepings.—Tea sweepings mixed with lime and asafetida held not dutiable as waste. See paragraph 13.

385. That there shall be levied, collected and paid on the importation of all raw or unmanufactured articles not enumerated, etc.

5½. Betel nuts.—Betel nuts held not dutiable as nonenumerated articles. See paragraph 226.

31½. Food maltose.—Food maltose held not dutiable as a nonenumerated manufacture. See paragraph 17.

40½. Immortelles, dried and dyed.—Immortelles, dried and dyed, held not dutiable as unenumerated articles. See paragraph 210.

43½. Leather.—Strips of leather partly dressed, to be converted into razor strops, held not dutiable as nonenumerated articles partly manufactured. See paragraph 530.

Leather cut to form to be manufactured in picker straps held not dutiable as a nonenumerated article manufactured in part. See paragraph 530.

Leather cue tips held not dutiable as manufacture not specially provided for. See paragraph 360.

The language, "all leather not specially provided for in this section" (paragraph 530), precludes the classification of any leather (as a material) under paragraph 385. Bahnsen & Co. v. U. S., 7 Ct. Cust. App. 385.

45½. Malt soup stock.—Malt soup stock held not dutiable as a nonenumerated manufacture. See paragraph 17.

61½. Pituitary glands of calves.—The pituitary glands of calves, imported for the purpose of making from them a watery liquid hypodermically injected in obstetric work, are not classifiable under paragraph 419, because not enumerated. The fact that they can be eaten is not sufficient to make them classifiable as "meats" under paragraph 545. They are not dutiable as "drugs" under paragraph 477, because not named and not like any of the things named in the paragraph. There is no proof identifying them with the "antitoxins, vaccine virus, and all other serums derived from animals and used for therapeutic purposes" of paragraph 400. So far as is shown by the record in this case, their classification as nonenumerated unmanufactured articles under paragraph 385 must be affirmed. Frankfeld & Co. v. U. S., 7 Ct. Cust. App. 296.

71¼. Spruce gum.—Spruce gum is not a drug as the term is used in paragraph 27 or 477, and hence is classifiable under neither of those paragraphs. It is, then, relegated to the residuary provisions of paragaph 385. The fact that it has been cleaned is not sufficient to make it a manufacture, and, so far as shown by this record, it is dutiable as a nonenumerated unmanufactured article under paragraph 385. U. S. v. Maine Cent. R. Co., 7 Ct. Cust. App. 114.

Following United States v. Maine Central Railroad Co., 7 Ct. Cust. App. 114, T. D. 36427, spruce gum is not classifiable as a drug under either paragraph 27 or 477. U. S. v. Leavitt, 7 Ct. Cust. App. 144.

71½. Stuffed chicks and ducklings.—Stuffed chicks and ducklings held not dutiable as nonenumerated manufactured articles. See paragraph 347.

71¾. Stuffed olives.—Stuffed olives held not dutiable as nonenumerated articles. See paragraph 218.

72½. Tea sweepings.—Tea sweepings mixed with lime and asafetida held not dutiable as a nonenumerated article. See paragraph 13.

386. That each and every imported article, not enumerated, which is similar, etc.

Construction of similitude clause in general.—Articles held similar to enumerated article, see the various enumerated articles.

Component of chief value.—In determining which is the "component material of chief value" under paragraph 386, Tariff Act of 1913, of a fabric

with a warp yarn of wool and a weft yarn of mixed wool and mohair, the proportion of wool in the weft yarn should be added to that composing the warp yarn. The fact that the weft yarn is in chief value of mohair does not warrant the assumption for this purpose that it is entirely mohair. Field & Co. v. U. S., 7 Ct. Cust. App. 332.

The positive, uncontradicted testimony of one competent, credible witness that he found a certain yarn to contain a percentage of 25 or more of wool is sufficient to establish that as a fact in the case. Id.

FREE LIST

391. Agricultural implements: Plows, tooth and disk harrows, etc.

Agricultural machinery.—Shears used exclusively for pruning vineyards and orchards come within the rule of the United States v. Boker & Co., 6 Ct. Cust. App. 243, T. D. 35472. They and their parts are admissible free of duty as agricultural implements and parts under paragraph 391. They are not dutiable as "shears" under paragraph 128, and bolts and nuts for them are not dutiable as bolts and nuts under paragraph 123. U. S. v. Ducommun Hardware Co., 7 Ct. Cust. App. 353.

Congress intended that those shears which are chiefly used agriculturally should not be dutiable as "shears" under paragraph 128, but admissible free as agricultural implements under this paragraph. Id.

The classification of "shears" under paragraph 128 and "agricultural implements" under paragraph 391 means that all shears chiefly used for agricultural purposes are classifiable under paragraph 391, and other shears under paragraph 128. U. S. v. Irwin & Co., 7 Ct. Cust. App. 360.

"Sheep shears, specially designed for shearing sheep," and shown to be exclusively used for that purpose, are not dutiable as "shears" under paragraph 128, but admissible free of duty as "agricultural implements" under paragraph 391. Id.

Following United States v. Irwin & Co., 7 Ct. Cust. App. 360, T. D. 36906, decided concurrently herewith, sheep shears are not dutiable as "shears" under paragraph 128, but admissible free of duty as "agricultural implements" under paragraph 391. U. S. v. Wiebusch & Hilger, 7 Ct. Cust. App. 364.

Long-handled, round-point polished shovels and D-handled, square-point polished shovels are shown by the evidence to be chiefly used by farmers for agricultural purposes. They are admissible free of duty as agricultural implements (paragraph 391, Tariff Act of 1913), and not dutiable as metal articles (paragraph 167). Tower v. U. S., 7 Ct. Cust. App. 408.

Sugar-manufacturing machinery.—Machinery imported for sugar making, but chiefly used otherwise, held not free of duty. See paragraph 167.

Machine used to convert crystalline into amorphous sugar for making chocolate held not free of duty as machinery for use in manufacturing sugar. See paragraph 167.

Proof that a machine actually used in making chocolate is susceptible of being used in making sugar would not be sufficient to make it classifiable under paragraph 391 as "machinery for use in the manufacture of sugar." Downing & Co. v. U. S., 7 Ct. Cust. App. 287.

The language "machinery for use in the manufacture of sugar" (paragraph 391), refers to the chief use made of such machinery when imported, and not to the use made of a particular importation. Brown & Co. v. U. S., 7 Ct. Cust. App. 309.

400. Antitoxins, vaccine virus, etc.

Pituitary glands.—Pituitary glands held not classifiable as antitoxines, etc. See paragraph 385.

408. Bagging for cotton, gunny cloth, etc.

Cotton bagging.—Pieces of woven fabrics of single jute yarns, about a square yard each in size, intended for use in patching cotton bales, not bleached, dyed, colored, stained. painted, or printed, not exceeding 16 threads to the square inch, counting the warp and filling, and weighing not less than 15 ounces per square yard, are entitled to free entry as cotton bagging under paragraph 408, and not dutiable as a woven article or manufacture of vegetable fiber under paragraph 284. Texas & P. R. Co. v. U. S., 7 Ct. Cust. App. 328.

Meaning of "printed."—The term "printed," as used in paragraph 408, applies only to such printing as affects the character or condition of the woven fabrics as such, whether by way of ornamentation or exploitation, or for other like purpose. The conspicuous stenciling of the consignee's name upon a fabric for purposes of temporary

identification does not make it a printed fabric. Texas & P. Ry. Co. v. U. S., 7 Ct. Cust. App. 328.

Weight per square yard.—When a fabric is in evidence, and it is apparent from a mere examination in the light of common knowledge and experience, without technical skill and without the aid of weighing or measuring instruments, that it weighs more than 15 ounces per square yard, this should be accepted as a proven fact. Texas & P. Ry. Co. v. U. S., 7 Ct. Cust. App. 328.

416. Birds and land and water fowls, etc.

Stuffed chicks and ducklings.—Stuffed chicks and ducklings held not dutiable as birds and land and water fowls. See paragraph 347.

419. Bladders, and all integuments, tendons and intestines of animals, etc.

Construction in general.—Paragraph 419 contains no general language. Consequently only the things named in it are classifiable under it. Frankfeld & Co. v. U. S., 7 Ct. Cust. App. 296.

Pituitary glands.—Pituitary glands held not classifiable as bladders, intestines, etc. See paragraph 385.

477. Drugs, such as barks, beans, etc.

½. In general.—The language in successive prior tariff acts of the provisions corresponding to paragraphs 27 and 477 shows that Congress gradually narrowed their scope until they include those articles only which are drugs within the limitations set by the paragraphs. U. S. v. Maine Cent. R. Co., 7 Ct. Cust. App. 114.

This paragraph levies duty on such drugs only as are named and as are like the ones named in the paragraph. Frankfeld & Co. v. U. S., 7 Ct. Cust. App. 296.

2½. Crude star anise seed.—The crude seed of the star anise, a plant totally different from the anise, is not dutiable as "anise seed," or, its oil being obtained by distillation and not expression, as "other oil seeds," under paragraph 212, but admissible free as "drugs, such as * * * seeds (aromatic, not garden seeds), * * * which are natural and uncompounded drugs and not edible * * * and are in a crude state," under paragraph 477. U. S. v. McKesson & Robbins, 7 Ct. Cust. App. 13.

Crude star anise seed, following United States v. McKesson & Robbins, 7 Ct. Cust. App. 13, T. D. 36257, decided concurrently herewith, is not dutiable as "anise seed," under paragraph 212, Tariff Act of 1913, but admissible free under paragraph 477. U. S. v. Tappenbeck, 7 Ct. Cust. App. 17.

8¼. Nuts.—Betel nuts held not classifiable as a drug. See paragraph 226.

The Tariff Act of 1909 specified nuts eo nomine within the drug paragraphs, while the act of 1913 does not. "Notes on Tariff Revision, 1913," shows that Congress intended that the specification of "nuts" in each of the drug paragraphs of the Tariff Act of 1909 referred only to such nuts as were used expressly for dyeing and tanning and that this intention was continued in the act of 1913. Paragraph 477, Tariff Act of 1913, does not include any kind of nuts. Sheldon & Co. v. U. S., 7 Ct. Cust. App. 454.

8½. Pituitary glands.—Pituitary glands held not classifiable as drugs. See paragraph 385.

11¼. Spruce gum.—Spruce gum held not classifiable as a drug. See paragraph 385.

There being no evidence in the record that spruce gum is a drug, it cannot be classified under either paragraph 27 or 477. U. S. v. Eastern Drug Co., 7 Ct. Cust. App. 210.

11½. Tea sweepings.—Tea sweepings mixed with lime and asafetida held not dutiable as a drug. See paragraph 13.

514. (Repealed.)

Indigo paste.—Indigo paste is obtained from indigo, and is dutiable as a dye obtained from indigo under paragraph 514. U. S. v. Hensel, Bruckmann & Lorbacher, 7 Ct. Cust. App. 391.

Thioindigo.—Colors known as thioindigo held not dutiable as dyes obtained from indigo. See paragraph 20.

518. Iron ore, including manganiferous iron ore, etc.

Iron in pigs.—Iron in the form of pigs, known by the proprietary name "tant iron," having a silicon content greater than that of ordinary pig iron, but much less than that of ordinary ferrosilicon, and manganese and sulphur contents greater than those of ferrosilicon, used for casting and machining into bowls to contain acids, shown to be unfit for use like ferrosili-

con as an alloy in the manufacture of steel, is but a special kind of pig iron, and is dutiable as "iron in pigs" (paragraph 518). It is not ferrosilicon, and is not dutiable as such under paragraph 102, or as "unwrought metal" under paragraph 154. U. S. v. Faunce, 7 Ct. Cust. App. 426.

530. All leather not specially provided for.

½. **In general.**—The language "all leather not specially provided for in this section" (paragraph 530) precludes the classification of any leather (as a material) under paragraph 385. Bahnsen & Co. v. U. S., 7 Ct. Cust. App. 385.

Strips of leather designed to be manufactured into picker straps are not dutiable as manufactures of leather under paragraph 360, Tariff Act of 1913, or as nonenumerated articles manufactured in part under paragraph 385. They are admissible free of duty as "leather" (paragraph 530). Bahnsen & Co. v. U. S., 7 Ct. Cust. App. 385; Hensel, Bruckmann & Lorbacher v. U. S., 7 Ct. Cust. App. 388.

The fact that successive tariff acts from 1890 to 1909, both inclusive, provided for "leather cut into forms suitable to be converted into manufactured articles" separately from manufactures of leather shows that Congress regards such merchandise as leather, and not manufactures of leather. Koken Barbers' Supply Co. et al. v. U. S., 7 Ct. Cust. App. 394.

Strips of partly dressed leather, to be converted by further manufacturing processes into razor strops, are not dutiable as "manufactures of leather" under paragraph 360, or as nonenumerated articles partly manufactured under paragraph 385. They are admissible free of duty as leather under paragraph 530. Id.

3½. **Cue Tips.**—Leather cue tips held not free of duty as leather not specially provided for. See paragraph 360.

545. Meats: Fresh beef, veal, mutton, etc.

In general.—Paragraph 545 contemplates such "meats" only as are of everyday consumption and the subject of the meat inspection laws of the country, its states, and municipalities. Frankfeld & Co. v. U. S., 7 Ct. Cust. App. 296.

Pituitary glands.—Pituitary glands held not classifiable as meats. See paragraph 385.

552. Moss, sea weeds, etc.

Crude seaweed.—Seaweed, dried, with nothing added to change its character, and packed in tin boxes as a convenient method of getting the product to market, is classifiable as crude seaweed (par. 552), and not, by reason of being edible, as a vegetable (par. 200). U. S. v. Ohashi Importing Co., 7 Ct. Cust. App. 487; U. S. v. Furuya & Co., 7 Ct. Cust. App. 495.

578. Platinum, unmanufactured, etc.

Wire of platinum and iridium.—Wire of platinum and iridium held not platinum in wire. See paragraph 114.

582. Professional books, implements, instruments, etc.

Bonds.—Act Aug. 5, 1909, § 1, Free List, par. 656, providing that theatrical scenery, etc., brought by proprietors or managers from abroad for temporary exhibition and not for sale, shall be admitted free of duty, bond being given for payment of duties imposed upon all articles not exported, does not require, as condition precedent to validity of bond, that importers of theatrical effects must have actual possession of or accompany same at time of arrival, or be a person immigrating to the United States. Illinois Surety Co. v. U. S. (C. C. A.) 251 F. 823.

In action by United States against surety on redelivery bond, conditioned that principal, within six months, would redeliver to collector of port theatrical scenery imported, surety is in no position to say goods ought not to have been admitted temporarily free of duty, because unaccompanied by importer; it having become surety with knowledge of fact goods were so admitted. Id.

A redelivery bond, given by the importer of theatrical scenery for temporary use only in this country, and conditioned that he would redeliver the scenery within six months to the collector of a port, and re-export it, was not void, as restricting exportation from any port other than that mentioned only as place of redelivery to collector to prove identity. Id.

Statutes requiring the execution of redelivery bonds for imported goods are remedial in their character, and should be construed liberally, to carry out the purpose of their enactment. Id.

Redelivery bond, executed by the importer of theatrical scenery, etc., was not void because conditioned that im-

porter within six months would redeliver to collector of port and export it, though Act Aug. 5, 1909, c. 6, § 1, Free List, par. 656, requires that bond be given for payment of such duties as may be imposed by law in case goods are not exported within six months. Id.

Redelivery bond, given by importer of theatrical scenery, etc., conditioned that he would within six months redeliver to collector of port, and enter effects for exportation within six months, as prescribed by Act Aug. 5, 1909, c. 6, § 1, Free List, par. 656, was valid as common-law obligation, though not conditioned for payment of such duties as might be imposed by law; the statutory requirement. Id.

642. Wearing apparel, articles of personal adornment, etc.

Construction of paragraph in general.—Merchandise ordered by appellee in a foreign country from a foreign country for delivery in a foreign country, but delivered to and paid for by appellee in this country, was not "acquired abroad" within the meaning of paragraph 642, Tariff Act of 1913, which permits free entry of up to, but not exceeding, $100 in value of articles acquired abroad by residents of this country for personal or household use or as souvenirs or curios, but not bought on commission or intended for sale. U. S. v. Hutchings, 7 Ct. Cust. App. 283.

648. Woods: Cedar, including Spanish cedar, lignum-vitæ, etc.

Rattan.—Reeds made from rattan held not free of duty as rough rattan sticks cut into lengths. See paragraph 173.

650. Wool of the sheep, hair of the camel, etc.

Cited without definite application,
U. S. v. Salfner, 7 Ct. Cust. App. 371.

651. Wool wastes: All noils, top waste, etc.

Cited without definite application,
U. S. v. Salfner, 7 Ct. Cust. App. 371.

656. Works of art (except rugs and carpets), collections, etc.

Regulations as to proof of antiquity.—Where an invoice, required by the Treasury Department's regulation pursuant to paragraph 656 to be certified before the American consul, consisted of two sheets seeming in themselves to be parts of the same document, and had the certificate on the first sheet only, the certificate attaches presumably to both sheets as one document. Having been so accepted and passed on without objection by the collector in the line of his official duty, this court must presume, in the absence of proof to the contrary, that the form it had when filed with him was the form it had when submitted to the consul. U. S. v. Shallus, 7 Ct. Cust. App. 314.

§ 5291d. (Act Aug. 31, 1918, c. 165, § 1.) Articles for Red Cross free of duty.

During the continuance of the state of war now existing, and during the period of one year thereafter, there may be imported into the United States free of the payment of any import duty any articles of clothing, medicines, drugs, hospital supplies and equipment, goods, wool and cotton, and the products thereof, donated by any person or persons abroad and consigned to the American National Red Cross: Provided, That such articles or supplies are not to be sold but are only to be donated or used by it solely to or for the benefit of the land or naval forces of the United States or of the allies of the United States, or for the relief of the civilian population of the United States or any of its said allies. (40 Stat. 954.)

This section, and the section next following were an act entitled "An act to authorize the importation without the payment of duty of sundry articles for the American National Red Cross to be donated or used by it solely to or for the benefit of the land or naval forces of the United States or its allies, or for the relief of the civilian population of the United States or of its allies," cited above.

§ 5291e. (Act Aug. 31, 1918, c. 165, § 2.) Same; regulations. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry this Act into effect. (40 Stat. 954.)

See note to § 5291d, ante.

§ 5293. (Act Oct. 3, 1913, c. 16, § IV, B.) Reciprocity treaty with Cuba not affected, except as to proviso.

Continuance of preferential on sugar imported.—Under the rates of duty imposed by paragraph 177 of the Tariff Act of October 3, 1913, and effective March 1, 1914, the 20 per cent. preferential on Cuban sugar imported into the United States continues on and after the latter date, being continued in effect by section 5293. 30 Op. Atty. Gen. 259.

§ 5296. (Act Oct. 3, 1913, c. 16, § IV, E.) Countervailing duty on articles on which export bounty was paid.

Construction of act in general.—The plain, explicit, and unequivocal purpose of this section is that whenever a foreign power or dependency or any political subdivision of a government shall give any aid or any advantage to exporters of goods imported into this country therefrom, whereby they may be sold for less in competition with our domestic goods, the duties on them shall be increased to that extent. It is the result of such aid or advantage that Congress seeks to countervail, regardless of whatever name or in whatever manner or form or for whatever purpose it was given. Whether the thing done be called "allowance," "bonification," "bounty," "grant," "drawback," or what, matters not. The question is whether or not the result would be to admit the merchandise to our markets at a lower cost price. Nicholas & Co. v. U. S., 7 Ct. Cust. App. 97.

What constitutes bounty or grant.—An "allowance" paid by the United Kingdom to the exporter of spirits is a "bounty or grant" within the meaning of this section, and justifies the imposition of the countervailing duty provided for by the paragraph. Nicholas & Co. v. U. S., 7 Ct. Cust. App. 97.

§§ 5299–5301. (Act Oct. 3, 1913, c. 16, § IV, G, subsecs. 1–3.) Importation of obscene books, lottery tickets, etc.

Cited without definite application,
U. S. v. Jones (D. C.) 230 F. 262.

§ 5302. (Act Oct. 3, 1913, c. 16, § IV, H, subsec. 1.) Importation of neat cattle and hides prohibited; suspension of prohibition, in part.

Importation from Colombia under treaty.—Colombia is not entitled, under the treaty of 1846 between the United States and New Granada, to have healthy cattle imported from her territory into the United States until the Secretary of the Treasury has officially determined, and given public notice thereof, that such importation will not tend to the introduction or spread of contagious or infectious diseases among cattle of the United States. 30 Op. Atty. Gen. 325.

§ 5308. (Act Oct. 3, 1913, c. 16, § IV, J, subsec. 4.) Admission without payment of duty, under bond for exportation.

See section 5291, par. 582, ante, and note thereunder.

§ 5309. (Act Oct. 3, 1913, c. 16, § IV, J, subsec. 5.) Importation in bond of materials for construction of vessels and of materials for building their machinery, and articles for outfit and equipment; use free of duty.

Marine engine.—The obvious intent of this section was to favor the shipping industry of this country, and whatever of ambiguity may be found in it must be resolved so as to give effect to that intention. The interchangeable use in the subsection of the words "materials" and "articles" denies to it uniform expression, unless "articles" be construed to mean such articles as are materials used in further manufacture. To hold that a completed marine engine is "materials" and can be imported free of duty would defeat the obvious intent of the subsection. U. S. v. Outerbridge & Co., 7 Ct. Cust. App. 223.

The importation in one shipment of all the essential parts of a marine engine, though such parts be unassembled, is an importation of a marine engine. Id.

All the parts of a marine engine, except bushes, filter box, connecting pipe

from receiver to condenser, and bolts to fasten it to its foundation, constitute a complete marine engine. Id.

A marine engine is not admissible free of duty under this section, as shipbuilding materials or articles, but is dutiable under section 5291, paragraph 165, ante, as a steam engine. Id.

Trawls imported for repairs.—A trawl is not a part of the vessel which draws it, but is equipment for the vessel. Otte v. U. S., 7 Ct. Cust. App. 166.

Trawls imported for repairs are not admissible free of duty as original equipment of American vessels under this section, or as repair parts of such vessels under Comp. St. 1916, § 5310. Id.

Cited without definite application, U. S. v. Kennedy & Moon, 7 Ct. Cust. App. 442.

§ 5310. (Act Oct. 3, 1913, c. 16, § IV, J, subsec. 6.) Withdrawal from bond of articles for repair of vessels.

Trawls imported for repairs.—Trawls imported for repairs are not admissible free of duty as original equipment of American vessels under section 5309, or as repair parts of such vessels under this section. Otte v. U. S., 7 Ct. Cust. App. 166.

Wireless apparatus.—In view of Act July 23, 1912, 37 Stat. 199, amendatory of Act June 24, 1910 (Comp. St. 1916, § 8262), compelling ships of a certain class to be equipped with wireless apparatus of a certain class, such apparatus imported to replace inefficient apparatus upon such American ships is admissible free of duty as repairs for American vessels under subsection 6 of paragraph J of section 4, Tariff Act of 1913, and not dutiable as being in chief value of metal under paragraph 167. U. S. v. Kennedy & Moon, 7 Ct. Cust. App. 442.

§ 5311. (Act Oct. 3, 1913, c. 16, § IV, J, subsec. 7.) Discount on duties on goods, imported in United States vessels.

Reciprocity treaties.—The 5 per cent. tariff discount given merchandise imported in American bottoms by this section is inoperative as to present reciprocity treaties with foreign countries. U. S. v. M. H. Pulaski Co., 37 S. Ct. 346, 243 U. S. 97, 61 L. Ed. 617.

Goods imported in American vessels.—Goods imported in American vessels are entitled to a 5 per cent. discount under this section. U. S. v. McGibbon & Co., 7 Ct. Cust. App. 290; Straus & Co. v. U. S., 7 Ct. Cust. App. 414.

Goods imported in Belgian vessels.—Goods imported in Belgian vessels are entitled to 5 per cent. discount under this section. Straus & Co. v. U. S., 7 Ct. Cust. App. 414.

Goods imported in Dutch vessels.—Goods imported in vessels belonging to Holland or the Netherlands are entitled to the 5 per cent. discount under this section. Isler & Guye v. U. S., 7 Ct. Cust. App. 178.

§ 5326. (Act July 26, 1911, c. 3, § 1.) Reciprocity with Canada.

Repeal of section 3.—The Tariff Act of 1913 was designed to be a complete revision of the tariff laws of the country, and its wording very clearly shows that it was intended as a substitute for all prior tariff legislation not saved by the act itself. The rule seems to be well settled that an act of that character must be held to have repealed all prior laws not expressly continued in force and relating to the same subject, and so the Tariff Act of 1913 repealed section 2 of the Canadian Reciprocity Act. Dow Co. v. U. S., 7 Ct. Cust. App. 343.

CHAPTER B—THE TARIFF COMMISSION

§ 5326bb. (Act July 1, 1918, c. 113, § 1.) Disbursing clerk.

The disbursing clerk of the Treasury Department shall act in a similar capacity for the United States Tariff Commission. (40 Stat. 652.)

This section was a provision of the sundry civil appropriation act for the fiscal year, 1919, cited above.

TITLE XXXIV—COLLECTION OF DUTIES UPON IMPORTS

Chap.		Sec.
1.	Collection-districts, ports, and officers	5327
2.	Qualifications, pay, and duties of officers	5359
4.	Entry of merchandise	5481
5.	Unlading	5556
6.	Appraisal	5591
7.	The bond and warehouse system	5650a
7A.	Immediate transportation in bond to inland ports	5695
8.	Payment	5714
10.	Enforcement of duty-laws and punishment for violations	5763
11.	Provisions applying to commerce with contiguous countries	5809

CHAPTER ONE—COLLECTION-DISTRICTS, PORTS, AND OFFICERS

§ 5327. (Act Aug. 24, 1912, c. 355, § 1.) Reorganization of Customs Service by President.

Reorganization in general.—See Cochnower v. U. S., 51 Ct. Cl. 461.

The continuance in office of collectors of ports in the enlarged districts until expiration of their existing commissions was duly authorized by this act, under which the President's proclamation of March 3, 1913, reorganizing the customs service, was issued. 30 Op. Atty. Gen. 204.

CHAPTER TWO—QUALIFICATIONS, PAY, AND DUTIES OF OFFICERS

§ 5359. (R. S. § 2621.) Duties of collector where naval officers and surveyors are appointed.

Powers, duties, and liabilities in general.—The power of a collector to liquidate and reliquidate is vested in him by statute, and unlimited except by affirmative law. This has been recognized by consistent, persistent, and continuous administrative practice, legislative enactment, and judicial decision since the institution of his office. Vitelli & Son v. U. S., 7 Ct. Cust. App. 243.

The powers and duties of collectors of customs are equally vested in their special deputies, and the special deputies' right and power to liquidate and reliquidate are without question. Id.

See, also, notes under §§ 5595, 5715, post.

Cited without definite application, MacMath v. U. S., 39 S. Ct. 31, 63 L. Ed. —.

§ 5368. (R. S. § 2630.) Deputy collectors.

Powers and duties in general.—The powers and duties of collectors of customs are equally vested in their special deputies, and the special deputies' right and power to liquidate and reliquidate are without question. Vitelli & Son v. U. S., 7 Ct. Cust. App. 243.

§ 5394. (R. S. § 2687.) Apportionment of compensation.

Clerk's fees in naturalization proceedings.—Under Naturalization Act, § 13 (Comp. St. 1916, § 4372), and this section, held, that the clerk of the Circuit Court, during the last half year, which the office existed, could not retain more than $1,500 of fees received in naturalization cases, though one-half of the fees exceeded that sum. Robb v. U. S., 233 F. 525, 147 C. C. A. 411.

Under this section and Act June 29, 1906 (Comp. St. 1916, § 4372), a clerk of a court is not entitled to the full maximum sum allowed for fees collect-

ed in naturalization proceedings in any one fiscal year received during six months of such year, but is only entitled to retain his pro rata share of said maximum sum for the period during which said fees were collected. Darling v. U. S., 51 Ct. Cl. 100.

Decisions under superseded acts—In general.—See Cochnower v. U. S., 39 S. Ct. 137, 63 L. Ed. —.

CHAPTER FOUR—ENTRY OF MERCHANDISE

Sec.
5481. Requisites of an entry of goods generally.
5484. Bond by agent, factor, common carrier or person other than owner or consignee.
5496. Baggage and tools.
5499. Concealing dutiable articles in baggage.
5522. Entry without invoice, on affidavit and verified statement; books; bond for production.
5524. Entry or introduction of goods by means of false invoice or other deception.
5526. Same; forfeiture.
5527. Addition to or deduction from invoice value; additional duties; forfeiture for undervaluation.
5548. Smuggling merchandise, or making or passing false invoice.
5553. Regulations for carrying act into effect.

§ 5481. (R. S. § 2785.) Requisites of entry of goods generally.

Entry on invoice.—The fact that § 5291, par. 162, ante, provides a special method of appraising zinc ores, does not relieve them from being entered on invoice as other importations. National Zinc Co. v. U. S., 7 Ct. Cust. App. 145.

§ 5484. (R. S. § 2787, as amended, Act March 2, 1905, c. 1306.) Bond by agent, factor, common carrier, or person other than owner or consignee.

Action on bonds.—An action by the United States on bonds given by an importing agent pursuant to this section for failure to observe the technical requirements of that section, the duties having been paid, is one to recover a penalty or forfeiture accruing under the customs laws, and is barred in three years by Comp. St. 1916, § 1713. U. S. v. Joles (D. C.) 251 F. 417.

§ 5496. (R. S. § 2799.) Baggage and tools.

Cited without definite application, Sierra v. U. S. (C. C. A.) 233 F. 37; U. S. v. One Blue Taffeta Evening Coat (D. C.) 241 F. 926; 30 Op. Atty. Gen. 123.

§ 5499. (R. S. § 2802.) Concealing dutiable articles in baggage.

1. Proceedings to forfeit.—In a count of a libel for forfeiture of goods, which charged that the goods were part of the baggage of the claimant and were not "mentioned" to the collector before whom the entry of the articles was made, contrary to this section, the word "mentioned" does not involve a legal conclusion, since the term is not used as a legal term, but embraces any form of mentioning included in its broader colloquial meaning. U. S. v. One Blue Taffeta Evening Coat, Trimmed Lace, and Other Women's Clothing (D. C.) 237 F. 703.

§ 5522. (Act Oct. 3, 1913, c. 16, § III, E.) Entry without invoice, on affidavit and verified statement; books; bond for production.

Libel for forfeiture.—A count in a libel for the forfeiture of goods, which charged that they were imported without the production of a duly certified invoice, and without an affidavit excusing failure to produce the invoice and a sworn statement of the costs, contrary to this section, is fatally defective, since the importation is complete as soon as the goods enter the port, at which time there could be no evasion of the duty, so that there can be no illegal importation, except of goods illegally packed or absolutely forbidden. U. S. v. One Blue Taffeta Evening Coat, Trimmed Lace, and Other Women's Clothing (D. C.) 237 F. 703.

A libel for forfeiture of goods for false statements to the examiner, which does not properly plead article 1124 of the Customs Regulations, or allege that the collector had designated the merchandise for examination, fails to show that the examiner had any powers with reference to the merchandise. Id.

§ 5524. (Act Oct. 3, 1913, c. 16, § III, G.) Entry or introduction of goods by means of false invoice, or other deception.

2. False entry—In general.—Under Act Aug. 5, 1909, c. 6, § 28, subsec. 9, 36 Stat. 97, providing that if any owner shall enter or introduce into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, affidavit, letter, or paper, or by means of any false statement, by means whereof the United States may be deprived of the lawful duties accruing thereon, such person shall be fined or imprisoned, held, that any fraudulent or false invoice, affidavit, letter, or paper, or any false statement, regarding the value of imported merchandise, whether required by statute or not, was a violation thereof. U. S. v. Abrams (D. C.) 230 F. 310.

10. Indictment—Under prior statutes.—A count in an indictment charged that defendants unlawfully imported from Canada into the United States certain imported merchandise subject to a duty to be computed on the then value, at a valuation much lower than its actual value, by means of a false statement, a fraudulent invoice, and a false affidavit, for the purpose of defrauding the United States; that defendants caused such merchandise, of which they were then the owners, to wit, a specified quantity of Indian baskets, to be passed through the customs house, and did so pass it and introduce it into the commerce of the United States by means of such statement, invoice, and affidavit which represented the value of such merchandise to be $41.04, and no more, when in fact its value was $62; and that defendants did such acts knowing the statement, invoice, and affidavit to be false. Held, that this was sufficient to charge a violation of Tariff Act Aug. 5, 1909, § 28, subsec. 9. U. S. v. Abrams (D. C.) 230 F. 310.

Conclusiveness of judgment.—Judgment dismissing indictment for defrauding United States, of customs duties held conclusive against right of United States to recover in civil action amount of loss claimed to have been suffered through defendant's fraud. U. S. v. Salen (D. C.) 244 F. 296.

Where indictment charging that United States was defrauded out of customs was dismissed, and government did not appeal, such dismissal was conclusive adjudication on merits against government's claim. Id.

§ 5526. (Act Oct. 3, 1913, c. 16, § III, H.) Same; forfeiture.

2. Owner, consignee, agent, or other person.—Under this section, foreign seller and buyer, who participate in defrauding United States customs by understating value of goods imported, may all be joined in an action to recover as a penalty the value of the goods which was forfeited. U. S. v. Leon Rheims Co. (D. C.) 246 F. 179.

3. Forfeiture—In general.—Under this section and Rev. St. § 3082 (Comp. St. 1916, § 5785), held, that merchandise imported into United States from Cuba by registered mail, in violation of Postal Convention, art. 11, dated June 16, 1903, between Cuba and United States, and article 16 of Universal Postal Convention, dated May 26, 1906, was subject to forfeiture. U. S. v. Four Packages of Cut Diamonds (D. C.) 247 F. 354.

7. —— False entry.—Act Aug. 5, 1909, c. 6, § 28, subsec. 9, 36 Stat. 97, provides that if any consignor, etc., shall attempt to enter or introduce into the commerce of the United States any imported merchandise by means of any fraudulent or false invoices or any false statements, or any false or fraudulent practice or appliance, or shall be guilty of any willful act or omission by means whereof the United States shall or may be deprived of the lawful duties accruing thereon, such merchandise shall be forfeited. Held that, where a consignor of merchandise sent by parcels post attempted by means of a false invoice undervaluing the merchandise to enter and introduce it into the commerce of the United States, such merchandise was subject to forfeiture, though there was no formal entry or custom house proceeding, as the consignor's attempt to introduce the goods into the commerce of the United States was the statutory cause of forfeiture, and the consignor or the forfeiture to which his conduct subjected an importation was not affected by the course the goods thereafter followed, or whether the consignee received them through the customs office or through the post office. U. S. v. Eighteen Packages of Dental Instruments (C. C. A.) 230 F. 564.

The parcels post convention with Germany of September 2, 1899, provides that merchandise packages must be wrapped or inclosed so as to permit their contents to be easily examined by customs officers and postmasters authorized to do so, that they shall be subject in the country of destination to all customs duties and customs regulations in force therein for the protection of the customs revenues, and that the sender of each package must make a customs declaration upon a prescribed form. Held, that this in no way prevents the application to merchandise imported from Germany by parcels post of Act Aug. 5, 1909, c. 6, § 28, subsec. 9, relative to the forfeiture of merchandise which the consignor attempts to enter or introduce into the

commerce of the United States by means of any fraudulent or false invoice, etc. Id.

The provisions of this section, for forfeiture of goods for entry by means of false invoice, declaration, or any fraudulent practice whatever, apply to the baggage of passengers, and articles therein are subject to forfeiture for fraudulent undervaluation in the declaration or otherwise. U. S. v. One Blue Taffeta Evening Coat (D. C.) 241 F. 926.

Where goods are imported on a false invoice prepared by consignor in a foreign country, fraud attaches to goods, and they may be forfeited therefor, despite innocence of the consignee. U. S. v. Four Packages of Cut Diamonds (D. C.) 247 F. 354.

A forfeiture of goods for fraudulent entry or undervaluation is wholly penal, and should only be granted upon strict proof. Id.

8. —— **Effect on revenue.**—Where importer increased values in consular invoice prepared by foreign seller, and goods were actually entered under such invoice and duties paid on that basis, goods cannot be forfeited, under this section. U. S. v. One Case, No. 1,577, 234 F. 856, 148 C. C. A. 454.

11. **Bona fide lienors or purchasers.**—Where correspondence between consignor, who lived in Holland, and one to whom cut diamonds were consigned in United States, shipment being made through agent in Cuba, together with difference between commercial and consular invoices, indicated an attempt to undervalue diamonds, they are subject to forfeiture, under this section, though purchaser was guilty of no fraud. U. S. v. Four Packages of Cut Diamonds (D. C.) 247 F. 354.

16. **Information, libel, or petition.**—Allegations in a libel for forfeiture of articles brought in as baggage for violation of the customs laws held not to entitle the claimant to demand oyer of the baggage declaration. U. S. v. One Blue Taffeta Evening Coat (D. C.) 241 F. 926.

Cited without definite application, U. S. v. One Blue Taffeta Evening Coat, Trimmed Lace, and Other Women's Clothing (D. C.) 237 F. 703; In re Beloochistan Rug Weaving Co. (D. C.) 244 F. 283; Vitelli & Son v. U. S., 7 Ct. Cust. App. 243.

§ 5527. (Act Oct. 3, 1913, c. 16, § III, I.) Addition to or deduction from invoice value; additional duties; forfeiture for undervaluation.

2. **Addition to or deduction from invoice value.**—Addition by the importer of a certain sum to the invoice value, with a certificate to the effect that the addition was made to make market value as indicated by the appraiser's advance in similar cases and that his action was taken pursuant to this section, was not a compliance therewith, since it required him to certify that the entered value was higher than the market value (which he did not do) and provided that his action should appear to be taken after due diligence and inquiry (which did not appear). Vandiver v. U. S., 7 Ct. Cust. App. 338.

4. **Appraisal—In general.**—Where Court of Customs Appeals had already decided appeal on ground that discretion of Secretary of Treasury under this section could not be reviewed, held, that mandamus would not lie to compel a decision on the merits. Ex parte Park & Tilford, 38 S. Ct. 15, 245 U. S. 82, 62 L. Ed. 164.

11. **Additional duties—In general.**—When zinc ore was entered, in accordance with the estimate on the consular invoice as being 40 per cent. zinc, and the subsequent official assay showed 46.6 per cent. zinc, there was no undervaluation such as would subject it to the "additional duty" provisions of this section. But when the entry stated the market value of the zinc in a ton of 40 per cent. zinc ore to be less than the consular invoice showed, less than the price stated for it in the contract under which it was purchased, and less than the true market value as found by the appraiser, there was. National Zinc Co. v. U. S., 7 Ct. Cust. App. 145.

The fact that section 5291, par. 162, provides a special method of appraising zinc ores does not relieve them from being entered upon invoice as other importations, nor does it relieve their importer from the consequences of undervaluation. Id.

The fact that zinc ore was entered for rewarehousing, to be smelted and the zinc exported, does not relieve it of the additional duty incurred under this section for undervaluation, since section 5673 provides that the amount of the duties payable on such imported ores at the time of their importation shall stand charged against the bonds of the bonded warehouses, and that the metals producible from the bonded ores or any portion thereof may be withdrawn for domestic consumption upon the payment of the duties chargeable against an equivalent amount of ores from which said metals would be producible in their condition as imported. Especially is this true in view of the provision of this section that the additional duties levied thereunder shall not be refunded "in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback." Id.

Carbonic acid gas was imported

packed under compression in steel tubes or capsules about two inches in length and an inch in diameter, fitted with air-tight screw caps for use in charging drinking water. It was shown that the gas was purchased as a separate commodity and packed into the capsules for transportation, that the capsules were commonly returned to dealers and sent abroad again in the same service, and that they have no other use. The gas was the per se merchandise, and the capsules mere containers, within the meaning of that word in section 5599 post. Sections 5591, 5594, 5599, confine the duty of the appraiser to the merchandise and his action in advancing the value of the capsules conferred no validity on the collector's assessment of the additional duty imposed by this section in cases where the appraised exceeds the entered value. U. S. v. Downing & Co., 7 Ct. Cust. App. 479.

Where both importer and appraiser arrived at the market value by deducting inland freight and shipping charges from the value at the foreign port, and a greater deduction was made by the importer than by the appraiser, such action resulting in a larger appraised than entered value, the additional duty provided by this section was justly imposed. U. S. v. Philips Co., 7 Ct. Cust. App. 497.

20. Manifest clerical error.—The total of the itemized invoice showed a lower value and an interlineation in the invoice showed a higher one. Importers entered the merchandise at the lower figure. There is nothing in this to justify a presumption that importers did not enter the goods as they intended. "Manifest clerical error" under this section does not appear, and the additional duty provided for was justly imposed. Oberle & Henry v. U. S., 7 Ct. Cust. App. 404.

27. Forfeitures—In general.—Where importer increased values in consular invoice prepared by exporter, and goods were appraised at increased value, held, that they could not be forfeited, under this section. U. S. v. One Case, No. 1,577, 234 F. 856, 148 C. C. A. 454.

Under this section, where consignee raised value of merchandise at time of entry so as to correspond to actual value of merchandise in place from whence it was exported, merchandise cannot be forfeited on account of undervaluation, regardless of fraud of consignor. U. S. v. Nineteen Bales and Sixteen Bundles of Rugs (D. C.) 247 F. 380.

§ 5548. (R. S. § 2865, as amended, Act Feb. 27, 1877, c. 69, § 1.) Smuggling merchandise, or making or passing false invoice.

Reduplication of statute.—Rev. St. § 3082 (Comp. St. 1916, § 5785), forbidding the importation of goods contrary to law, applies only to the importation of goods illegally packed or absolutely forbidden, and is not reduplicating this section or the Customs Administrative Act. U. S. v. One Blue Taffeta Evening Coat, Trimmed Lace, and Other Women's Clothing (D. C.) 237 F. 703.

Jurisdiction.—Commander of interned German war vessel held subject to jurisdiction of United States courts for offense of smuggling from vessel into United States dutiable articles. U. S. v. Thierichens (D. C.) 243 F. 419.

Indictment.—An indictment charged that defendant fraudulently and knowingly imported into the United States, contrary to law, goods subject to customs duty, importing them clandestinely, secretly, and without an entry being made at the customs house as required by law, and without the payment of duty thereon, with intent to defraud the United States of its lawful revenue. Held that, though the indictment was predicated on section 5785, it also charged the offense denounced by this section. Sierra v. U. S. (C. C. A.) 233 F. 37.

Forfeiture.—An acquittal on an indictment charging a violation of this section and Comp. St. 1916, § 5785, held a bar to a subsequent libel of information seeking forfeiture of goods brought into the country without payment of duty, where the transaction was the same, and the statutory violations alleged were the same. Sierra v. U. S., 233 F. 37, 147 C. C. A. 107.

Forfeiture of potatoes brought into the United States, as well as the vehicles used in their importation, cannot be upheld, under this section and Comp. St. 1916. § 5785, or under Comp. St. 1916, §§ 5785 and 5809. Daigle v. U. S., 237 F. 159, 150 C. C. A. 305.

§ 5553. (Act June 10, 1910, c. 283, § 4.) Regulations for carrying act into effect.

Cited without definite application,
30 Op. Atty. Gen. 123.

CHAPTER FIVE—UNLADING

Sec.
5556, 5559, 5561, 5562. Forfeiture for unlawful transfer; license; bond.
5571. Compensation for night service; boarding officers may administer oaths.
5582. Returns of weighers, gaugers, and measurers.

§§ 5556, 5559, 5561, 5562. (R. S. § 2868, and Act Feb. 13, 1911, c. 46.) Forfeiture for unlawful transfer; license; bond.

Cited without definite application,
30 Op. Atty. Gen. 123.

§ 5571. (Act Feb. 13, 1911, c. 46, § 5.) Compensation for night service; boarding officers may administer oaths.

Word "cargo" as including baggage.—The word "cargo" as used in this section, does not include passengers' baggage. 30 Op. Atty. Gen. 123.

§ 5582. (R. S. § 2890.) Returns of weighers, gaugers, and measurers.

Finality of return.—While it is true that the weigher's return is presumably correct under the presumption attending official action, and cannot be varied by the collector except when the weigher has failed to follow the law or in cases of fraud, Congress has not expressly vested it with the finality of appraisement. Vitelli & Son v. U. S., 7 Ct. Cust. App. 243.

Setting aside fraudulent return.—That a collector may set aside a fraudulent return by a weigher cannot be questioned. Vitelli & Son v. U. S., 7 Ct. Cust. App. 243.

Weigher's certificate as evidence.—A government weigher's certificate, stating the quantity, etc., of certain beans, not identified with those involved in the suit, and whose accuracy was not proved, nor its contents brought home to defendant, is incompetent. Llopis v. P. Pastene & Co. (Sup.) 159 N. Y. S. 773.

CHAPTER SIX—APPRAISAL

Sec.
5591. Appraisal at actual market value and wholesale price.
5592. Ascertainment of value.
5594. Revision of reports of assistant appraisers; reappraisement; appeal to board of general appraisers.
5595. Decision of collector; appeal to board of general appraisers.
5596. Administration of oaths, examination of witnesses, and production of papers.
5598. Decisions of general appraiser; filing; publication of abstracts.
5599. Assessment of ad valorem duties.
5619. Deficiency.

§ 5591. (Act Oct. 3, 1913, c. 16, § III, K.) Appraisal at actual market value and wholesale price.

I. Appraisal in general.—An appraisement is in no sense a classification. American Bead Co. v. U. S., 7 Ct. Cust. App. 161.

The function of the appraiser is to find facts, and his opinions and legal conclusions are not binding. Id.

Classification is not the function of an appraiser, and no presumption attaches to his legal conclusions. His statement that the silk cord was "appliqued all around the edge of the comfortable" is his conclusion of law. U. S. v. McGibbon & Co., 7 Ct. Cust. App. 290.

Carbonic acid gas was imported packed under compression in steel tubes or capsules about two inches in length and an inch in diameter, fitted with air-tight screw caps for use in charging drinking water. It was shown that the gas was purchased as a separate commodity and packed into the capsules for transportation, that the capsules were commonly returned to dealers and sent abroad again in the same service, and that they have no other use. The gas was the per se merchandise and the capsules mere containers, within the meaning of that word in Comp. St. 1916, § 5599. This section and sections 5594 and 5599

confine the duty of the appraiser to the merchandise, and his action in advancing the value of the capsules conferred no validity upon the collector's assessment of the additional duty imposed by section 5527 in cases where the appraised exceeds the entered value. U. S. v. Downing & Co., 7 Ct. Cust. App. 479.

Under this section, authorizing the appraiser to use "all reasonable ways and means" in his power to "ascertain, estimate, and appraise" the actual market value and wholesale price of dutiable merchandise at the time of its exportation to the United States, in the principal markets of the country whence the same has been imported, the appraiser is justified in arriving at his conclusion by deducting from the value of the merchandise at the port the shipping and freight charges from the place where the shipment originated—the principal market for such merchandise—to the port. Such action is not an appraisement of the freight and shipping charges, but a convenient method of finding the value at the place where the shipment originated. U. S. v. Philips Co., 7 Ct. Cust. App. 497.

§ 5592. (Act Oct. 3, 1913, c. 16, § III, L.) Ascertainment of value.

Cost of production.—The compensation paid to talent for the production of phonograph records is an element in the "cost of production" of such records, under paragraph L of section 3, Tariff Act of 1913. Austin, Baldwin & Co. v. U. S., 7 Ct. Cust. App. 186.

Charges, expenses, and commissions.—Money expended in the production of phonograph records for "locating room, moving and hire of piano, wages of boy at laboratory, and rent of laboratory, furniture and curtains," is not a part of the "costs of materials and of fabrication," but within the category of "general expenses" under this section. Austin, Baldwin & Co. v. U. S., 7 Ct. Cust. App. 186.

The provision in this section, "all general expenses to be estimated at not less than 10 per centum," does not authorize appraising officers to fix general expenses at any sum greater than 10 per cent. of the total expenses which to them may seem proper and without regard to the actual general expenses. Id.

§ 5594. (Act Oct. 3, 1913, c. 16, § III, M.) Revision of reports of assistant appraisers; reappraisement; appeal to board of general appraisers.

6. Conclusiveness of appraisal.—Notwithstanding Act June 22, 1874 (Comp. St. 1916, § 5714), and this section, that the liquidation of the amount of customs duties shall be final and conclusive, United States can maintain an action to recover customs duties where it has been defrauded of the amount actually due. U. S. v. John A. Heitz, Inc. (D. C.) 238 F. 1002.

This section confers ultimate and exclusive appellate jurisdiction to appraise on the board of three general appraisers to which the case is assigned; and the decision of that body becomes, by the precise language of the statute itself, final and conclusive on all parties, and is not subject to review by appeal. U. S. v. Loeb & Schoenfeld Co., 7 Ct. Cust. App. 380.

7. Reappraisement, in general.—Carbonic acid gas was imported packed under compression in steel tubes or capsules about two inches in length and an inch in diameter, fitted with air-tight screw caps for use in charging drinking water. It was shown that the gas was purchased as a separate commodity and packed into the capsules for transportation, that the capsules were commonly returned to dealers and sent abroad again in the same service, and that they have no other use. The gas was the per se merchandise and the capsules mere containers, within the meaning of that word in Comp. St. 1916, § 5599. This section and sections 5591, 5599, confine the duty of the appraiser to the merchandise, and his action in advancing the value of the capsules conferred no validity on the collector's assessment of the additional duty imposed by section 5527, in cases where the appraised exceeds the entered value. U. S. v. Downing & Co., 7 Ct. Cust. App. 479.

11. —— Conclusiveness.—It is elemental that parties litigant have no inherent right to an appeal. The remedy of appeal is a statutory right, and, if there be no statute giving the right, there is no right. U. S. v. Loeb & Schoenfeld Co., 7 Ct. Cust. App. 380.

Subsection 29 of section 28, Tariff Act of 1909, does not contemplate any review by appeal of the action of the Board of General Appraisers sitting as a reappraisement board and is restricted to a review of their action as a classification board. Id.

13. Liquidation by collector.—See U. S. v. John A. Heitz, Inc. (D. C.) 238 F. 1002.

The powers and duties of collectors of customs are equally vested in their special deputies; and the special deputies' right and power to liquidate and reliquidate are without question. Vitelli & Son v. U. S., 7 Ct. Cust. App. 243.

The power of a collector to liquidate and reliquidate is vested in him by statute, and unlimited, except by affirmative law. This has been recognized by consistent, persistent, and continuous

administrative practice, legislative enactment, and judicial decision since the institution of his office. Id.

There never has been, and is not now, a time limit within which the original liquidation must be made. Id.

§ 5595. (Act Oct. 3, 1913, c. 16, § III, N.) Decision of collector; appeal to board of general appraisers.

1. Finality of collector's decision.—See U. S. v. John A. Heitz, Inc. (D. C.) 238 F. 1002.

The appraiser's report and the collector's assessment are only prima facie correct. U. S. v. Macy & Co., 7 Ct. Cust. App. 8.

2. —— Presumption of validity.—Collector's classification is presumed correct. U. S. v. Kronfeld Saunders & Co., 7 Ct. Cust. App. 93; Stone & Co. v. U. S., 7 Ct. Cust. App. 124.

The presumption of correctness attaching to the collector's classification of denatured tea sweepings (a mixture of tea sweepings, lime, and asafetida) as an entirety (tea sweepings) under Comp. St. 1916, § 5291, par. 13, is not overcome by a claim that the lime content is dutiable separately, unless it be shown that the lime and tea sweepings have each maintained their identity in the mixture, and unless it be shown how much is tea sweepings and how much is lime. U. S. v. Monsanto Chemical Co., 7 Ct. Cust. App. 340.

6. Protest—Sufficiency.—A protest, which shows what claim is made and has not misled the collector, is not rendered insufficient by a numerical reference to a paragraph obviously not intended. U. S. v. Tappenbeck, 7 Ct. Cust. App. 17.

A party pleading a statute need not negative an exception contained in a proviso or amendment in a separate substantive clause, and not in the enacting clause, for this is matter of defense to the plea. U. S. v. Murphy & Co., 7 Ct. Cust. App. 35.

A protest claiming printing paper to be dutiable under paragraph 322, Tariff Act of 1913, need not deny that it came from a country which imposed an export duty upon it or the material used in its manufacture. To hold this would be to hold that every protest must negative paragraph E of section 4, which levies additional duty upon any dutiable article coming from a country which bestows a bounty upon its exportation. Id.

A protest is not rendered insufficient by claiming at the wrong rate under paragraph 103, Tariff Act of 1909, which taxes mirrors of different sizes at different rates. The record shows the sizes of the mirrors, and, the report of the official gauger being presumed to do so, there was sufficient before the collector for proper liquidation. General Electric Co. v. U. S., 7 Ct. Cust. App. 157.

A protest showing that "626" had been typewritten as the number of the paragraph claimed under, but had been erased and "555" inserted with lead pencil in lieu thereof, is, in the absence of any claim that it had been tampered with, sufficient to claim under paragraph 555. Wells Fargo & Co. v. U. S., 7 Ct. Cust. App. 346.

7. —— Affirmance of classification where correct classification is not stated in protest.—The collector's assessment of merchandise, even if incorrect shall not be disturbed, unless the protest makes claim for assessment under the correct provision of the tariff Act, and the decision of the Board of General Appraisers sustaining a protest which objects to one wrong classification and claims another also wrong is reversed. U. S. v. Leavitt, 7 Ct Cust. App. 144.

The collector's classification of spruce gum under Comp. St. 1916, § 5291, par. 27, though erroneous, must stand, when the only claim in the protest is for classification under paragraph 477, also erroneous. U. S. v. Eastern Drug Co., 7 Ct. Cust. App. 210.

14. —— Signature.—Generally speaking, agency, when not implied by law, arises from a contractual relation, express or implied, between one party, called the principal, and the other, the agent; and inanimate objects, like the merchandise in this case, are obviously without ability to create agents, nor can the statute be so interpreted. A protest, signed by the agent of the owner and importer in his own name, only complies with the provision of subsection 14 of section 28, Tariff Act of 1909, that the protest must be made by the "owner, importer, consignee, or agent of such merchandise." Wells Fargo & Co. v. U. S., 7 Ct. Cust. App. 346.

The existence of a parol agency may be shown by the testimony of the agent. Id.

15. —— Time for filing.—A protest filed between the time of the payment at the post office of the estimated duties on a mail importation and the liquidation by the collector is premature and ineffective. U. S. v. Mandel Bros., 7 Ct. Cust. App. 476.

This section expressly inhibits the filing of a protest before liquidation. Such prematurely filed protest is ineffective. Id.

21. Appeal to board of appraisers.—The board of General Appraisers may not, sua sponte, dismiss a protest for multifariousness. Cross Co. et al. v. U. S., 7 Ct. Cust. App. 43.

The collector has no power to liquidate pending appeal to reappraisement. Stubbs v. U. S., 7 Ct. Cust. App. 399.

A liquidation by the collector pending

appeal to reappraisement is not voidable merely, but void. Such action does not constitute a "settlement of duties" within the purview of section 21, chapter 391, Act of June 22, 1874 (Comp. St. 1916, § 5714), which provides that a settlement of duties shall be final a year after entry, in the absence of fraud and in the absence of protest. Id.

To justify a classification board in declaring null and void an appraisement by three general appraisers on the ground that it was based upon a wrong theory of the law, it must appear positively, clearly, and certainly that they did proceed upon such wrong theory. This does not appear from a record which does not contain a recital of all the facts before the reappraisement board, and does not contain any statement as to the theory of law upon which such board proceeded. U. S. v. Johnson Co., 7 Ct. Cust. App. 466.

The Board of United States General Appraisers has jurisdiction to review protests relating to mail importations. U. S. v. Mandel Bros., 7 Ct. Cust. App. 476.

The addition to the tariff law by this section of the words "or upon merchandise on which duty shall have been assessed" extends the jurisdiction of the Board of United States General Appraisers to all decisions of collectors of customs as to the rate and amount of duties, whether or not the merchandise was imported, and whether or not provision is made for its legal entry. It is any and every decision of a collector as to the rate and amount of duties that may be protested and reviewed, and not only such a decision as to imported or legally entered merchandise, or as to goods for which a certain entry is by statute provided. Id.

25¼. **Appeal to courts—Point not raised by protest.**—The alleged absence of samples of the merchandise at the time of reappraisement thereof by the board of three general appraisers may not be urged before the Court of Customs Appeals, when the point is not raised by the protest. Stubbs v. U. S., 7 Ct. Cust. App. 399.

26¼. —— **Waiver of objection below.**—The alleged absence of samples of the merchandise at the time of reappraisement thereof by the board of three general appraisers may not be urged before the Court of Customs Appeals, when an examination of samples by the board was expressly waived by a stipulation of the parties, duly entered of record. Stubbs v. U. S., 7 Ct. Cust. App. 399.

26½. —— **Showing in support of claim of res judicata.**—Showing that the merchandise in this case is identical with that in another, without incorporating in this case the record of the other, and without introducing in this case such evidence as was introduced in the other, does not support a claim that the holding in the other case is res judicata of the issue in this one. Wells Fargo & Co. v. U. S., 7 Ct. Cust. App. 346.

28. —— **Review of questions of fact.**—Only the parties are interested in the facts of a case, and their agreed statement of them concludes the court. The public also is interested in the law, and their agreed statement of it would not conclude the court. Salomon & Co. v. U. S., 7 Ct. Cust. App. 5.

The evidence in this case being in such hopeless conflict that the court is unable to decide any question of law or fact presented, nothing is possible, under the rule that the burden is on the appellant to establish the material allegations of his protest by a convincing preponderance of the evidence, except to affirm the decision of the Board of General Appraisers sustaining the decision of the collector. St. Elmo Cigar Co. v. U. S., 7 Ct. Cust. App. 153.

Parties' stipulations of fact bind the court. American Bead Co. v. U. S., 7 Ct. Cust. App. 161.

A claim in a protest that an article is in chief value of wood, against the collector's finding that it is in chief value of metal, is sustained in this case by the uncontradicted testimony of a competent witness, taken with the appraiser's advisory classification as in chief value of wood, and the fact that the Board of General Appraisers made no finding upon that issue. U. S. v. Duluth, W. & P. R. Co., 7 Ct. Cust. App. 234.

29. —— **Questions of law.**—A party's concession as to a matter of law does not conclude the court. U. S. v. Macy & Co., 7 Ct. Cust. App. 8.

31. —— **Disposition of case.**—Case remanded, with additional instruction that the board take and receive such evidence as may be adduced necessary for and in aid of the determination of such facts as will enable the collector to effectually liquidate as to all of the importations covered by the decision and direct liquidation accordingly. General Electric Co. v. U. S., 7 Ct. Cust. App. 484.

§ 5596. (Act Oct. 3, 1913, c. 16, § III, O.) Administration of oaths, examination of witnesses, and production of papers.

Evidence in general.—The court does not judicially know that rosaries are not "designed to be worn on apparel or carried on or about or attached to the person." U. S. v. Malhami & Co., 7 Ct. Cust. App. 175.

The court may well take judicial notice of that which is known by all men

—that the sheep which is raised by the American agriculturist furnishes for man not only food, but raiment. U. S. v. Irwin & Co., 7 Ct. Cust. App. 360.

The court can take judicial notice that the pencils in this case, having different sizes of lead and different colors, are used by draftsmen and architects, with frequent changes from one to the other, and that ordinarily they would be laid upon the desk ready for frequent shifting from one to the other, or, if placed in the pocket for convenience, could not be designed to be carried on the person. U. S. v. Faber, 7 Ct. Cust. App. 406.

The court may take judicial notice that the chief uses to which farmers devote shovels are planting fruit trees, truck gardening, spreading fertilizer, digging potatoes, and digging and keeping in repair ditches for irrigating or drainage purposes. Tower v. U. S., 7 Ct. Cust. App. 408.

—— **Competency of witnesses.**—A witness with experience in the electric light carbon business is competent to testify as to the composition of such carbons, without having seen them manufactured. Hirschberg et al. v. U. S., 7 Ct. Cust. App. 40.

—— **Weight.**—Where the evidence consisted of the testimony of 11 competent and credible witnesses, 6 for the importer and 5 for the government, all of the importer's witnesses being in substantial agreement with each other, and 4 of the government's being at variance with each other as to the considerations upon which they based their testimony, this court would not be justified in saying that the Board of United States General Appraisers erred in holding that the importer had established his claim by a preponderance of the evidence. U. S. v. Shallus, 7 Ct. Cust. App. 314.

§ 5598. (Act Oct. 3, 1913, c. 16, § III, Q.) Decisions of general appraiser; filing; publication of abstracts.

Appraiser's report and collector's assessment.—The appraiser's report and the collector's assessment are only prima facie correct. U. S. v. Macy & Co., 7 Ct. Cust. App. 8.

§ 5599. (Act Oct. 3, 1913, c. 16, § III, R.) Assessment of ad valorem duties.

5. **Coverings, containers, etc.**—Carbonic acid gas was imported packed under compression in steel tubes or capsules about two inches in length and an inch in diameter, fitted with air-tight screw caps, for use in charging drinking water. It was shown that the gas was purchased as a separate commodity, and packed into the capsules for transportation; that the capsules were commonly returned to dealers and sent abroad again in the same service, and that they have no other use. The gas was the per se merchandise, and the capsules mere containers, within the meaning of that word in this section. This section and Comp. St. 1916, §§ 5591, 5594, confine the duty of the appraiser to the merchandise, and his action in advancing the value of the capsules conferred no validity upon the collector's assessment of the additional duty imposed by section 5527 in cases where the appraised exceeds the entered value. U. S. v. Downing & Co., 7 Ct. Cust. App. 479.

§ 5619. (R. S. § 2921.) Deficiency.

Allowance for deficiency.—In importations of Wurzburger and Pilsner beer the importer made an honest effort to estimate the amount of wantage or outage, finding 2.96 per cent. for the Wurzburger and 3.51 per cent. for the Pilsner. By making a justifiable criticism of the importer's method, the Board of United States General Appraisers decided that the proper allowance should be 1 per cent. By giving due weight to the method used and conclusion reached by the manufacturer, corroborative of the method and conclusion of the importer, the court decides that the allowance should be 2 per cent. U. S. v. Lüchow, 7 Ct. Cust. App. 301.

CHAPTER SEVEN—THE BOND AND WAREHOUSE SYSTEM

§ 5650a. (Res. Oct. 6, 1917, c. 108.) Entry of distilled spirits shipped from foreign countries under bond for export.

That the Secretary of the Treasury be, and he is hereby, authorized and directed to permit the entry of distilled spirits shipped from any foreign country to the United States prior to September first, nineteen hundred and seventeen, into bonded warehouses in the United States, under bond to be given by the importer of such distilled spirits, conditioned for the export of such goods to some foreign country within the period of one year from and after the entry thereof into the United States. (40 Stat. 427.)

This was a resolution entitled a "Joint Resolution authorizing and directing the Secretary of the Treasury to permit the entry of distilled spirits into bonded warehouses under bond, conditioned for the export of such distilled spirits to some foreign country within one year from the date of entry into the United States," cited above.

§ 5672. (Act Oct. 3, 1913, c. 16, § IV, M.) Manufacturing warehouses.

Regulations by Secretary of the Treasury.—This section does not authorize the Secretary of the Treasury to promulgate regulations requiring manufacturers of cigars to pay $10 per thousand for stamps to indicate the origin of the tobacco and the place of manufacture. U. S. v. E. Rosenburg & Sons (D. C.) 253 F. 285.

§ 5673. (Act Oct. 3, 1913, c. 16, § IV, N, subsec. 1.) Smelting works as bonded warehouse.

Relief from additional duty.—The fact that zinc ore was entered for rewarehousing, to be smelted and the zinc exported, does not relieve it of the additional duty incurred under Comp. St. 1916, § 5527, for undervaluation, since this section provides that the amount of the duties payable upon such imported ores at the time of their importation shall stand charged against the bonds of the bonded warehouses, and that the metals producible from the bonded ores or any portion thereof may be withdrawn for domestic consumption upon the payment of the duties chargeable against an equivalent amount of ores from which said metals would be producible in their condition as imported. Especially is this true in view of the provision of section 5527, that the additional duties levied thereunder shall not be refunded "in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback." National Zinc Co. v. U. S., 7 Ct. Cust. App. 145.

CHAPTER SEVEN A—IMMEDIATE TRANSPORTATION IN BOND TO INLAND PORTS

§ 5695. (Act June 10, 1880, c. 190, § 1, as amended, Act June 14, 1880, c. 214, and Act June 20, 1884, c. 103.) Ports at which entry may be made for transportation in bond.

The privileges of this section were extended to additional ports by the following acts:

Bar Harbor, Me., Act July 20, 1918, c. 159.

Gulfport, Miss., Act March 2, 1919, c. 93.

Northgate, N. D., Act Oct. 6, 1917, c. 80.

Oswego, N. Y., Act July 20, 1918, c. 158.

CHAPTER EIGHT—PAYMENT

§ 5714. (Act June 22, 1874, c. 391, § 21.) Settlements conclusive.

Nature and operation of section in general.—The first limitation on the collector's power to reliquidate was this section. Vitelli & Son v. U. S., 7 Ct. Cust. App. 243.

The collector's power to reliquidate within a year after entry has received uniform administrative, legislative, and judicial recognition prior to and since the passage of this act. Id.

The collector's power to reliquidate after the expiration of a year from entry in case of protest has received uniform administrative, legislative, and judicial recognition prior to and since the passage of this act. Id.

Settlement of duties.—Liquidation by the collector pending appeal to reappraisement does not constitute a "settlement of duties" within the purview of this section. Stubbs v. U. S., 7 Ct. Cust. App. 399.

Conclusiveness of settlement in general.—Notwithstanding this Act and Tariff Act Oct. 3, 1913, § 3, that the liquidation of the amount of customs duties shall be final and conclusive, United States can sue to recover duties where it has been defrauded of the amount actually due. U. S. v. John A. Heitz, Inc. (D. C.) 238 F. 1002.

Fraud.—The statute makes the liquidation final "in the absence of fraud." This does not necessitate a finding of fraud by the collector to justify reliquidation, but directs him not to reliquidate in "the absence of fraud." If he suspects fraud, he cannot say that fraud is absent. A well-founded suspicion of fraud is sufficient to move him to reliquidation. Vitelli & Son v. U. S., 7 Ct. Cust. App. 243.

The words "in the absence of fraud and in the absence of protest by the owner, importer, agent, or consignee" do not restrict the fraud to the owner, importer, agent, or consignee. Id.

Fraud vitiates whatever it touches, and it may be said that a liquidation induced by fraud is no liquidation, and a fraudulent weigher's return no weigher's return. Id.

That a collector may set aside a fraudulent return by a weigher cannot be questioned. Id.

See, also, note under § 5715, post.

§ 5715. (Act March 3, 1875, c. 136, § 1.) Refunding duties paid.

Reliquidation of duties.—The power of a collector to liquidate and reliquidate is vested in him by statute, and unlimited except by affirmative law. This has been recognized by consistent, persistent, and continuous administrative practice, legislative enactment, and judicial decision since the institution of his office. Vitelli & Son v. U. S., 7 Ct. Cust. App. 213.

The power of the collector to reliquidate when the goods have gone beyond his possession or control has been administratively, legislatively, and judicially recognized from the earliest time. Id.

This section implies that the collector has an inherent general power to reliquidate. Id.

The collector's power to reliquidate after the expiration of a year from entry in case of fraud stands upon the same ground as in case of protest, and, like it, has received uniform administrative, legislative, and judicial recognition. Id.

The statute makes the liquidation final "in the absence of fraud." This does not necessitate a finding of fraud by the collector to justify reliquidation, but directs him not to reliquidate in "the absence of fraud." If he suspects fraud, he cannot say that fraud is absent. A well-founded suspicion of fraud is sufficient to move him to reliquidation. Id.

The law restricts a collector's findings to rate and amount of duty. He can make no conclusive finding as to fraud or anything else than rate and amount of duty. A reliquidation involves nothing except a different finding as to rate and amount of duty. Id.

In the trial before the Board of General Appraisers of a protest by F. Vitelli & Son against a reliquidation on account of fraud alleged in the original liquidation, indictments and records of acquittal in prosecutions by the United States against Joseph Vitelli for such frauds, without evidence connecting F. Vitelli & Son with Joseph Vitelli, have no probative force, and were properly excluded by the Board of General Appraisers. Id.

In the trial before the Board of General Appraisers of a protest against a reliquidation made more than a year after entry, the legal presumption is, as in all cases, that the collector of customs acted within the powers conferred upon him by law, and the burden is on the protestant to show the invalidity of the reliquidation. Id.

In the trial before the Board of General Appraisers of a protest against a reliquidation made more than a year after entry, evidence that the goods had been bought and sold by importers at weights greater than the entered ones, is sufficient to establish a prima facie case of fraud and put upon the protestants the burden of overcoming it. Id.

There is no doubt, at least in cases where the weigher did not follow the law or was guilty of fraud, that the collector can proceed, or direct the weigher to proceed, to ascertain from the accounts of merchants to whom the merchandise was sold its true weights and accordingly liquidate. Id.

The customs administrative procedure, in case of reliquidation for fraud more than one year after entry, gives the importer ample notice and abundant opportunity to defend. The record shows that such notice and opportunity were had in these cases. Id.

See, also, notes under § 5714, ante.

§ 5718 (Act Oct. 3, 1913, c. 16, § III, Y.) Refunding overpayments; correction of errors.

Manifest clerical error.—An understatement of the market value per ton of zinc ore, varying from the consular invoice and from the price stated in the contract for purchasing it, the arithmetical extension in the entry being correctly made upon the basis of the declared price per ton, declared number of tons, and declared percentage of zinc content, is not manifest clerical error within the meaning of this section. National Zinc Co. v. U. S., 7 Ct. Cust. App. 145.

CHAPTER TEN—ENFORCEMENT OF DUTY-LAWS AND PUNISHMENT FOR VIOLATIONS

Sec.
5763. Search of vehicles and persons.
5764. Forfeitures.
5769. Search warrant.
5775. Seizures.
5785. Concealing or buying goods liable to seizure.
5790. Institution of suits.

§ 5763. (R. S. § 3061.) Search of vehicles and persons.

Forfeiture.—Under Quarantine Act, § 7 (Comp. St. 1916, § 8758), rule of Secretary of Agriculture of December 22, 1913, this section, and sections 5764, 5785, 5812, potatoes brought into United States in violation of such rule, together with vehicles used for importation, etc., held subject to forfeiture, not being presented for inspection in the required manner. Daigle v. U. S., 237 F. 159, 150 C. C. A. 305.

Under this section (Comp. St. 1916, §§ 5764, 5790), and Act June 22, 1874, § 17 (Comp. St. 1916, § 10132), District Court held without jurisdiction of petition by person seeking relief from forfeiture for violation of customs laws, where no forfeiture had been declared. U. S. v. One Certain Six-Passenger, Six-Cylinder, Forty-Eight Horse Power Locomobile (D. C.) 242 F. 998.

§ 5764. (R. S. § 3062.) Forfeitures.

See Daigle v. U. S., 237 F. 159, 150 C. C. A. 305; U. S. v. One Certain Six-Passenger, Six-Cylinder, Forty-Eight Horse Power Locomobile (D. C.) 242 F. 998; note, ante, § 5763.

§ 5769. (R. S. § 3066, as amended, Act April 25, 1882, c. 89.) Search warrant.

Cited without definite application,
U. S. v. Jones (D. C.) 230 F. 262.

§ 5775. (R. S. § 3072.) Seizures.

Cited without definite application,
In re Beloochistan Rug Weaving Co. (D. C.) 244 F. 283.

§ 5785. (R. S. § 3082.) Concealing or buying goods liable to seizure.

3. Operation of section.—This section, forbidding the importation of goods contrary to law, applies only to the importation of goods illegally packed or absolutely forbidden, and is not reduplicating Rev. St. § 2865 (Comp. St. 1916, § 5548), or the Customs Administrative Act. U. S. v. One Blue Taffeta Evening Coat, Trimmed Lace, and Other Women's Clothing (D. C.) 237 F. 703.

6. "Import or bring."—Under Comp. St. 1916, § 5526, and this section, held, that merchandise imported into United States from Cuba by registered mail, in violation of Postal Convention, art. 11, dated June 16, 1903, between Cuba

and United States, and article 16 of Universal Postal Convention, dated May 26, 1906, was subject to forfeiture. U. S. v. Four Packages of Cut Diamonds (D. C.) 247 F. 354.

9. Dutiable articles in baggage.—Goods which, disguised as personal baggage, are attempted to be introduced into the commerce of the country by means of a false baggage declaration, are subject to forfeiture. U. S. v. One Blue Taffeta Evening Coat, Trimmed Lace, and Other Women's Clothing (D. C.) 237 F. 703.

12. Penalty or fine—Indictment.—Comp. St. 1916, § 5548, declares that if any person shall knowingly and willfully, with intent to defraud, smuggle into the United States any goods subject to duty and which should have been invoiced, without paying the duty, and shall make out or attempt to pass through the customs house, any false invoice, he shall be deemed guilty of misdemeanor. An indictment charged that defendant fraudulently and knowingly imported into the United States, contrary to law, goods subject to customs duty, importing them clandestinely, secretly, and without an entry being made at the customs house as required by law, and without the payment of duty thereon, with intent to defraud the United States of its lawful revenue. Held that, though the indictment was predicated on section 5548, it also charged the offense denounced by this section. Sierra v. U. S. (C. C. A.) 233 F. 37.

13. Acquittal as a bar.—An acquittal on an indictment charging a violation of this section and Comp. St. 1916, § 5548, held a bar to a subsequent libel of information seeking forfeiture of goods brought into the country without payment of duty, where the transaction was the same, and the statutory violations alleged were the same. Sierra v. U. S., 233 F. 37, 147 C. C. A. 107.

14. Forfeiture—In general.—Forfeiture of potatoes brought into the United States, as well as the vehicles used in their importation, cannot be upheld, under this section and section 5548, or under this section and section 5809; their importation being prohibited. Daigle v. U. S., 237 F. 159, 150 C. C. A. 305.

Under this section, Quarantine Act, § 7 (Comp. St. 1916, § 8758), rule of Secretary of Agriculture of December 22, 1913, and Rev. St. §§ 3061, 3062, and 3100 (Comp. St. 1916, §§ 5763, 5764, 5812), potatoes brought into United States in violation of such rule, together with vehicles used for importation, etc., held subject to forfeiture, not being presented for inspection in the required manner. Daigle v. U. S., 237 F. 159, 150 C. C. A. 305.

Only the goods about which false statements are made are forfeited, unless they are boxed or baled with others. U. S. v. One Blue Taffeta Evening Coat, Trimmed Lace, and Other Women's Clothing (D. C.) 237 F. 703.

15. —— Information or libel for forfeiture.—Claimant of merchandise and vehicles sought to be forfeited for unlawful importation into the United States by land held not entitled to complain that process was termed a libel of information, instead of an information; instrument reciting that seizure was by land. Daigle v. U. S., 237 F. 159, 150 C. C. A. 305.

It is permissible to plead contradictory versions of the same transaction in different counts of a libel for the forfeiture of goods for the nonpayment of customs duties thereon. U. S. v. One Blue Taffeta Evening Coat, Trimmed Lace, and Other Women's Clothing (D. C.) 237 F. 703.

An exception cannot be sustained to a libel for the forfeiture of goods for nonpayment of customs duties, which is insufficient as to part of the goods described therein, but good as to the rest. Id.

§ 5790. (R. S. § 3087.) Institution of suits.

Jurisdiction.—Under this section, Rev. St. §§ 3061, 3062, 3087 (Comp. St. 1916, §§ 5763, 5764, 5790), and Act June 22, 1874, § 17 (Comp. St. 1916, § 10132), District Court held without jurisdiction of petition by person seeking relief from forfeiture for violation of customs laws, where no forfeiture had been declared. U. S. v. One Certain Six-Passenger, Six-Cylinder, Forty-Eight Horse Power Locomobile (D. C.) 242 F. 998.

CHAPTER ELEVEN—PROVISIONS APPLYING TO COMMERCE WITH CONTIGUOUS COUNTRIES

§ 5809. (R. S. § 3097.) Entry on northern and northwestern frontiers.

Forfeiture.—Forfeiture of potatoes brought into the United States, as well as the vehicles used in their importation, cannot be upheld, under Rev. St. §§ 2865, 3082 (Comp. St. 1916, §§ 5548, 5785), or under this section and Comp. St. 1916, § 5785; their importation being prohibited. Daigle v. U. S., 237 F. 159, 150 C. C. A. 305.

§ 5812. (R. S. § 3100, as amended, Act Feb. 18, 1875, c. 80, § 1, and Act Feb. 27, 1877, c. 69, § 1.) Inspection of merchandise.

Potatoes.—Under this section, Quarantine Act, § 7 (Comp. St. 1916, § 8758), rule of Secretary of Agriculture of December 22, 1913, and Rev. St. §§ 3061, 3062, 3082 (Comp. St. 1916, §§ 5763, 5764, 5785), potatoes brought into United States in violation of such rule, together with vehicles used for importation, etc., held subject to forfeiture, not being presented for inspection in the required manner. Daigle v. U. S., 237 F. 159, 150 C. C. A. 305.

§ 5814. (R. S. § 3102.) Sealing cars and vessels.

Cited without definite application,
Daigle v. U. S. (C. C. A.) 237 F. 159.

§ 5822. (R. S. § 3110.) Forfeiture for transportation by foreign vessels.

Cited without definite application,
30 Op. Atty. Gen. 5.

TITLE XXXV—INTERNAL REVENUE

Chap.		Sec.
1.	Officers of internal revenue	5851a
2.	Of assessments and collections	5895
3.	Special taxes	5965
4.	Distilled spirits and wines	5981
5.	Fermented liquors	6144
5A.	Sirups, extracts, soft drinks, mineral waters, and carbonic acid gas	6161½a
6.	Tobacco and snuff	6168
7.	Cigars	6202a
7A.	Oleomargarine, adulterated butter, and process or renovated butter	6215
7E.	Opium for smoking	6287a
7F.	Opium, coca leaves, and compounds, manufacturers, etc., thereof	6287g
8.	Banks and bankers	6293
8A.	Special excise tax on corporations	6300
8B.	Excise tax on dealings in cotton futures	6309a
8C.	Transportation facilities by public utilities	6309⅛a
8D.	Insurance policies	6309¼a
8DD.	Tax on transportation and other facilities, and on insurance	6309⅓a
8E.	Theater, etc., admissions and club dues or fees	6309½a
8EE.	Tax on admissions and dues	6309⅝a
8F.	Miscellaneous articles	6309¾a
8G.	Excise taxes	6309⅘a
9.	Stamp taxes on specific objects	6318a
9A.	Incomes	6319
9AA.	Income tax	6336⅛a
9B.	Munition manufacturer's tax	6336¼a
9C.	Excess-profits tax	6336⅜a
9CC.	War-profits and excess-profits tax	6336 7/10a
10A.	Estate tax	6336½a
10B.	Tax on employment of child labor	6336⅞a
11.	Provisions common to several objects of taxation	6340a
11A.	Increase of internal revenue (Revenue Act of 1916)	6371bb.
11B.	War revenue (Revenue Act of 1917)	6371⅛a
11C.	Revenue act of 1918	6371¼a

CHAPTER ONE—OFFICERS OF INTERNAL REVENUE

Sec.
5851a. Collectors; adjustment of salaries.
5854. Disability or vacancy in office of collector.
5859a. Collection of internal revenue tax.
5859aa. [Superseded.]
5859b. Cotton-futures tax, attorneys, agents, etc.
5859c. [Superseded.]
5859d. Restricting sale of opium.
5859dd. Detailed statement of Commissioner of Internal Revenue.
5859e. Salaries and expenses of internal revenue officers.
5877a. [Repealed.]
5877aa. Leaves of absence; revenue agents and inspectors.
5882. Commissioner may transfer or suspend officers.
5883. Duties of collectors and agents; power of Commissioner.
5884. Duties of collectors; reports of violations of law.
5885. Revenue officers; administering oaths and taking evidence.
5887. Same; disclosing operations of manufacturers.
5893. District attorney or marshal accepting or demanding anything for compromise of violation of internal revenue laws.

§ 5851a. (Act Feb. 24, 1919, c. 18, § 1301(b).) Collectors; adjustment of salaries.

The salaries of collectors may be readjusted and increased under such regulations as may be prescribed by the Commissioner, sub-

ject to the approval of the Secretary, but no collector shall receive a salary in excess of $6,000 a year. (40 Stat. 1140.)

This section is paragraph (b) of § 1301 of the Revenue Act of 1918 (Title XIII—General Administrative Provisions), cited above.

The term "collectors" means collectors of internal revenue. See § 6371¼a, post.

§ 5854. (R. S. § 3149, as amended, Act March 1, 1879, c. 125, § 2.) Disability or vacancy in office of collector.

Appointment of deputies.—In order to continue in office after the appointment of a successor to their own collector, deputy collectors must be affirmatively reappointed and recommissioned. 30 Op. Atty. Gen. 1.

§ 5859a. (Act March 1, 1919, c. 86, § 1.) Collection of internal revenue tax.

For expenses of assessing and collecting the internal-revenue taxes, as provided by the "Revenue Act of 1918," including the employment of the necessary officers, attorneys, experts, agents, accountants, inspectors, deputy collectors, clerks, janitors, and messengers in the District of Columbia and the several collection districts, to be appointed as provided by law, telegraph and telephone service, rental of quarters outside the District of Columbia, postage freight, express, and other necessary miscellaneous expenses, and the purchase of such supplies, equipment, furniture, mechanical devices, printing, stationery, law books and books of reference, and such other articles as may be necessary for use in the District of Columbia and the several collection districts, $21,000,000: Provided, That of this amount not to exceed $184,160 shall be available for the expenses authorized to be incurred by the Secretary of Labor upon request of the Commissioner of Internal Revenue, in accordance with the Act "to provide revenue, and for other purposes," approved February 24, 1919: Provided further, That no salary shall be paid out of the said sum of $184,160 at a rate exceeding $3,000 per annum: Provided further, That not more than $500,000 of the total amount appropriated herein may be expended by the Commissioner of Internal Revenue for detecting and bringing to trial persons guilty of violating the internal-revenue laws or conniving at the same, including payments for information and detection of such violation. (40 Stat. 1234.)

This section is a part of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It supersedes similar provisions in Act March 3, 1917, c. 163, § 1, 39 Stat. 1090, 1091, and Act July 3, 1918, c. 130, § 1, 40 Stat. 778.

§ 5859aa. (Act July 3, 1918, c. 130, § 1.) [Superseded.]

This provision made appropriations for additional expenses in assessing and collecting the internal revenue taxes provided by Act Oct. 3, 1917, and authorized the appointment of additional agents. It was superseded by the similar provisions of Act March 1, 1919, c. 86, § 1, ante, § 5859a.

§ 5859b. (Act July 3, 1918, c. 130, § 1.) Cotton-futures tax, attorneys, agents, etc.

Collecting the cotton-futures tax: For expenses to enforce the provisions of part A of the Act approved August eleventh, nineteen hundred and sixteen, known as the cotton-futures Act, including the employment of attorneys, agents, inspectors, deputy collectors, clerks, and messengers at rates to be fixed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, and for the purchase of such supplies, equipment, mechanical devices, and other articles as may be necessary, $20,000: Provided, That no person shall be employed hereunder at a compensation exceeding $4,000 per annum. (40 Stat. 779.)

This section was a part of the legislative, executive, and judicial appropriation act for the fiscal year 1919, cited above. It supersedes similar provisions of Act March 3, 1917, c. 163, § 1, 39 Stat. 1090.

§ 5859c. (Act July 3, 1918, c. 130, § 1.) [Superseded.]

This provision made appropriations for collecting the tax on estates, munitions, etc., and authorized the appointment of additional agents for that purpose. It was superseded by similar provisions of Act March 1, 1919, c. 86, § 1, ante, § 5859a.

§ 5859d. (Act March 1, 1919, c. 86, § 1.) Restricting sale of opium.

Restricting the sale of opium, and so forth: For expenses to enforce the provisions of the Act approved December 17, 1914, entitled "An Act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon, all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or cocoa leaves, their salts, derivatives, or preparations, and for other purposes," as amended by the "Revenue Act of 1918," including the employment of agents, deputy collectors, inspectors, chemists, assistant chemists, clerks, and messengers in the field and in the Bureau of Internal Revenue in the District of Columbia, to be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and for the purchase of such supplies, equipment, mechanical devices, and other articles as may be necessary for use in the District of Columbia and the several collection districts, including not to exceed $4 per diem in lieu of subsistence, $750,000. (40 Stat. 1234.)

This section is a part of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It supersedes similar provisions in Act March 3, 1917, c. 163, § 1, 39 Stat. 1091, and Act July 3, 1918, c. 130, § 1, 40 Stat. 779.

§ 5859dd. (Act March 1, 1919, c. 86, § 1.) Detailed statement of Commissioner of Internal Revenue.

The Commissioner of Internal Revenue shall submit to Congress on the first day of its next regular session a detailed statement showing the number, designation, and annual rate of compensation of the persons employed and the amounts expended for rent and other authorized purposes in the District of Columbia from the foregoing appropriations for the collection of internal revenue. (40 Stat. 1234.)

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above. It has been repeated in prior appropriation acts.

§ 5859e. (Act March 1, 1919, c. 86, § 1.) Salaries and expenses of internal revenue officers.

For salaries and expenses of collectors of internal revenue, deputy collectors, gaugers, storekeepers, and storekeeper gaugers, clerks, messengers, and janitors in internal-revenue offices, rent of offices outside of the District of Columbia, telephone service, injuries to horses (not exceeding $150 for any horse crippled or killed), expenses of seizure and sale, and other necessary miscellaneous expenses in collecting internal-revenue taxes, $4,288,000: Provided, That no part of this amount shall be used in defraying the expenses of any officer, designated above, subpœnaed by the United States court to attend any trial before a United States court or preliminary examination before any United States commissioner, which expenses shall be paid from the appropriation for "Fees of witnesses, United States courts." (40 Stat. 1233.)

This section is a part of the legislative, executive, and judicial appropriation act for the fiscal year 1920, cited above.

§ 5877a. [Repealed.]

This section, which was § 463 of the Revenue Act of 1916, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 5877aa. (Act Feb. 24, 1919, c. 18, § 1302.) Leaves of absence; revenue agents and inspectors.

All internal-revenue agents and inspectors shall be granted leave of absence with pay, which shall not be cumulative, not to exceed thirty days in any calendar year, under such regulations as the Commissioner, with the approval of the Secretary, may prescribe. (40 Stat. 1141.)

This section is § 1302 of the Revenue Act of 1918 (Title XIII—General Administrative Provisions), cited above. It supersedes an identical provision in Act Sept. 8, 1916, c. 463, § 413, which was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

The terms "Commissioner" and "Secretary" mean the Commissioner of Internal Revenue and the Secretary of the Treasury, respectively. See § 6371¼a, post.

§ 5882. (Act Aug. 15, 1876, c. 287, § 1.) Commissioner may transfer or suspend officers.

Suspension.—Under section 3163, Rev. St. (Comp. St. 1916, § 5883), authorizing employment in the internal revenue service and the rules and regulations pertaining thereto, and this section, a storekeeper gauger may be suspended without pay. Geisert v. U S., 50 Ct. Cl. 95.

§ 5883. (R. S. § 3163, as amended, Act March 1, 1879, c. 125, § 2.) Duties of collectors and agents; power of Commissioner.

Suspension.—Under this section and Act Aug. 15, 1876 (Comp. St. 1916, § 5882), a storekeeper gauger may be suspended without pay. Geisert v. U. S., 50 Ct. Cl. 95.

§ 5884. (R. S. § 3164, as amended Act Feb. 24, 1919, c. 18, § 1317.) Duties of collectors; reports of violations of law.

It shall be the duty of every collector of internal revenue having knowledge of any willful violation of any law of the United States relating to the revenue, within thirty days after coming into possession of such knowledge, to file with the district attorney of the district in which any fine, penalty, or forfeiture may be incurred, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, setting forth the provisions of law believed to be so violated on which reliance may be had for condemnation or conviction. (40 Stat. 1146.)

This section was amended by § 1317 of the "Revenue Act of 1918," cited above, to read as set forth above. Prior to this amendment this section read as follows: "It shall be the duty of every collector of internal revenue to report within ten days to the district attorney of the district in which any fine, penalty, or forfeiture may be incurred for the violation of any law of the United States relating to the revenue, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, and which may come to his knowledge from time to time, stating the provisions of the law believed to be violated, and on which a reliance may be had for condemnation or conviction; and if any collector shall in any case fail to report to the proper district attorney as prescribed in this section, his right to any compensation, benefit, or allowance in such case shall be forfeited to the United States, and the same may, in the discretion of the Secretary of the Treasury, be awarded to such persons as may make complaint and prosecute the same to judgment or conviction."

§ 5885. (R. S. § 3165, as amended Act March 1, 1879, c. 125, § 2, and Act Feb. 24, 1919, c. 18, § 1317.) Revenue officers; administering oaths and taking evidence.

Every collector, deputy collector, internal-revenue agent, and internal-revenue officer assigned to duty under an internal-revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are au-

thorized by law or regulation authorized by law to be taken. (20 Stat. 329. 40 Stat. 1146.)

This section was again amended by § 1317 of the Revenue Act of 1918, cited above, to read as set forth above. This amendment consisted in striking out, after the words "deputy collector," the words "and inspector," and by adding after such words the words "internal-revenue agents, and internal-revenue officer assigned to duty under an internal-revenue agent."

§ 5887. (R. S. § 3167, as amended Act Aug. 27, 1894, c. 349, § 34, Act Oct. 3, 1913, c. 16, § II, I, Act Sept. 8, 1916, c. 463, § 16, and Act Feb. 24, 1919, c. 18, § 1317.) Same; disclosing operations of manufacturers.

It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment. (28 Stat. 559. 38 Stat. 177. 39 Stat. 773. 40 Stat. 1146.)

This section was again amended by § 1317 of the Revenue Act of 1918, cited above, to read as set forth above. This amendment consists in the insertion of a comma after the words "any income return," where such words last appear in the section, and in the insertion of a comma after the word "income," where it last appears in the section.

Section 16 of the Revenue Act of 1916, which also amended this section, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

Notes of Decisions

Validity.—The federal and state governments have power to provide that returns made to their officers to be used in assessing and collecting revenue and taxes shall not be revealed by the officers, and such provisions protect the officers against commitment for contempt for refusal to produce such returns on subpœna by a court. In re Valecia Condensed Milk Co., 240 F. 310, 153 C. C. A. 236.

Construction and application in general.—The exception in St. Wis. 1915, § 1087m24, forbidding income tax returns from being divulged, except as provided by law, does not permit the production of the returns whenever required through processes of the law. In re Valecia Condensed Milk Co., 240 F. 310, 153 C. C. A. 236.

§ 5893. (R. S. § 3170.) District attorney or marshal accepting or demanding anything for compromise of violation of internal revenue laws.

Cited without definite application, McPherson v. U. S. (C. C. A.) 245 F. 35.

CHAPTER TWO—OF ASSESSMENTS AND COLLECTIONS

Sec.
5895. Canvass for objects of taxation.
5896. Returns of persons liable to tax.
5896a, 5896b. [Repealed.]
5899. Collector to make returns; time allowed for filing; failure to file.
5904. Commissioner of Internal Revenue to make assessments; correction of incomplete or imperfect lists.
5908. Lien for taxes.
5909. Taxes collectible by distraint.
5920. Certificate of purchase; deed.
5930. Commissioner to have charge of real estate acquired by United States.
5937. Suits, etc., for fines, penalties, and forfeitures, and for taxes.
5944. Refundments; taxes or penalties.
5947. Suits to restrain assessments or collection of taxes.
5948. Suits to recover taxes; taxes collected under second assessment.
5949. Suits for recovery of taxes wrongfully collected.
5950. Limitation of suits for recovery of taxes wrongfully collected.
5951. Claims for refundment; limitation.
5952. Compromises.

§ 5895. (R. S. § 3172, as amended Act Aug. 27, 1894, c. 349, § 34, Act Oct. 3, 1913, c. 16, § II, I, Act Sept. 8, 1916, c. 463, § 16, and Act Feb. 24, 1919, c. 18, § 1317.) Canvass for objects of taxation.

Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects. (28 Stat. 558. 38 Stat. 178. 39 Stat. 773. 40 Stat. 1146.)

This section was again amended by § 1317 of the Revenue Act of 1918, cited above. This amendment makes no changes in the section as last amended.

Section 16 of the Revenue Act of 1916, which also amended this section, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 5896. (R. S. § 3173, as amended Act March 1, 1879, c. 125, § 3, Act Aug. 27, 1894, c. 349, § 34, Act Oct. 3, 1913, c. 16, § II, I, Act Sept. 8, 1916, c. 463, § 16, and Act Feb. 24, 1919, c. 18, § 1317.) Returns of persons liable to tax.

It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before the thirty-first day of July in each year, and (2) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, article or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as

aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: Provided further, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned: Provided, That "person," as used in this section, shall be construed to include any corporation, joint-stock company or association, or insurance company when such construction is necessary to carry out its provisions. (20 Stat. 330. 28 Stat. 558. 38 Stat. 178. 39 Stat. 773. 40 Stat. 1146.)

This section was again amended by § 1317 of the Revenue Act of 1918, cited above, to read as set forth above. This amendment consists in striking out, after the words "thirty-first day of July in each year," the following: "(2) in case of income tax on or before the first day of March in each year, or on or before the last day of the sixty-day period next following the closing date of the fiscal year for which it makes a return of its income"; by adding, in place of the figure "(3)," the figure "(2)"; and by striking out, after the words "of the articles or objects, including," the words "the amount of annual income charged with a duty or tax."

Section 16 of the Revenue Act of 1916, which also amended this section, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

Notes of Decisions

Construction and application in general.—See Camp Bird v. Howbert (C. C. A.) 249 F. 27.

§§ 5896a, 5896b. (Act Oct. 3, 1917, c. 63, §§ 1002, 1004.) [Repealed.]

These sections of the Revenue Act of 1917 provided that, where additional taxes were imposed by that act on articles on which the tax imposed by existing law had been paid, the person, etc., liable for the tax should make return under oath within 30 days after the passage of the act under regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, that time for payment of the additional tax might be extended for 7 months upon giving bond for payment, and imposed a penalty of $1,000, or imprisonment not exceeding one year, or both, for false return or attempt to evade the tax, and in addition a penalty of double the tax evaded or not collected. They were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 5899. (R. S. § 3176, as amended Act March 1, 1879, c. 125, § 3, Act Aug. 27, 1894, c. 349, § 34, Act Oct. 3, 1913, c. 16, § II, I, Act Sept. 8, 1916, c. 463, § 16, and Act Feb. 24, 1919, c. 18, § 1317.) Collector to make returns; time allowed for filing; failure to file.

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

If the failure to file a return or list is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax. (20 Stat. 331. 28 Stat. 559. 38 Stat. 179. 39 Stat. 773. 40 Stat. 1147.)

This section was again amended by § 1317 of the Revenue Act of 1918, cited above, to read as set forth above. This amendment consists in inserting, after the words "at the time prescribed by law," the words "or by regulation made under authority of law"; by inserting, after the words "through testimony or otherwise," the sentence beginning with "In any such case the Commissioner may, from his own knowledge"; by inserting, after the words "or list so made and subscribed by," the words "the Commissioner, or by"; by inserting, after the words "of Internal Revenue shall," the words "determine and"; by striking out, after the words "or lists are so made," the

words "by a collector or deputy collector," and inserting in lieu thereof the words "under the provisions of this section"; by inserting, after the words "prescribed by law, or prescribed by the," the words "Commissioner of Internal Revenue or the"; by inserting, after the word "collector," the words "in pursuance of law"; by striking out, after the words "shall add to the tax," the word "fifty," and inserting in lieu thereof the figures "25"; by striking out, after the words "except that, when a return is," the words "voluntarily and without notice from the collector"; and by striking out, after the words "shall add to the tax," the words "one hundred," and inserting in lieu thereof the figures "50."

Section 16 of the Revenue Act of 1916, which also amended this section, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

Notes of Decisions

Construction and application in general.—See Camp Bird v. Howbert (C. C. A.) 249 F. 27.

§ 5904. (R. S. § 3182.) Commissioner of Internal Revenue to make assessments; correction of incomplete or imperfect lists.

1. Construction with other statutes.—See Camp Bird v. Howbert (C. C. A.) 249 F. 27.

9. Evidence of assessment.—In an action by surety company against its principal on a distiller's bond to recover for payments for taxes assessed under this section made by it on demand of the United States, oral evidence of the assessment list on which the tax liability of the principal was based was erroneous, an exemplified or certified copy under Revisal 1905, §§ 1616, 1617, being best evidence. National Surety Co. v. Brock (N. C.) 97 S. E. 417.

10. Presumption as to assessment.—An additional tax assessed because of claimed withdrawal of untaxpaid whisky from warehouse, under authority of this section, is prima facie valid, and in an action for its recovery after payment plaintiff has the burden of proving its invalidity. Mayes v. Casey (C. C. A.) 252 F. 754.

§ 5908. (R. S. § 3186, as amended, Act March 1, 1879, c. 125, § 3, and Act March 4, 1913, c. 166.) Lien for taxes.

Cited without definite application,
Gouge v. Hart (D. C.) 250 F. 802.

§ 5909. (R. S. § 3187.) Taxes collectible by distraint.

Effect of assessment list.—An assessment list under this section, when certified to the collector of internal revenue has the force and effect of a judgment and execution, and in an action by the government for taxes so assessed constitutes a prima facie case of liability. National Surety Co. v. Brock (N. C.) 97 S. E. 417.

§ 5920. (R. S. § 3198.) Certificate of purchase; deed.

Certificate of sale.—Deputy collector's certificate of sale for internal revenue tax is not evidence that title has passed, but only that holder has right to acquire title by deed or receive money necessary to effect a redemption. Beckham v. Lindsey (Ga. App.) 95 S. E. 745.

§ 5930. (R. S. § 3208, as amended, Act March 1, 1879, c. 125, § 3.) Commissioner to have charge of real estate acquired by United States.

Cited without definite application,
Gouge v. Hart (D. C.) 250 F. 802.

§ 5937. (R. S. § 3213.) Suits, etc., for fines, penalties, and forfeitures, and for taxes.

4. Right of action and defenses in general.—Judgment need not be obtained before maintenance of suit to impound, and apply to government claim for oleomargarine tax, dividends which an oleomargarine manufacturer, now having no property left, paid to its officers and directors, and which, but for fraud, should have been paid for such tax. U. S. v. Capital City Dairy Co. (D. C.) 252 F. 900.

7. Assessment as condition precedent.—In view of this section, held that, under Act Aug. 5, 1909, § 38, subds. 5, 8 (Comp. St. 1916, §§ 6304, 6307), United States may maintain action against

corporation for excise taxes based on income omitted, though Commissioner of Internal Revenue made no reassessment, etc., within time prescribed. U. S. v. Nashville, C. & St. L. Ry., 249 F. 678, 161 C. C. A. 588.

Where a corporation's return incorrectly stated its net income and the tax based upon such return had been paid, an action of indebitatus assumpsit would lie to recover the balance of the tax, which should have been levied and paid, without any formal assessment of such additional tax. U. S. v. Minneapolis Threshing Mach. Co. (D. C.) 229 F. 1019.

12. Evidence.—On hearing of application for receiver in suit to impound, and apply to government's claim for oleomargarine tax, dividends paid by the manufacturer to stockholders, its officers and directors, which but for fraud should have been paid for said tax, held, considering pleadings, affidavits, admissions, and counter affidavits, weight of evidence was with plaintiff. U. S. v. Capital City Dairy Co. (D. C.) 252 F. 900.

§ 5944. (R. S. § 3220, as amended, Act Feb. 24, 1919, c. 18, § 1316(a).) Refundments; taxes or penalties.

The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section. (40 Stat. 1145.)

This section was amended by § 1316 of the Revenue Act of 1918, cited above, to read as set forth above. This amendment consists in striking out, after the words "is authorized," the words "on appeal to him made"; by inserting, after the words "for any internal," the word "revenue"; by inserting, after the words "performance of his official duty," the words "and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section"; and by striking out, at the end of the section the proviso which read as follows: "Provided, That where a second assessment is made in case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is proved that said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation."

Notes of Decisions

2. Remedy for illegal assessment in general.—See Camp Bird v. Howbert (C. C. A.) 249 F. 27.

9. Income tax.—Remedy given by Refunding Act held available to trustees under will who have paid tax on corpus of contingent legacies for excess over tax due on value of annual income from legacies. Rosenfeld v. Scott (D. C.) 232 F. 509.

15. Presentation of appeal or claim.—A suit cannot be maintained to recover an internal revenue tax erroneously or illegally collected, unless a claim for refuting is presented to the commissioner within two years after its payment. New York Mail & Newspaper Transp. Co. v. Anderson, 234 F. 590, 148 C. C. A. 356.

22. Right of action to recover tax paid.—An action to recover internal revenue taxes erroneously collected is assumpsit on an implied contract and survives against the personal representatives of the collector if he dies pending the suit. Philadelphia, H & P. R. Co. v. Lederer (D. C.) 239 F. 184, judgment affirmed (C. C. A.) 242 F. 492.

23. Enforcement of liability to refund against collector's successor.—Act Feb. 8, 1899, c. 121 (Comp. St. 1916, § 1594), providing against abatement of actions by or against government officers, held not to authorize action against collector of internal revenue to recover taxes paid his predecessor, where only pending proceeding was a claim for refund. Philadelphia, H. & P. R. Co. v. Lederer, 242 F. 492, 155 C. C. A. 268, affirming judgment (D. C.) 239 F. 184.

As Rev. St. § 989 (Comp. St. 1916, §

1635), is applicable only to collector of internal revenue making illegal exaction, and as suit to recover same may be revived against collector's representatives on his death, collector's successor in office is not liable to suit therefor. Roberts v. Lowe (D. C.) 236 F. 604.

25. Recovery of interest.—On recovery of a judgment against a collector of internal revenue for the amount of an internal revenue tax illegally collected, the plaintiff is entitled to have the judgment state that it is with interest. New York Mail & Newspaper Transp. Co. v. Anderson, 234 F. 590, 148 C. C. A. 356.

28. Time to sue to recover taxes back.—Pleading of plaintiffs in suits to recover taxes paid under Corporation Tax Law held to have been based on the statute and subject to the limitations prescribed thereby. Public Service Ry. Co. v. Herold, 229 F. 902, 144 C. C. A. 184.

31. Evidence.—To recover income taxes paid under protest, on the ground that an insufficient amount was allowed for depreciation of the income-producing property, plaintiff has the burden of showing that the amount allowed was too small. Cohen v. Lowe (D. C.) 234 F. 474.

32. Question for jury.—In action to recover back amount paid for revenue stamps, whether the stamps were bought and affixed under duress and constraint held a question of fact. Rutan v. Johnson & Johnson, 231 F. 369, 145 C. C. A. 363.

In action to recover back amounts paid for revenue stamps, what matters were presented and determined in previous similar actions, and how far the same matters were again presented, held a question of fact. Id.

32½. Judgment.—Judgments for plaintiff in 2 of 18 actions to recover back amounts paid for revenue stamps held to estop the government from reexamining the same, or essentially the same, questions in the other actions. Rutan v. Johnson & Johnson, 231 F. 369, 145 C. C. A. 363.

§ 5947. (R. S. § 3224.) Suits to restrain assessments or collection of taxes.

Construction and application in general.—Despite this section, receivers believing property in their charge or income thereof not to be subject to tax may apply to court appointing them for instructions as to payment. Scott v. Western Pac. R. Co., 246 F. 545, 158 C. C. A. 515, affirming order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 236 F. 813.

Prohibition of suits to restrain the assessment or collection of tax, contained in this section, cannot be waived by any officer of the government. Gouge v. Hart (D. C.) 250 F. 802.

Suits to which statute applies.—This section is not limited in its application to suits for injunctive relief, but prevents a suit to set aside a sale to the government of property levied on under an internal revenue assessment. Gouge v. Hart (D. C.) 250 F. 802.

§ 5948. (R. S. § 3225, as amended, Act Sept. 8, 1916, c. 463, § 14(d), and Act Feb. 24, 1919, c. 18, § 1316(b).) Suits to recover taxes; taxes collected under second assessment.

When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, or recovered by any suit, unless it is proved that such list, statement, or return was not willfully false or fraudulent and did not contain any willful understatement or undervaluation. (39 Stat. 773. 40 Stat. 1145.)

This section was again amended by § 1316 of the Revenue Act of 1918, cited above, to read as set forth above. This amendment consists in striking out, after the words "understatement or undervaluation," the words "no tax collected under such assessment shall be recovered by any suit," and inserting in lieu thereof the words "such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, or recovered by any suit"; and by striking out, at the end of the section, the words "but this section shall not apply to statements or returns made or to be made in good faith under the laws of the United States regarding annual depreciation of oil or gas wells and mines."

Section 14 of the Revenue Act of 1916, which also amended this section, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

Notes of Decisions

Validity.—This section is not invalid in its applicability to Corporation Tax Act, for it does not destroy uniformity of taxation, applying to all portions of

the country alike. Camp Bird v. Howbert, 249 F. 27, 161 C. C. A. 87, certiorari granted 38 S. Ct. 578, 247 U. S. 509, 62 L. Ed. 1241, and judgment reversed 39 S. Ct. 7, 63 L. Ed. —.

Construction and application in general.—In view of fact that it was enacted as part of legislation imposing a general system of internal revenue to meet financial burdens of the Civil War, this section, in its application to taxes collected under Corporation Tax Act, does not authorize recovery of sums paid on a second assessment, where return was false, but not fraudulent. Camp Bird v. Howbert, 249 F. 27, 161 C. C. A. 87, certiorari granted 38 S. Ct. 578, 247 U. S. 509, 62 L. Ed. 1241, and judgment reversed, 39 S. Ct. 7, 63 L. Ed. —.

As Corporation Tax Act imposes an excise tax, and declares that all laws relating to collection, remission, and refund of internal revenue taxes so far as applicable shall apply, this section is applicable. Id.

Under this section, brought into Corporation Tax Act, omission by mutual life company of item from income side of tax return, through treating it as suspense item, held not to bar company's right of action to recover excessive taxes. Northwestern Mut. Life Ins. Co. v. Fink (D. C.) 248 F. 568.

Effect of amendments.—The amendment to this section by Act Sept. 8, 1916, c. 463, § 14(d), is not retroactive, and does not authorize recovery of corporation taxes previously collected from mining company on second assessment, where the first return was false. Camp Bird v. Howbert, 249 F. 27, 161 C. C. A. 87, certiorari granted 38 S. Ct. 578, 247 U. S. 509, 62 L. Ed. 1241, and judgment reversed 39 S. Ct. 7, 63 L. Ed. —.

§ 5949. (R. S. § 3226, as amended, Act Feb. 27, 1877, c. 69, § 1.) Suits for recovery of taxes wrongfully collected.

2. Suits to which statute applies.—See Rosenfeld v. Scott (D. C.) 232 F. 509.

Where a collector of internal revenue, acting under Income Tax Law Oct. 3, 1913 (Comp. St. 1916, § 6336n), illegally collected taxes from a partnership composed of corporations, the members of the firm are entitled to recover the exaction, with interest and costs. Haiku Sugar Co. v. Johnstone, 249 F. 103, 161 C. C. A. 155.

5. Compliance with statutes in general.—A claim for a refund filed by a trustee did not constitute the requisite basis for a suit under the general statute and Act July 27, 1912, c. 256, for the recovery of a legacy tax by the plaintiff in her own right. Rand v. U. S., 52 Ct. Cl. 72, 285.

7. Appeal as condition precedent to trespass against collector.—Legacy taxes having been paid by the executrix with funds advanced and afterwards repaid to her by plaintiff, the payment, being without protest, was within the rule governing voluntary payments. Rand v. U. S., 52 Ct. Cl. 72, 285.

§ 5950. (R. S. § 3227.) Limitation of suits for recovery of taxes wrongfully collected.

Construction and application in general.—See Rosenfeld v. Scott (D. C.) 232 F. 509; Rand v. U. S., 52 Ct. Cl. 72.

Commencement of suit.—A suit against the United States, under this section, to recover internal taxes erroneously or illegally collected, is "brought," within the limitation clause, when summons is issued. Mill Creek & Minehill Nav. & R. Co. v. U. S. (D. C.) 246 F. 1013.

§ 5951. (R. S. § 3228.) Claims for refundment; limitation.

Construction and application in general.—See Rosenfeld v. Scott (D. C.) 232 F. 509; Rand v. U. S., 52 Ct. Cl. 72.

§ 5952. (R. S. § 3229.) Compromises.

2. Power to compromise in general.—The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, has authority, under section 3229, Revised Statutes, to compromise a case involving a tax liability before proceeding to distraint and sale. 30 Op. Atty. Gen. 329.

CHAPTER THREE—SPECIAL TAXES

Sec.
5965. Carrying on business without payment of special tax; penalties.
5966. Same; forfeitures.
5967. Carrying on business of manufacturer of, or dealer in, oleomargarine without payment of special tax; penalty.
5970. Payment of special tax not to authorize violation of State laws, nor prohibit State taxation.
5971. Special taxes imposed on whom.
(4) Retail liquor dealers.
5973. Retail liquor dealers; wholesale liquor dealers; retail dealers in malt liquors; wholesale dealers in malt liquors.
5980a–5980m. [Repealed.]
5980n. Corporation tax.
5980o. Other special taxes.
(1) Brokers.
(2) Pawnbrokers.
(3) Shipbrokers.
(4) Customhouse brokers.
(5) Theaters, museums, and concert halls.
(6) Circuses.
(7) Public exhibitions or shows.
(8) Bowling alleys and billiard rooms.
(9) Shooting galleries.
(10) Riding academies.
(11) Passenger automobiles for hire.
(12) Brewers, distillers, wholesale and retail liquor dealers and manufacturers of stills.
Taxes to be in lieu of existing taxes.
5980p. Tobacco, cigar, and cigarette manufacturers.
5980q. Tax on yachts, pleasure boats, power boats, sailing boats, and motor boats; measurement; new boats; credits.
5980r. Receipts in lieu of special tax stamps in certain cases.
5980s. Nonpayment of taxes imposed by §§ 1000–1002.
5980t. Repeal of Act Oct. 22, 1914, c. 331.

§ 5965. (R. S. § 3242.) Carrying on business without payment of special tax; penalties.

13. Sale or use by druggist or apothecary.—Druggist compounding essence of jamaica ginger under formula prescribed by "The pharmacopœia" and by "The United States Dispensatory," and selling it as a medicine, held within proviso of Acts Ala. 1915, p. 4, § 7, permitting druggist to use alcohol in compounding medicines, sale of which do not subject him to payment of federal liquor tax. Humphrey v. State (Ala. App.) 77 So. 82, certiorari denied Ex parte State (Sup.) 77 So. 1001.

14. Prosecution and punishment.—In a prosecution for carrying on the business of a liquor dealer without having paid the special tax therefor required by law, evidence of sales by defendant prior to the years named in the indictment held admissible. Day v. U. S., 229 F. 534, 143 C. C. A. 602, affirming judgment on rehearing 220 F. 818, 136 C. C. A. 406.

§ 5966. (Act Feb. 8, 1875, c. 36, § 16.) Same; forfeitures.

Evidence.—In a prosecution for carrying on the business of a retail liquor dealer by selling and offering for sale distilled spirits without having paid the special United States government tax as required by law, evidence held sufficient to sustain the conviction. Ketchum v. U. S. (C. C. A.) 250 F. 107.

Former conviction.—Where defendant was convicted of carrying on business of a retail liquor dealer without having paid special tax therefor as required by law, and sentenced, he cannot thereafter be sentenced on the same conviction to another and different punishment. Blackman v. U. S. (C. C. A.) 250 F. 449.

§ 5967. (Act Aug. 2, 1886, c. 840, § 4.) Carrying on business of manufacturer of, or dealer in, oleomargarine without payment of special tax; penalty.

Indictment.—An indictment found in the Southern District of New York against defendants, who manufactured oleomargarine in Rhode Island, charging them with conspiracy to defraud the federal internal revenue laws, held to charge an offense of which the District Court of New York had jurisdiction, alleging commission of overt acts in the district. Tillinghast v. Richards (D. C.) 233 F. 710.

An indictment charging defendants with defrauding the United States of taxes on artificially colored oleomargarine, which alleged that they carried on their business under a corporate name, but treated them as principals, is not bad as failing to charge them as

principals. U. S. v. Orr (D. C.) 233 F. 718.

An indictment charging that defendants, as manufacturers of artificially colored oleomargarine, defrauded the government of its revenues, is not bad because not specifying whether defendants merely added artificial coloration or manufactured the whole product. Id.

§ 5970. (R. S. § 3243.) Payment of special tax not to authorize violation of State laws, nor prohibit State taxation.

Violation of state laws in general.—An internal revenue license to sell intoxicating liquors is no protection against the state law prohibiting the sale of whisky, and amounts to no more than a receipt to the holder that he has paid the federal taxes. Chas. M. Pfeifer & Co. v. Love's Drug Store, 88 S. E. 343, 171 N. C. 214.

Federal liquor license as evidence of violation of state law.—Evidence that accused has paid an internal revenue tax as a retail liquor dealer is admissible. Sapp v. State (Ala. App.) 56 So. 45; Warrick v. State, 62 So. 342, 8 Ala. App. 391; Christian v. State (Ga. App.) 70 S. E. 258; Daniel v. State, 76 S. E. 162, 11 Ga. App. 799, following Huckabee v. Same, 67 S. E. 837, 7 Ga. App. 677, and Cassidy v. Same, 72 S. E. 939, 10 Ga. App. 123; People v. Barton, 147 Ill. App. 185; State v. Dollar, 128 P. 365, 88 Kan. 346. Contra: Commonwealth v. Anderson, 10 Ky. Law Rep. 307; Guy v. State, 44 A. 997, 90 Md. 29; State v. Sexton, 125 S. W. 519, 141 Mo. App. 694; State v. Kilmer (N. D.) 153 N. W. 1089; Hargrove v. State, 129 Pac. 74, 8 Okl. Cr. 487, following Billingsley v. Same, 113 Pac. 241, 4 Okl. Cr. 597; Henderson v. State (Tex. Cr. App.) 39 S. W. 116; Pitner v. State, 39 S. W. 662, 37 Tex. Cr. R. 268; Treue v. State (Tex. Cr. App.) 44 S. W. 829; Martin v. State (Tex. Cr. App.) 61 S. W. 486; Coleman v. State (Tex. Cr. App.) 111 S. W. 1011; Columbo v. State (Tex. Cr. App.) 145 S. W. 910.

Such evidence is admissible when the charge is keeping for unlawful sale, carrying on unlawful business, or maintaining liquor nuisance. Tarpey v. State, 63 So. 17, 8 Ala. App. 432; Cassidy v. State (Ga. App.) 72 S. E. 939; Jackson v. Same, Id. 941; City of Topeka v. Briggs, 135 Pac. 1184, 90 Kan. 843; State v. Wiggin, 72 Me. 425; State v. O'Connell, 82 Me. 30, 19 Atl. 86; Commonwealth v. Brown, 124 Mass. 318; Commonwealth v. Uhrig, 146 Mass. 132, 15 N. E. 156; People v. Lalonde, 137 N. W. 74, 171 Mich. 286; Frudie v. State, 92 N. W. 320, 66 Neb. 244; Moulder v. State (Okl. Cr. App.) 138 Pac. 815; Diamond v. State (Tenn.) 131 S. W. 666; Brown v. State (Tex. Cr. App.) 160 S. W. 374. And also when the charge is unlawfully selling. Birch v. State (Ariz.) 171 P. 135; Seibert v. State (Ark.) 180 S. W. 990; People v. Zoeller, 160 Ill. App. 437; People v. Foreman, 165 Ill. App. 13; State v. Donato (La.) 53 So. 662; Burnett v. State, 72 Miss. 994, 18 South. 432; State v. Munch, 57 Mo. App. 207; State v. Starchich, 170 S. W. 361, 184 Mo. App. 485; State v. Parkel, 170 S. W. 915, 185 Mo. App. 70; Deeds v. State (Okl. Cr. App.) 111 P. 667; State v. Mellor, 13 R. I. 666; Brinkley v. State (Tenn.) 143 S. W. 1120; Clark v. State, 49 S. W. 85, 40 Tex. Cr. R. 127; Martoni v. State (Tex. Cr. App.) 167 S. W. 349; Williams v. Commonwealth, 69 S. E. 1031, 111 Va. 870.

Payment of tax as retail liquor dealer may be proved by testimony that the receipt was posted. Gibson v. State (Ala. App.) 72 So. 569; Commonwealth v. Brown, 124 Mass. 318; People v. Moore, 118 N. W. 742, 15 Detroit Leg. N. 920, 155 Mich. 107; People v. Davis, 137 N. W. 61, 171 Mich. 241; Burnett v. State, 72 Miss. 994, 18 So. 432; State v. Starchich, 170 S. W. 361, 184 Mo. App. 485; Treue v. State (Tex. Cr. App.) 44 S. W. 829; Milam v. State (Tex. Cr. App.) 146 S. W. 185; Rhodes v. State (Tex. Cr. App.) 172 S. W. 252. By the cross-examination of accused. People v. Zoeller, 160 Ill. App. 437; Throckmorton v. Commonwealth, 49 S. W. 474, 20 Ky. Law Rep. 1508; Schoennerstedt v. State (Tex. Cr. App.) 117 S. W. 829. By an examined copy of the records of the collector of internal revenue or the testimony of one who had inspected such records. People v. Moore, 161 Ill. App. 56; State v. O'Connell, 82 Me. 30, 19 Atl. 86; Suggs v. State (Tex. Cr. App.) 101 S. W. 999; Columbo v. State (Tex. Cr. App.) 145 S. W. 910; Brown v. State (Tex. Cr. App.) 160 S. W. 374; Martoni v. State, (Tex. Cr. App.) 167 S. W. 349; State v. Spaulding, 60 Vt. 228, 14 A. 769; State v. White, 39 A. 1085, 70 Vt. 225. Or by a copy of the record certified by the collector. People v. Joyce, 154 Ill. App. 12; People v. Peck, 203 Ill. App. 504; People v. Brown, 112 N. E. 462, 273 Ill. 169, affirming judgment 196 Ill. App. 400; City of Topeka v. Briggs, 135 P. 1184, 90 Kan. 843; State v. Missouri Pac. Ry. Co., 152 P. 777, 96 Kan. 609; State v. Donato (La.) 53 So. 662; State v. Wiggin, 72 Me. 425; Hargrove v. State, 129 P. 74, 8 Okl. Cr. 487, following Billingsley v. Same, 113 P. 241, 4 Okl. Cr. 597; Moulder v. State (Okl. Cr. App.) 138 P. 815; Brinkley v. State (Tenn.) 143 S. W. 1120; Gersteman v. State (Tex. Cr. App.) 33 S. W. 357.

Under Acts Sp. Sess. Ala. 1909, p. 84, § 22½, authorizing proof that one

charged with selling or otherwise disposing of liquor has paid internal revenue tax, the tax receipt is admissible, though the evidence shows a gift of liquor. Roden v. State, 58 So. 72, 3 Ala. App. 199.

Under Local Option Law Ill. § 17, a certified copy of internal revenue special tax stamp is admissible, though with no evidence of posting, to show the character of liquor sold. People v. Brown, 112 N. E. 462, 273 Ill. 169, affirming judgment 196 Ill. App. 400.

It is error to instruct the jury, upon a prosecution for selling liquor in violation of law, that a United States license to sell such liquor, if offered in evidence by the defendant, may be considered as a circumstance tending to show the commission of the offense by him. State v. Stultz, 20 Iowa, 488.

In a penal action against a carrier, under Ky. St. § 2569b, for knowingly delivering in dry territory intoxicating liquor intended for sale, evidence that the consignee had United States revenue license is inadmissible, unless accompanied by proof that defendant's agent who made the delivery knew of such license. American Express Co. v. Commonwealth, 186 S. W. 887, 171 Ky. 1.

Though federal license to sell liquors was issued to another than accused at a place other than his wareroom, the testimony of the revenue collector who issued such license was admissible, in view of evidence that the licensee stored overflow stock with accused. Lemon v. Commonwealth, 188 S. W. 858, 171 Ky. 822.

Certificate from internal revenue department not shown to have been properly issued was inadmissible as prima facie evidence, pursuant to Act 40 of 1908, of defendant's guilt of retailing intoxicating liquors without a license. State v. Wilson, 68 So. 199, 137 La. 19.

On a trial for maintaining a liquor nuisance, defendant, in rebuttal of evidence that he took out an internal revenue license to sell liquors, can show what passed between him and the assessor to show the purpose for which the license was taken. Commonwealth v. Austin, 97 Mass. 595.

Where the date of an alleged illegal sale of liquors was fixed as August 18th, and there was evidence to show that defendant had a place where he kept liquors for sale, and had a United States revenue license to sell liquors, but no showing that he had such license or place on August 18th, the trial court erred in instructing the jury to take this evidence into consideration in determining whether or not defendant was guilty, since it was incompetent, as not covering the date of alleged sale. Snider v. State, 29 So. 78, 78 Miss. 366.

In a prosecution for selling intoxicating liquors in violation of a state statute, where the state was permitted to introduce in evidence a United States internal revenue stamp, commonly called a "government license," as tending to show that defendant was engaged in the business of selling intoxicating liquors, defendant should be permitted to explain his possession of such revenue stamp for any other purpose. Frudie v. State, 92 N. W. 320, 66 Neb. 244.

On a prosecution of Gus Ward for violating the prohibitory law, before a certified copy of the United States internal revenue collector's record, showing that a license had been issued to J. G. Ward is admissible, there must be evidence that defendant is the person to whom the license was issued, or was so associated with him as to connect him with it. Ward v. State, 128 P. 1105, 8 Okl. Cr. 525.

In a prosecution for having in possession intoxicating liquors with intent to sell the same, a United States revenue license held by defendant is not admissible in evidence unless it covers the time within which he is proven to have been in possession of the liquors. Tucker v. State (Okl. Cr. App.) 132 P. 689.

In a prosecution for selling intoxicating liquor, county attorneys should not jeopardize the state's rights by introducing unnecessary proof of payment of the special revenue tax by defendant. Montgomery v. State (Okl. Cr. App.) 142 P. 1048.

In a prosecution for violation of the state law in the sale of intoxicating liquors, evidence that accused did not have a federal internal revenue license is immaterial. Anderson v. State (Tex. Cr. App.) 37 S. W. 859.

Where defendant, on cross-examination, was compelled to state that he took out a revenue license to sell "malt" liquors, it was not error to refuse to permit him to explain the circumstances under which he procured it. Barnes v. State (Tex. Cr. App.) 44 S. W. 491.

In a prosecution for violating the local option law, evidence that defendant paid an internal revenue license subsequent to the transaction for which he was indicted was inadmissible. Lane v. State, 92 S. W. 839, 49 Tex. Cr. R. 335.

Where, on a prosecution for violation of the local option law, it appeared that defendant organized what was known as a "Cold Storage Club," and that he went to various persons, and on their payment of a membership fee and the advance of sums of money he would send for liquor, it was proper to permit a witness to testify that he found from an inspection of the books in the internal revenue office that the liquor license of the club in question had expired. Walker v. State, 94 S. W. 230, 49 Tex. Cr. R. 345.

—— **Weight and sufficiency.**—Proof of possession of large quantities of intoxicating liquors and of a federal retail

liquor license is, in absence of reasonable explanation, sufficient to warrant conviction for violation of prohibitory law. Rhoads v. State (Okl. Cr. App.) 159 P. 945.

In prosecution for illegal retail liquor selling by statute there is a presumption of guilt arising from possession of a United States internal revenue license for retail sale of intoxicating liquor. Montgomery v. State, 188 S. W. 213, 135 Tenn. 577.

Several states have by statute made the payment of the retail liquor dealer's tax by one not authorized to sell under the state law prima facie evidence of the violation of the state liquor law. For the construction and application of such statutes, see Gibson v. State (Ala. App.) 72 So. 569; Holt v. State (Ala. App.) 78 So. 315; Appling v. State (Ark.) 114 S. W. 927; Johnston v. State (Fla.) 62 So. 655; Haar v. State, 81 S. E. 811, 14 Ga. App. 548; State v. Fountain (Iowa) 168 N. W. 285; State v. Quellette (Me.) 77 A. 544; State v. Boynton, 71 S. E. 341, 155 N. C. 456; State v. Rochelle, 72 S. E. 481, 156 N. C. 641; Diamond v. State (Tenn.) 131 S. W. 666; Elmore v. State (Tenn.) 186 S. W. 453; Ryan v. State (Wis.) 168 N. W. 566.

§ 5971. (R. S. § 3244, as amended, Act Feb. 18, 1875, c. 80, § 1, and Act March 1, 1879, c. 125, §§ 4, 10.) Special taxes imposed on whom.

(4) Retail liquor dealers.

Retail dealers.—Pen. Code Tex. 1911, arts. 496, 500, making a house disorderly where liquor is sold or kept for the purpose of sale, so as to require the seller to obtain an internal revenue license, are valid. Claunch v. State (Tex. Cr. App.) 204 S. W. 436.

§ 5973. (Act Feb. 8, 1875, c. 36, § 18, as amended, Act March 1, 1879, c. 125, § 4.) Retail liquor dealers; wholesale liquor dealers; retail dealers in malt liquors; wholesale dealers in malt liquors.

Retail dealers.—Under the rulings of the United States Internal Revenue Department, the sale at retail of the beverage known as "Weiss Beer" requires the payment of a retail liquor dealer's or retail malt dealer's special United States internal revenue tax. Sisson v. 684 Bottles of Weiss Beer and 8 Bottles of American Pilsener Beer (Co. Ct.) 169 N. Y. S. 1053, 102 Misc. Rep. 401.

§§ 5980a–5980m. [Repealed.]

These sections, which were §§ 407–410, 412, of the Revenue Act of 1916, were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

The corporation excise tax act of 1909, now superseded, is set forth in notes under §§ 6300–6309, post. See, also, § 5980n, post.

Notes of Decisions

Validity.—Act Cong. Oct. 22, 1914, c. 331, 38 Stat. 750, § 3, provided that bankers shall pay a special tax of $1 on each $1,000 of capital employed; that, in estimating capital, surplus, and undivided profits shall be included; that every person, firm, or company having a place of business where credits are opened by the deposit or collection of money subject to be paid or remitted, or where money is advanced or loaned on stocks, bonds, etc., or where stocks, bonds, etc., are received for discount or sale, shall be a "banker" thereunder. Held, that the statute was not void, as imposing a direct tax upon the property of a banker merely because of its ownership of such property, as the act does not tax property as such, but levies a special license tax upon one engaged in a particular business, because of the privilege he is exercising, and the fact, if true, that the amount paid is the same as would be paid, had all the property of the banker been taxed on an assessed value basis, is merely incidental and accidental. Real Estate Title, Ins. & Trust Co. v. Lederer (D. C.) 229 F. 799.

§ 5980n. (Act Feb. 24, 1919, c. 18, § 1000.) Corporation tax.

(a) On and after July 1, 1918, in lieu of the tax imposed by the first subdivision of section 407 of the Revenue Act of 1916—

(1) Every domestic corporation shall pay annually a special excise tax with respect to carrying on or doing business, equivalent to $1 for each $1,000 of so much of the fair average value of its capital stock for the preceding year ending June 30 as is in excess of $5,000. In estimating the value of capital stock the surplus and undivided profits shall be included;

(2) Every foreign corporation shall pay annually a special excise tax with respect to carrying on or doing business in the United States, equivalent to $1 for each $1,000 of the average amount of capital employed in the transaction of its business in the United States during the preceding year ending June thirtieth.

(b) In computing the tax in the case of insurance companies such deposits and reserve funds as they are required by law or contract to maintain or hold for the protection of or payment to or apportionment among policyholders shall not be included.

(c) The taxes imposed by this section shall not apply in any year to any corporation which was not engaged in business (or in the case of a foreign corporation not engaged in business in the United States) during the preceding year ending June 30, nor to any corporation enumerated in section 231. The taxes imposed by this section shall apply to mutual insurance companies, and in the case of every such domestic company the tax shall be equivalent to $1 for each $1,000 of the excess over $5,000 of the sum of its surplus or contingent reserves maintained for the general use of the business and any reserves the net additions to which are included in net income under the provisions of Title II, as of the close of the preceding accounting period used by such company for purposes of making its income tax return: Provided, That in the case of a foreign mutual insurance company the tax shall be equivalent to $1 for each $1,000 of the same proportion of the sum of such surplus and reserves, which the reserve fund upon business transacted within the United States is of the total reserve upon all business transacted, as of the close of the preceding accounting period used by such company for purposes of making its income tax return.

(d) Section 257 shall apply to all returns filed with the Commissioner for purposes of the tax imposed by this section. (40 Stat. 1126.)

This section is § 1000 of the Revenue Act of 1918 (Title X—Special Taxes), cited above.

For subdivision 1 of § 407 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 5980a.

Section 231 of the Revenue Act of 1918, referred to in this section, is set forth post, § 6336⅛o.

For Title II of the Revenue Act of 1918, also referred to in this section, see post, §§ 6336⅛a–6336⅛z.

Section 257 of the Revenue Act of 1918, also referred to in this section, is set forth post, § 6336⅛x.

The text of the corporation excise tax act of 1909 is set forth in notes to §§ 6300–6309, post.

Notes of Decisions

Liability to tax.—Under Act Oct. 22, 1914, § 3, cl. 8, a corporation using the term "Lyceum Bureau" in its title, engaged in business of supplying Chautauqua and lyceum courses throughout the country with lecturers and entertainers, is subject to tax on professional show features, for they do not fall within exception of act. Redpath Lyceum Bureau v. Pickering (C. C. A.) 251 F. 49.

§ 5980o. (Act Feb. 24, 1919, c. 18, § 1001.) Other special taxes.

On and after January 1, 1919, there shall be levied, collected, and paid annually the following special taxes—

(1) Brokers.

Brokers shall pay $50. Every person whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, other securities, produce or merchandise, for others, shall be regarded as a broker. If a broker is a member of a stock exchange, or if he is a member of any produce exchange, board of trade, or similar organization, where produce or merchandise is sold, he shall pay an additional

amount as follows: If the average value, during the preceding year ending June 30, of a seat or membership in such exchange or organization was $2,000 or more but not more than $5,000, $100; if such value was more than $5,000, $150.

See Revenue Act of 1916, § 407 (2), U. S. Comp. St. 1916, § 5980b.

(2) Pawnbrokers.

Pawnbrokers shall pay $100. Every person whose business or occupation it is to take or receive, by way of pledge, pawn, or exchange, any goods, wares, or merchandise, or any kind of personal property whatever, as security for the repayment of money loaned thereon, shall be regarded as a pawnbroker.

See Revenue Act of 1916, § 407 (3), U. S. Comp. St. 1916, § 5980c.

(3) Ship brokers.

Ship brokers shall pay $50. Every person whose business it is as a broker to negotiate freights and other business for the owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels, shall be regarded as a ship broker.

See Revenue Act of 1916, § 407 (4), U. S. Comp. St. 1916, § 5980d.

(4) Customhouse brokers.

Customhouse brokers shall pay $50. Every person whose occupation it is, as the agent of others, to arrange entries and other customhouse papers, or transact business at any port of entry relating to the importation or exportation of goods, wares, or merchandise, shall be regarded as a customhouse broker.

See Revenue Act of 1916, § 407 (5), U. S. Comp. St. 1916, § 5980e.

(5) Theaters, museums, and concert halls.

Proprietors of theaters, museums, and concert halls, where a charge for admission is made, having a seating capacity of not more than two hundred and fifty, shall pay $50; having a seating capacity of more than two hundred and fifty and not exceeding five hundred, shall pay $100; having a seating capacity exceeding five hundred and not exceeding eight hundred, shall pay $150; having a seating capacity of more than eight hundred, shall pay $200. Every edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance money is received, not including halls or armories rented or used occasionally for concerts or theatrical representations, and not including edifices owned by religious, educational or charitable institutions, societies or organizations where all the proceeds from admissions inure exclusively to the benefit of such institutions, societies or organizations or exclusively to the benefit of persons in the military or naval forces of the United States, shall be regarded as a theater: Provided, That in cities, towns, or villages of five thousand inhabitants or less the amount of such payment shall be one-half of that above stated: Provided further, That whenever any such edifice is under lease at the time the tax is due, the tax shall be paid by the lessee, unless otherwise stipulated between the parties to the lease.

See Revenue Act of 1916, § 407 (6), U. S. Comp. St. 1916, § 5980f.

(6) Circuses.

The proprietor or proprietors of circuses shall pay $100. Every building, space, tent, or area, where feats of horsemanship or acrobatic sports or theatrical performances not otherwise provided for in this section are exhibited shall be regarded as a circus: Provided, That no special tax paid in one State, Territory, or the District of Columbia shall exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special

tax shall be imposed for exhibitions within any one State, Territory, or District.

See Revenue Act of 1916, § 407 (7), U. S. Comp. St. 1916, § 5980g.

(7) Public exhibitions or shows.

Proprietors or agents of all other public exhibitions or shows for money not enumerated in this section shall pay $15: Provided, That a special tax paid in one State, Territory, or the District of Columbia shall not exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be required for exhibitions within any one State, Territory, or the District of Columbia: Provided further, That this paragraph shall not apply to Chautauquas, lecture lyceums, agricultural or industrial fairs, or exhibitions held under the auspices of religious or charitable associations: Provided further, That an aggregation of entertainments, known as a street fair, shall not pay a larger tax than $100 in any State, Territory, or in the District of Columbia.

See Revenue Act of 1916, § 407 (8), U. S. Comp. St. 1916, § 5980h.

(8) Bowling alleys and billiard rooms.

Proprietors of bowling alleys and billiard rooms shall pay $10 for each alley or table. Every building or place where bowls are thrown or where games of billiards or pool are played, except in private homes shall be regarded as a bowling alley or a billiard room, respectively.

See Revenue Act of 1916, § 407 (9), U. S. Comp. St. 1916, § 5980i.

(9) Shooting galleries.

Proprietors of shooting galleries shall pay $20. Every building, space, tent or area, where a charge is made for the discharge of firearms at any form of target shall be regarded as a shooting gallery.

(10) Riding academies.

Proprietors of riding academies shall pay $100. Every building, space, tent, or area, where a charge is made for instruction in horsemanship or for facilities for the practice of horsemanship shall be regarded as a riding academy.

(11) Passenger automobiles for hire.

Persons carrying on the business of operating or renting passenger automobiles for hire shall pay $10 for each such automobile having a seating capacity of more than two and not more than seven, and $20 for each such automobile having a seating capacity of more than seven.

(12) Brewers, distillers, wholesale and retail liquor dealers and manufacturers of stills.

Every person carrying on the business of a brewer, distiller, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquor, retail dealer in malt liquor, or manufacturer of stills, as defined in section 3244 as amended and section 3247 of the Revised Statutes, in any State, Territory, or District of the United States contrary to the laws of such State, Territory or District, or in any place therein in which carrying on such business is prohibited by local or municipal law, shall pay, in addition to all other taxes, special or otherwise, imposed by existing law or by this Act, $1,000.

The payment of the tax imposed by this subdivision shall not be held to exempt any person from any penalty or punishment provided for by the laws of any State, Territory, or District for carrying on such business in such State, Territory, or District, or in

any manner to authorize the commencement or continuance of such business contrary to the laws of such State, Territory, or District, or in places prohibited by local or municipal law.

For Revised Statutes, §§ 3244, 3247, referred to in this subdivision, see U. S. Comp. St. 1916, §§ 5971, 5981.

Taxes to be in lieu of existing taxes.

The taxes imposed by this section shall, in the case of persons upon whom a corresponding tax is imposed by section 407 of the Revenue Act of 1916, be in lieu of such tax. (40 Stat. 1126.)

This section is § 1001 of the Revenue Act of 1918 (Title X—Special Taxes), cited above.

For Revenue Act of 1916, § 407 (2-9), see U. S. Comp. St. 1916, §§ 5980b-5980i.

§ 5980p. (Act Feb. 24, 1919, c. 18, § 1002.) Tobacco, cigar, and cigarette manufacturers.

On and after January 1, 1919, there shall be levied, collected, and paid annually, in lieu of the taxes imposed by section 408 of the Revenue Act of 1916, the following special taxes, the amount of such taxes to be computed on the basis of the sales for the preceding year ending June 30—

Manufacturers of tobacco whose annual sales do not exceed fifty thousand pounds shall each pay $6;

Manufacturers of tobacco whose annual sales exceed fifty thousand and do not exceed one hundred thousand pounds shall each pay $12;

Manufacturers of tobacco whose annual sales exceed one hundred thousand and do not exceed two hundred thousand pounds shall each pay $24;

Manufacturers of tobacco whose annual sales exceed two hundred thousand pounds shall each pay $24, and at the rate of 16 cents per thousand pounds, or fraction thereof, in respect to the excess over two hundred thousand pounds;

Manufacturers of cigars whose annual sales do not exceed fifty thousand cigars shall each pay $4;

Manufacturers of cigars whose annual sales exceed fifty thousand and do not exceed one hundred thousand cigars shall each pay $6;

Manufacturers of cigars whose annual sales exceed one hundred thousand and do not exceed two hundred thousand cigars shall each pay $12;

Manufacturers of cigars whose annual sales exceed two hundred thousand and do not exceed four hundred thousand cigars shall each pay $24;

Manufacturers of cigars whose annual sales exceed four hundred thousand cigars shall each pay $24, and at the rate of 10 cents per thousand cigars, or fraction thereof, in respect to the excess over four hundred thousand cigars;

Manufacturers of cigarettes, including small cigars weighing not more than three pounds per thousand shall each pay at the rate of 6 cents for every ten thousand cigarettes, or fraction thereof.

In arriving at the amount of special tax to be paid under this section, and in the levy and collection of such tax, each person engaged in the manufacture of more than one of the classes of articles specified in this section shall be considered and deemed a manufacturer of each class separately. (40 Stat. 1128.)

This section is § 1002 of the Revenue Act of 1918 (Title X—Special Taxes), cited above.

For Revenue Act of 1916, § 408, referred to in this section, see U. S. Comp. St. 1916, § 5980j.

§ 5980q. (Act Feb. 24, 1919, c. 18, § 1003.) Tax on yachts, pleasure boats, power boats, sailing boats, and motor boats; measurement; new boats; credits.

Sixty days after the passage of this Act, and thereafter on July 1 in each year, and also at the time of the original purchase of a new boat by a user, if on any other date than July 1, there shall be levied, assessed, collected, and paid in lieu of the tax imposed by section 603 of the Revenue Act of 1917, upon the use of yachts, pleasure boats, power boats, and sailing boats, of over five net tons, and motor boats with fixed engines, not used exclusively for trade, fishing, or national defense, or not built according to plans and specifications approved by the Navy Department, a special excise tax to be based on each yacht or boat, at rates as follows: Yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, of over five net tons, length not over fifty feet, $1 for each foot; length over fifty feet and not over one hundred feet, $2 for each foot; length over one hundred feet, $4 for each foot; motor boats of not over five net tons with fixed engines, $10.

In determining the length of such yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, the measurement of over-all length shall govern.

In the case of a tax imposed at the time of the original purchase of a new boat on any other date than July 1, and in the case of the tax taking effect sixty days after the passage of this Act, the amount to be paid shall be the same number of twelfths of the amount of the tax as the number of calendar months (including the month of sale, or the month in which is included the sixty-first day after the passage of this Act, as the case may be) remaining prior to the following July 1.

If the tax imposed by section 603 of the Revenue Act of 1917, for the fiscal year ending June 30, 1919, has been paid in respect to the use of any boat, the amount so paid shall under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, be credited upon the first tax due under this section in respect to the use of such boat, or be refunded to the person paying the first tax imposed by this section in respect to the use of such boat. (40 Stat. 1129.)

This section is § 1003 of the Revenue Act of 1918 (Title X—Special Taxes), cited above.

The taxes imposed by this section are in lieu of those imposed by § 603 of the Revenue Act of 1917. The provisions of that section were the same as those of this section, except that the date of first tax was to be the date the act took effect, the rates of tax were just one-half the rates imposed by this section, and there was no provision corresponding to the last paragraph of this section.

§ 5980r. (Act Feb. 24, 1919, c. 18, § 1004.) Receipts in lieu of special tax stamps in certain cases.

If the tax imposed by section 407 or 408 of the Revenue Act of 1916, for the fiscal year ending June 30, 1919, has been paid by any person subject to the corresponding tax imposed by this title, collectors may issue a receipt in lieu of special tax stamp for the amount by which the tax under this title is in excess of that paid or payable and evidenced by stamp under the Revenue Act of 1916. Such receipt shall be posted as in the case of the special tax stamp, as provided by law, and with it, within the place of business of the taxpayer.

If the corresponding tax imposed by section 407 of the Revenue Act of 1916 was not payable by stamp, the amount paid under such section for any period for which a tax is also imposed by this title

may be credited against the tax imposed by this title. (40 Stat. 1129.)

This section is § 1004 of the Revenue Act of 1918 (Title X—Special Taxes), cited above.

See notes to §§ 5980n, 5980o, ante.

§ 5980s. (Act Feb. 24, 1919, c. 18, § 1005.) Nonpayment of taxes imposed by §§ 1000–1002.

Any person who carries on any business or occupation for which a special tax is imposed by sections 1000, 1001, or 1002, without having paid the special tax therein provided, shall, besides being liable for the payment of such special tax, be subject to a penalty of not more than $1,000 or to imprisonment for not more than one year, or both. (40 Stat. 1129.)

This section is § 1005 of the Revenue Act of 1918 (Title X—Special Taxes), cited above.

For §§ 1000–1002 of the Revenue Act of 1918, referred to in this section, see ante, §§ 5980n, 5980o, 5980p.

§ 5980t. (Act Feb. 24, 1919, c. 18, § 1009.) Repeal of Act Oct. 22, 1914, c. 331.

The Act approved October 22, 1914, entitled "An Act to increase the internal revenue, and for other purposes," and the joint resolution approved December 17, 1915, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," are hereby repealed, except that the provisions of such Act shall remain in force for the assessment and collection of all special taxes imposed by sections 3 and 4 thereof, or by such sections as extended by such joint resolution, for any year or part thereof ending prior to January 1, 1917, and of all other taxes imposed by such Act, or by such Act as so extended, accrued prior to September 8, 1916, and for the imposition and collection of all penalties or forfeitures which have accrued or may accrue in relation to any of such taxes. (40 Stat. 1132.)

This section is § 1009 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 410 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 5980*l*.

CHAPTER FOUR—DISTILLED SPIRITS AND WINES

Sec.
5981. Distiller, definition of.
5985. Tax on distilled spirits.
5986a–5986d. [Repealed.]
5986e. Tax on distilled spirits.
5986f. Same; spirits in bonded warehouses during prohibition period; bonds.
5986g. Same; loss by leakage.
5986h. Same; retention in warehouse during prohibitory period.
5986i. Same; imported perfumes containing distilled spirits.
5986j. Same; floor tax.
5986k. Same; additional tax on rectified, purified, or refined distilled spirits or wines; floor tax.
5986*l*. Wholesale liquor dealers' stamps in exchange for stamps for rectified spirits; discontinued stamps.
5990. Brandy made from apples and other fruits.
5994. Registry of stills, etc.
5997. Distiller to give bond.
6002. Surveys of distilleries.
6009. Distillery warehouse.
6017a. [Repealed.]
6017aa. Installation of meters, tanks, and other apparatus.
6021. Carrying on distillery without giving bond, etc.; penalty.
6024a. [Repealed.]
6024aa. Distilling between 11 p. m. of Saturday and 1 a. m. of Monday; exception.
6026a. [Repealed.]

Sec.
6028. Drawing off, gauging, etc., and removal of spirits to warehouse.
6028a, 6028b. [Repealed.]
6028c. Filling packages of alcohol and high-proof spirits with reduced spirits from receiving cisterns and payment of tax without entry into bonded warehouses.
6028d. Drawing distilled spirits from receiving cisterns for deposit in distillery warehouse stamp; withdrawal on original gauge.
6029. Tax-paid spirits on distillery premises.
6036. Withdrawal from warehouse, entry for.
6037. Gauging, stamping, and branding spirits removed from warehouse.
6054. Allowance for loss of spirits deposited in warehouse extended.
6070a. [Repealed.]
6070aa. Bottling of spirits in bond; gin for export without payment of tax.
6089. Monthly examination of distiller's return, etc.
6089a. Exemption of distillers of ethyl alcohol from provisions of R. S. §§ 3264, 3285, 3309.
6097. Restamping when stamps lost or destroyed.
6100. Books to be kept by rectifiers and wholesale dealers; penalty; monthly transcript; penalty.
6102. Gauging, inspection, and stamping of rectified spirits.
6102a. Casks or packages; rectification; gauging and marking.
6103. Filling blanks, and affixing and protecting stamps.
6104. Spirits drawn into new packages to be gauged and branded; returns; forfeitures.
6105. Stamps and brands to be effaced, etc.
6110a–6110e. [Repealed.]
6110f. Natural wine and wine defined; sweetening wine.
6110g. Tax on still wines and compounds sold as still wines.
6110h. Withdrawal for fortification of grape brandy or wine spirits from fruit distillery or special bonded warehouse.
6111. Fortifying pure sweet wines with wine spirits.
6111a. [Repealed.]
6111aa. Same; floor tax on grape brandy or wine spirits for fortification of sweet wines.
6112. Same; wine spirits and sweet wine defined.
6114. Same; withdrawal of wine spirits.
6114a–6114e. [Repealed.]
6114ff. Removal of domestic wines to bonded premises; tax on product of wines used as material.
6114g. Production of grape wine on bonded premises and transportation for distilling material for nonalcoholic wines.
6114h. Tax on domestic and imported sparkling wines.
6114i. Floor tax on still and sparkling wines.
6114j. Payment of tax by affixing stamp; notice, bond and inventories; wines held by retailers or produced for family use.
6114k. Collection of tax on imported still wines, sparkling wines, and imported liquors by assessment.
6114l. Violations of §§ 610–621 of Revenue Act of 1918; mixing or blending; use of taxpaid grains for fortification.
6114m. Spirit meters, locks, seals; gaugers or storekeeper-gaugers.
6114n. Allowance for unavoidable loss of wines during cellar treatment.
6127a. [Repealed.]
6127aa. Transfer in tanks or tank cars for export.
6137a. Removal of ethyl alcohol to central denaturing bonded warehouse for denaturing; removal free of tax for use of United States or nations at war with Germany; leakage.

§ 5981. (R. S. § 327.) Distiller, definition of.

Cited without definite application,
Western Extracting Co. v. Smietanka
(C. C. A.) 234 F. 229.

§ 5985. (R. S. § 3251.) Tax on distilled spirits.

7½. **Mingling tax-paid and non-tax-paid liquor.**—Where it is impossible to ascertain the proportions of tax-paid and non-tax-paid liquor in whisky barrels, one who extracts and markets the mixture is taxable upon the entire amount. Western Extracting Co. v. Smietanka, 234 F. 229, 148 C. C. A. 131.

§§ 5986a–5986d. (Act Oct. 3, 1917, c. 63, §§ 300, 303, 304, 305.) [Repealed.]

These sections of the Revenue Act of 1917 were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a. The latter act contains provisions

of a similar nature, and are set forth post as §§ 5986e, 5986i, 5986j, 5986l. The text of the repealed provisions is as follows:

"Sec. 300. On and after the passage of this Act there shall be levied and collected on all distilled spirits in bond at that time or that have been or that may be then or thereafter produced in or imported into the United States, except such distilled spirits as are subject to the tax provided in section three hundred and three, in addition to the tax now imposed by law, a tax of $1.10 (or, if withdrawn for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of $2.10) on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law.

"In addition to the tax under existing law there shall be levied and collected upon all perfumes hereafter imported into the United States containing distilled spirits, a tax of $1.10 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon. Such tax shall be collected by the collector of customs and deposited as internal-revenue collections, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe."

"Sec. 303. Upon all distilled spirits produced in or imported into the United States upon which the tax now imposed by law has been paid, and which, on the day this Act is passed, are held by a retailer in a quantity in excess of fifty gallons in the aggregate, or by any other person, corporation, partnership, or association in any quantity, and which are intended for sale, there shall be levied, assessed, collected, and paid a tax of $1.10 (or, if intended for sale for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of $2.10) on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon: Provided, That the tax on such distilled spirits in the custody of a court of bankruptcy in insolvency proceedings on June first, nineteen hundred and seventeen, shall be paid by the person to whom the court delivers such distilled spirits at the time of such delivery, to the extent that the amount thus delivered exceeds the fifty gallons hereinbefore provided.

"Sec. 304. In addition to the tax now imposed or imposed by this Act on distilled spirits there shall be levied, assessed, collected, and paid a tax of 15 cents on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines hereafter rectified, purified, or refined in such manner, and on all mixtures hereafter produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section thirty-two hundred and forty-four, Revised Statutes, as amended, and on all such articles in the possession of the rectifier on the day this Act is passed: Provided, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries and other aromatics.

"When the process of rectification is completed and the tax prescribed by this section has been paid, it shall be unlawful for the rectifier or other dealer to reduce in proof or increase in volume such spirits or wine by the addition of water, or other substance; nothing herein contained shall, however, prevent a rectifier from using again in the process of rectification spirits already rectified and upon which the tax has theretofore been paid.

"The tax imposed by this section shall not attach to cordials or liqueurs on which a tax is imposed and paid under the Act entitled 'An Act to increase the revenue, and for other purposes,' approved September eighth, nineteen hundred and sixteen, nor to the mixing and blending of wines, where such blending is for the sole purpose of perfecting such wines according to commercial standards, nor to blends made exclusively of two or more pure straight whiskies aged in wood for a period not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below ninety proof: Provided, That such blended whiskies shall be exempt from tax under this section only when compounded under the immediate supervision of a revenue officer, in such tanks and under such conditions and supervision as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

"All distilled spirits taxable under this section shall be subject to uniform regulations concerning the use thereof in the manufacture, blending, compounding, mixing, marking, branding, and sale of whisky and rectified spirits, and no discrimination whatsoever shall be made by reason of a difference in the character of the material from which same may have been produced.

"The business of a rectifier of spirits shall be carried on, and the tax on rectified spirits shall be paid, under such rules, regulations, and bonds as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

"Any person violating any of the provisions of this section shall be deemed to be guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or imprisoned not more than two years. He shall, in addition, be liable to double the tax evaded together with the tax, to be collected by assessment or on any bond given.

"Sec. 305. Hereafter collectors of internal revenue shall not furnish wholesale liquor dealer's stamps in lieu of and in exchange for stamps for rectified spirits unless the package covered by stamp for rectified spirits is to be broken into smaller packages.

"The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to discontinue the use of the following stamps whenever in his judgment the interests of the Government will be subserved thereby:

"Distillery warehouse, special bonded warehouse, special bonded rewarehouse, general bonded warehouse, general bonded retransfer, transfer brandy, export tobacco, export cigars, export oleomargarine and export fermented liquor stamps."

§ 5986e. (Act Feb. 24, 1919, c. 18, § 600(a).) Tax on distilled spirits.

(a) There shall be levied and collected on all distilled spirits now in bond or that have been or that may be hereafter produced in or imported into the United States, except such distilled spirits as are subject to the tax provided in section 604, in lieu of the internal-revenue taxes now imposed thereon by law, a tax of $2.20 (or, if withdrawn for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of $6.40) on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law. (40 Stat. 1105.)

This section is subdivision (a) of § 600 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

The tax imposed by this section is in lieu of the tax imposed on distilled spirits by Revised Statutes, § 3251, Act Aug. 27, 1894, c. 349, § 48, U. S. Comp. St. 1916, §§ 5985, 5986, and Oct. 3, 1917, c. 63, § 300 (see note to § 5986a, ante).

§ 5986f. (Act Feb. 24, 1919, c. 18, § 600(b).) Same; spirits in bonded warehouses during prohibition period; bonds.

(b) The tax imposed by subdivision (a) on distilled spirits intended for beverage purposes shall not be due or payable on such spirits while stored in any distillery, bonded warehouse, or special or general bonded warehouse, and which, pursuant to any Act of Congress or proclamation of the President of the United States, cannot be lawfully sold or removed from any such warehouse during the period of prohibition fixed by such Act or proclamation; and all warehousing bonds or transportation and warehousing bonds conditioned for the payment of tax on any such spirits so stored on the date such prohibition takes effect shall as to all such spirits actually so stored be canceled and discharged, provided the distiller of such spirits shall in lieu of such bonds and prior to their cancellation execute a bond in a penal sum of not less than $10,000, with sureties satisfactory to the collector of the district, conditioned that the principal shall, during the period of such prohibition, safely keep or cause to be kept in good condition all such spirits and the warehouse in which the same are stored, and shall not remove or suffer to be removed from warehouse, contrary to law, any such spirits during the period of such prohibition; and the bond herein prescribed shall be in such further sum and shall contain such further conditions as the Commissioner, with the approval of the Secretary, may by regulations require. The distiller may, subject to the provisions of this section, be permitted to retain in any such bonded warehouse distilled spirits on which, under the terms of

any existing bond, the tax imposed thereon becomes due and payable prior to the date such prohibition takes effect: Provided, That on the removal of such prohibition the distiller shall, as to all spirits as to which the bonded period fixed by law has not expired and which remain stored in warehouse, execute new and satisfactory bond in the form required by existing law, conditioned for the payment of the tax on all such spirits; and all provisions of existing law relating to such bonded warehouses, or the storage of spirits therein, or to the execution of new or additional bonds, so far as applicable, shall continue in force as to all distilled spirits rebonded under the provisions of this section. (40 Stat. 1105.)

This section is a part of subdivision (b) of § 600 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

§ 5986g. (Act Feb. 24, 1919, c. 18, § 600(b).) Same; loss by leakage.

Upon the withdrawal of distilled spirits from bonded warehouse, after the period of prohibition has ended, and under the conditions imposed by section 50 of an Act entitled "An Act to reduce taxation, to provide revenue for the support of the Government, and for other purposes," approved August 28, 1894, an allowance for loss by leakage or other unavoidable cause, not exceeding one proof gallon as to packages of a capacity of not less than 40 wine gallons, may be made in addition to that provided in said section 50, as amended; and a like additional allowance of one proof gallon as to each package withdrawn may be made for each period of four months, or fraction thereof, for such spirits as shall have remained in warehouse during the period of prohibition and after the expiration of the maximum leakage period fixed by that section. (40 Stat. 1105.)

This section is a part of subdivision (b) of § 600 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

Section 50 of Act Aug. 28, 1894, referred to in this section, is Act Aug. 27, 1894, c. 394, § 50 (see U. S. Comp. St. 1916, § 6051).

§ 5986h. (Act Feb. 24, 1919, c. 18, § 600(b).) Same; retention in warehouse during prohibitory period.

Under regulations prescribed by the Secretary, any imported distilled spirits, wines or other liquors which may be in any customs bonded warehouse under the customs laws on the date such prohibition takes effect shall be permitted to remain therein without payment of any taxes or duties thereon, beyond the three-year period provided in section 2971 of the Revised Statutes, during such period of prohibition; and may be exported at any time during such extended period. Any imported spirits, wines or other liquors as to which the three-year bonded period may expire after the passage of this Act and prior to the date such prohibition takes effect may at the option of the owner remain in bond during such period of prohibition. (40 Stat. 1106.)

This section is a part of subdivision (b) of § 600 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For Revised Statutes § 2971, referred to in this section, see U. S. Comp. St. 1916, § 5657.

§ 5986i. (Act Feb. 24, 1919, c. 18, § 600(c).) Same; imported perfumes containing distilled spirits.

(c) In lieu of the internal-revenue tax now imposed thereon by law there shall be levied and collected upon all perfumes hereafter imported into the United States containing distilled spirits, a tax of $1.10 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon. Such tax shall be collected by the collector of customs and deposited as internal-revenue col-

lections, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe. (40 Stat. 1106.)

This section is subdivision (c) of § 600 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For provision of Revenue Act of 1917 imposing tax on imported perfumes containing distilled spirits, see note to § 5986a, ante.

§ 5986j. (Act Feb. 24, 1919, c. 18, § 604.) Same; floor tax.

Upon all distilled spirits produced in or imported into the United States upon which the internal-revenue tax now imposed by law has been paid, and which, on the day after the passage of this Act, are held by any person and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor tax of $3.20 (if intended for sale for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage) on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon. (40 Stat. 1107.)

This section is § 604 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For provision of the Revenue Act of 1917 imposing a floor tax on distilled spirits, see note to § 5986b, ante.

§ 5986k. (Act Feb. 24, 1919, c. 18, § 605.) Same; additional tax on rectified, purified, or refined distilled spirits or wines; floor tax.

In addition to the tax imposed by this Act on distilled spirits and wines, there shall be levied, assessed, collected, and paid, in lieu of the tax imposed by section 304 of the Revenue Act of 1917, a tax of 30 cents on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines hereafter rectified, purified, or refined in such manner, and on all mixtures hereafter produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section 3244 of the Revised Statutes, as amended: Provided, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries and other aromatics.

Upon all such articles heretofore produced, and which on the day after the passage of this Act are held by any person and intended for sale, there shall be levied, assessed, collected, and paid a floor tax of 15 cents on each proof gallon, and a proportionate tax at a like rate on all fractional parts of each proof gallon; and all such distilled spirits so held and not contained in the distillers' original stamped packages, or in bottles or other containers bearing the distillers' original labels, shall for the purpose of this section be regarded as rectified spirits.

When the process of rectification is completed and the taxes prescribed by this section have been paid, it shall be unlawful for the rectifier or other dealer to reduce in proof or increase in volume such spirits or wine by the addition of water or other substance; nothing herein contained shall, however, prevent a rectifier from using again in the process of rectification spirits already rectified and upon which the taxes have theretofore been paid.

The taxes imposed by this section shall not attach to cordials or liqueurs on which a tax is imposed and paid under section 611 or 613, nor to the mixing and blending of wines, where such blending is for the sole purpose of perfecting such wines according to commercial standards, nor to blends made exclusively of two or more pure straight whiskies aged in wood for a period not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below

ninety proof: Provided, That such blended whiskies shall be exempt from tax under this section only when compounded under the immediate supervision of a revenue officer, in such tanks and under such conditions and supervision as the Commissioner, with the approval of the Secretary, may prescribe.

All distilled spirits or wines taxable under this section shall be subject to uniform regulations concerning the use thereof in the manufacture, blending, compounding, mixing, marking, branding, and sale of whisky and rectified spirits, and no discrimination whatsoever shall be made by reason of a difference in the character of the material from which same may have been produced.

The business of a rectifier of spirits shall be carried on, and the tax on rectified spirits shall be paid, under such rules, regulations, and bonds as may be prescribed by the Commissioner, with the approval of the Secretary.

Whoever violates any of the provisions of this section shall be deemed to be guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000 or imprisoned not more than two years, and shall, in addition, be liable to double the tax evaded, together with the tax, to be collected by assessment or on any bond given. (40 Stat. 1108.)

This section is § 605 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For § 304 of the Revenue Act of 1917, referred to in this section, see note to § 5986c, ante.

For Revised Statutes, § 3224, also mentioned in this section, see U. S. Comp. St. 1916, § 5970 (3).

Sections 611, 613, of the Revenue Act of 1918, also referred to in this section, are set forth post, §§ 6110g, 6114h.

§ 5986*l*. (Act Feb. 24, 1919, c. 18, § 606.) Wholesale liquor dealers' stamps in exchange for stamps for rectified spirits; discontinued stamps.

Hereafter collectors shall not furnish wholesale liquor dealer's stamps in lieu of and in exchange for stamps for rectified spirits unless the package covered by stamp for rectified spirits is to be broken into smaller packages.

The Commissioner, with the approval of the Secretary, is authorized to discontinue the use of the following stamps whenever in his judgment the interests of the Government will be subserved thereby:

Distillery warehouse, special bonded warehouse, special bonded rewarehouse, general bonded warehouse, general bonded retransfer, transfer brandy, export tobacco, export cigars, export oleomargarine, and export fermented-liquor stamps. (40 Stat. 1108.)

This section is § 606 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For corresponding provision in § 305 of the Revenue Act of 1917, see note to § 5986d, ante.

§ 5990. (R. S. § 3255, as amended, Act June 3, 1896, c. 309, Act Feb. 4, 1901, c. 195, Act March 2, 1911, c. 198, Act Sept. 8, 1916, c. 463, § 404, and Act Feb. 24, 1919, c. 18, § 625.) Brandy made from apples and other fruits.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, plums, pawpaws, persimmons, prunes, figs, or cherries from any provision of this title relating to the manufacture of spirits, except as to the tax thereon when in his judgment it may seem expedient to do so: Provided, That where, in the manufacture of wine, artificial sweetening has been used the wine or the fruit pomace residuum may be used in the distillation

of brandy, and such use shall not prevent the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, from exempting such distiller from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: And provided further, That the distillers mentioned in this section may add to not less than five hundred gallons (or ten barrels) of grape cheese not more than five hundred gallons of a sugar solution made from cane, beet, starch, or corn sugar, 95 per centum pure, such solution to have a saccharine strength of not to exceed 10 per centum, and may ferment the resultant mixture on a winery or distillery premises, and such fermented product shall be regarded as distilling material. (29 Stat. 195. 31 Stat. 759. 36 Stat. 1014. 39 Stat. 788. 40 Stat. 1114.)

This section was again amended by § 625 of the Revenue Act of 1918, cited above, to read as set forth above. This amendment consists in the striking out, in the first proviso, after the words "may be used in the distillation of brandy," the word "as," and in substituting therefor the word "and."

Section 404 of the Revenue Act of 1916, which amended this section, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 5994. (R. S. § 3258.) Registry of stills, etc.

Cited without definite application,
Williams v. U. S. (C. C. A.) 254 F. 52;
Gordon v. U. S. (C. C. A.) 254 F. 53.

§ 5997. (R. S. § 3260, as amended, Act May 28, 1880, c. 108, § 1.) Distiller to give bond.

13. Actions on bonds.—Under Act Cong. Aug. 1, 1888, § 1 (Comp. St. 1916, § 1606), Laws N. C. 1889, c. 439, and Pell's Revisal N. C. § 574, held that judgments in favor of United States against surety on distillers bonds became liens on his property. U. S. v. Minor, 235 F. 101, 148 C. C. A. 595.

§ 6002. (R. S. § 3264, as amended, Act March 1, 1879, c. 125, § 5, Act June 22, 1910, c. 329, § 1, Act Sept. 8, 1916, c. 463, § 402(i), and Act Feb. 24, 1919, c. 18, § 623.) Surveys of distilleries.

On receipt of notice that any person, firm, or corporation wishes to commence the business of distilling, the collector, or a deputy collector, to be designated by him, shall proceed in person, at the expense of the United States, with the aid of an assistant designated by the Commissioner of Internal Revenue for the purpose of making surveys of distilleries in that district, to make a survey of such distillery for the purpose of estimating and determining its true spirit-producing capacity for a day of twenty-four hours.

In all surveys forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses, except in distilleries operated on the sour-mash principle, in which distilleries sixty gallons of beer brewed or fermented from grain shall represent not less than one bushel of grain, and except that in distilleries where the filtration-aeration process is used, with the approval of the Commissioner of Internal Revenue; that is, where the mash after it leaves the mash tub is passed through a filtering machine before it is run into the fermenting tub, and only the filtered liquid passes into the fermenting tub, there shall hereafter be no limitation upon the number of gallons of water which may be used in the process of mashing or filtration for fermentation; but the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in order to protect the revenue, shall be authorized to prescribe by regulation, to be made by him, such character of survey as he may find suitable for distilleries using

such filtration-aeration process. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries.

A written report of such survey shall be made in triplicate, of which one copy shall be delivered to the distiller, one copy shall be retained by the collector, and one copy shall be transmitted to the Commissioner of Internal Revenue, and the survey shall take effect upon the delivery of such copy to the distiller. Whenever the Commissioner is satisfied that any report of the capacity of a distillery is incorrect or needs revision, he shall direct the collector to make in like manner another survey of said distillery, and the report thereof shall be made and deposited as hereinbefore required: Provided, That the survey of any distillery estimated and stated by the distiller, in his notice of intention to distill, as capable of distilling not more than one hundred and fifty proof-gallons of distilled spirits every twenty-four hours may be made by the collector or by a deputy collector without the aid of an assistant; and that all surveys made for the purpose of correcting clerical errors or errors of computation existing in the report of a previous survey, and all surveys made for the purpose of changing the true spirit-producing capacity of any distillery for a day of twenty-four hours as estimated and determined by a previous survey, but which surveys do not require the remeasuring of the fermenting-tubs in a grain or molasses distillery, or the still or stills in a distillery of apples, peaches, or grapes exclusively, may be made without taking the measurements of the fermenting tubs or stills, as the case may be, and without revisiting the distillery: And provided further, That the Commissioner of Internal Revenue may, whenever he shall deem it proper, designate an officer, agent, or person other than the collector or deputy collector, to make, with or without the aid of a designated assistant, the surveys and resurveys hereinabove provided for. (20 Stat. 334. 36 Stat. 590. 39 Stat. 787. 40 Stat. 1114.)

This section was again amended by § 623 of the Revenue Act of 1918, cited above, to read as set forth above.

This amendment makes no change in the section as last amended by Act Sept. 8, 1916, c. 463, § 402(1), except that, in the second paragraph, after the words "and only the filtered," the word "liquid" is substituted for the word "liquor."

Section 402 of the Revenue Act of 1916, which also amended this section, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6009. (R. S. § 3271.) Distillery warehouse.

Cited without definite application,
Western Extracting Co. v. Smietanka (C. C. A.) 234 F. 229.

§ 6017a. (Act Oct. 3, 1917, c. 63, § 306.) [Repealed.]

This section of the Revenue Act of 1917, contained provisions similar to those of Act Feb. 24, 1919, c. 18, § 607, post, § 6017aa. It was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6017aa. (Act Feb. 24, 1919, c. 18, § 607.) Installation of meters, tanks, and other apparatus.

The Commissioner, with the approval of the Secretary, is hereby authorized to require at distilleries, breweries, rectifying houses, and wherever else in his judgment such action may be deemed advisable, the installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue, and such meters, tanks, and pipes and all necessary labor incident thereto shall be at the expense of the person on whose premises the installation is required. Any such person refusing or neglecting to install such

apparatus when so required by the Commissioner shall not be permitted to conduct business on such premises. (40 Stat. 1109.)

This section is § 607 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

A corresponding provision was contained in § 306 of the Revenue Act of 1917. See note to § 6017a, ante.

§ 6021. (R. S. § 3281.) Carrying on distillery without giving bond, etc.; penalty.

Indictment.—Indictment for illicit distilling of whisky, authorized conviction if accused distilled rum, brandy, or whisky. Bullard v. U. S., 245 F. 837, 158 C. C. A. 177.

Harmless error.—Where evidence showed only illicit distillation of whisky, instruction authorizing conviction on proof of distillation of rum, brandy, or whisky was harmless, though indictment specified only whisky. Bullard v. U. S., 245 F. 837, 158 C. C. A. 177.

Erroneous admission of judgment roll of another prosecution against defendant which he testified had been quashed held prejudicial error. Id.

Punishment.—For implication that violation is punishable by both fine and imprisonment, see U. S. v. Smith (D. C.) 240 F. 756.

§ 6024a. (Act Oct. 3, 1917, c. 63, § 302.) [Repealed.]

This section of the Revenue Act of 1917 contained a provision similar to Act Feb. 24, 1919, c. 18, § 602, post, § 6024aa. It was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6024aa. (Act Feb. 24, 1919, c. 18, § 602.) Distilling between 11 p. m. of Saturday and 1 a. m. of Monday; exception.

Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the manufacture, warehousing, withdrawal, and shipment, under the provisions of existing law, of ethyl alcohol for other than (1) beverage purposes or (2) use in the manufacture or production of any article used or intended for use as a beverage, and denatured alcohol, may be exempted from the provisions of section 3283 of the Revised Statutes. (40 Stat. 1107.)

This section is a part of § 602 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

A corresponding provision was contained in § 302 of the Revenue Act of 1917. See note to § 6024a, ante.

For R. S. § 3283, referred to in this section, see U. S. Comp. St. 1916, § 6024.

§ 6026a. (Act Oct. 3, 1917, c. 63, § 302.) [Repealed.]

This section of the Revenue Act of 1917 was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

The text of the section was as follows: "Under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, manufacturers of ethyl alcohol for other than beverage purposes may be granted permission under the provisions of section thirty-two hundred and eighty-five, Revised Statutes of the United States, to fill fermenting tub in a sweet-mash distillery not oftener than once in forty-eight hours."

§ 6028. (R. S. § 3287, as amended, Act March 1, 1879, c. 125, § 5, Act May 28, 1880, c. 108, § 6, Act Feb. 21, 1899, c. 177, and Act March 2, 1911, c. 199.) Drawing off, gauging, etc., and removal of spirits to warehouse.

Cited without definite application,
Western Extracting Co. v. Smietanka
(C. C. A.) 234 F. 229.

§§ 6028a, 6028b. [Repealed.]

These provisions, which were contained in § 302 of the Revenue Act of 1916, were similar to those in Act Feb. 24, 1919, c. 18, § 602, post, §§ 6028c, 6028d. They were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6028c. (Act Feb. 24, 1919, c. 18, § 602.) Filling packages of alcohol and high-proof spirits with reduced spirits from receiving cisterns and payment of tax without entry into bonded warehouses.

At registered distilleries producing alcohol, or other high-proof spirits, packages may be filled with such spirits reduced to not less than one hundred proof from the receiving cisterns and tax paid without being entered into bonded warehouse. Such spirits may be also transferred from the receiving cisterns at such distilleries, by means of pipe lines, direct to storage tanks in the bonded warehouse and may be warehoused in such storage tanks. Such spirits may be also transferred in tanks or tank cars to general bonded warehouses for storage therein, either in storage tanks in such warehouses or in the tanks in which they were transferred. Such spirits may also be transferred from receiving cisterns or warehouse storage tanks to barrels, drums, tanks, tank cars, or other approved containers, and may be transported in such containers for exportation or other lawful purposes. The Commissioner, with the approval of the Secretary, is hereby empowered to prescribe all necessary regulations relating to the drawing off, transferring, gauging, storing, and transporting of such spirits; the records to be kept and returns to be made; the size and kind of packages and tanks to be used; the marking, branding, numbering, and stamping of such packages and tanks; the kinds of stamps, if any, to be used; and the time and manner of paying the tax; the kind of bond and the penal sum of same. The tax prescribed by law must be paid before such spirits are removed from the distillery premises, or from general bonded warehouse in the case of spirits transferred thereto, except as otherwise provided by law. (40 Stat. 1106.)

This section is a part of § 602 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

A corresponding provision was contained in § 302 of the Revenue Act of 1917. See note to §§ 6028a, 6028b, ante.

§ 6028d. (Act Feb. 24, 1919, c. 18, § 602.) Drawing distilled spirits from receiving cisterns for deposit in distillery warehouse without warehouse stamp; withdrawal on original gauge.

Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, distilled spirits may hereafter be drawn from receiving cisterns and deposited in distillery warehouses without having affixed to the packages containing the same, distillery warehouse stamps, and such packages, when so deposited in warehouse, may be withdrawn therefrom on the original gauge where the same have remained in such warehouse for a period not exceeding thirty days from the date of deposit. (40 Stat. 1107.)

This section is a part of § 602 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

A corresponding provision was contained in § 302 of the Revenue Act of 1917. See note to §§ 6028a, 6028b, ante.

§ 6029. (R. S. § 3288.) Tax-paid spirits not to remain on distillery premises.

Cited without definite application,
Western Extracting Co. v. Smietanka
(C. C. A.) 234 F. 229.

§ 6036. (R. S. § 3294, as amended, Act March 1, 1879, c. 125, § 5, and Act May 28, 1880, c. 108, § 5.) Withdrawal from warehouse, entry for.

Cited without definite application,
Western Extracting Co. v. Smietanka
(C. C. A.) 234 F. 229.

§ 6037. (R. S. § 3295, as amended, Act July 16, 1892, c. 196, § 1.) Gauging, stamping, and branding spirits removed from warehouse.

Cited without definite application,
Western Extracting Co. v. Smietanka (C. C. A.) 234 F. 229.

§ 6054. (Act Jan. 13, 1903, c. 134.) Allowance for loss of spirits deposited in warehouse extended.

Cited without definite application,
Mayes v. Casey (C. C. A.) 252 F. 754.

§ 6070a. [Repealed.]

This section, which was § 405 of the Revenue Act of 1916, contained provisions similar to those in Act Feb. 24, 1919, c. 18, § 626, post, § 6070aa. It was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6070aa. (Act Feb. 24, 1919, c. 18, § 626.) Bottling of spirits in bond; gin for export without payment of tax.

Distilled spirits known commercially as gin of not less than 80 per centum proof may at any time within eight years after entry in bond at any distillery be bottled in bond at such distillery for export without the payment of tax, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe. (40 Stat. 1115.)

This section is § 626 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

A corresponding provision was contained in § 405 of the Revenue Act of 1916. See note to § 6070a, ante.

§ 6089. (R. S. § 3309, as amended, Act March 3, 1875, c. 131, § 12.) Monthly examination of distiller's return, etc.

Cited without definite application,
Mayes v. Casey (C. C. A.) 252 F. 754.

§ 6089a. (Act Feb. 24, 1919, c. 18, § 602.) Exemption of distillers of ethyl alcohol from provisions of R. S. §§ 3264, 3285, 3309.

The Commissioner, with the approval of the Secretary, may by regulations exempt distillers of ethyl alcohol, for use in the production of munitions of war, or for other nonbeverage purposes, from so much of the provisions of sections 3264, 3285, or 3309 of the Revised Statutes, and Acts amendatory thereof, respecting the survey of distilleries, the period of fermentation, the filling and emptying of fermenting tubs, and assessments, as, in his judgment, may be expedient: Provided, That the bond prescribed in section 3260 of the Revised Statutes shall, in the cases herein provided, be in such sum and contain such further conditions as the Commissioner may require. (40 Stat. 1107.)

This section is a part of § 602 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For Revised Statutes, §§ 3264, 3285, 3309, and 3260, referred to in this section, see U. S. Comp. St. 1916, §§ 6002, 6026, 6089, and 5997.

§ 6097. (R. S. § 3315, as amended, Act March 1, 1879, c. 125, § 5, and Act Feb. 24, 1919, c. 18, § 1315.) Restamping when stamps lost or destroyed.

The Commissioner of Internal Revenue may, under regulations prescribed by him with the approval of the Secretary of the Treasury, issue stamps for restamping packages of distilled spirits, tobacco, cigars, snuff, cigarettes, fermented liquors, and wines which have been duly stamped but from which the stamps have been lost

or destroyed by unavoidable accident. (20 Stat. 338. 40 Stat. 1145.)

This section was again amended by § 1315 of the Revenue Act of 1918, cited above, to read as set forth above.

This amendment consists in striking out, after the words "cigars, snuff, cigarettes," the word "and," and in inserting, after the words "fermented liquors," the words "and wines."

§ 6100. (R. S. § 3318, as amended, Act Feb. 27, 1877, c. 69, § 1, and Act March 1, 1879, c. 125, § 5.) Books to be kept by rectifiers and wholesale dealers; penalty; monthly transcript; penalty.

Cited without definite application,
Western Extracting Co. v. Smietanka
(C. C. A.) 234 F. 229.

§ 6102. (R. S. § 3320, as amended, Act July 16, 1892, c. 196, § 1, and Act Aug. 27, 1894, c. 349, § 66.) Gauging, inspection, and stamping of rectified spirits.

Cited without definite application,
Western Extracting Co. v. Smietanka
(C. C. A.) 234 F. 229.

§ 6102a. (Act March 4, 1915, c. 141, § 1.) Casks or packages; rectification; gauging and marking.

Validity of regulations.—There is nothing unreasonable in the purpose of Internal Revenue orders requiring proof of certain facts to determine whether liquor extracted from empty whisky barrels was tax-paid. Western Extracting Co. v. Smietanka, 234 F. 229, 148 C. C. A. 131.

§ 6103. (R. S. § 3322.) Filling blanks, and affixing and protecting stamps.

Cited without definite application,
Western Extracting Co. v. Smietanka
(C. C. A.) 234 F. 229.

§ 6104. (R. S. § 3323, as amended, Act July 16, 1892, c. 196, § 1.) Spirits drawn into new packages to be gauged and branded; returns; forfeitures.

Cited without definite application,
Western Extracting Co. v. Smietanka
(C. C. A.) 234 F. 229.

§ 6105. (R. S. § 3324.) Stamps and brands to be effaced, etc.

Cited without definite application,
Western Extracting Co. v. Smietanka
(C. C. A.) 234 F. 229.

§§ 6110a–6110b. [Repealed.]

These sections, which were §§ 401, 402, of the Revenue Act of 1916, were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§§ 6110c–6110e. (Act Oct. 3, 1917, c. 63, §§ 309–311.) [Repealed.]

These provisions of the Revenue Act of 1917 were repealed by § 1400 of the Revenue Act of 1918, which act contained provisions similar to those of the sections repealed. See §§ 6110g, 6114i, 6371¾a, post.

The text of the repealed sections is as follows:

"Sec. 309. Upon all still wines, including vermuth, and upon all champagne and other sparkling wines, liqueurs, cordials, artificial or imitation wines or compounds sold as wine, produced in or imported into the United States, and hereafter removed from the custom-house, place of manufacture, or from bonded premises for sale or consumption, there shall be levied and collected, in addition to the tax now imposed by law upon such articles, a tax equal to such tax, to be levied, collected, and paid under the provisions of existing law.

"Sec. 310. Upon all articles specified in section three hundred and nine upon which the tax now imposed by law has been paid and which are on the day this Act is passed held in excess of twenty-five gallons in the aggregate

of such articles and intended for sale, there shall be levied, collected, and paid a tax equal to the tax imposed by such section.

"Sec. 311. Upon all grape brandy or wine spirits withdrawn by a producer of wines from any fruit distillery or special bonded warehouse under subdivision (c) of section four hundred and two of the Act entitled 'An Act to increase the revenue, and for other purposes,' approved September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid in addition to the tax therein imposed, a tax equal to double such tax, to be assessed, collected, and paid under the provisions of existing law."

§ 6110f. (Act Feb. 24, 1919, c. 18, § 610.) Natural wine and wine defined; sweetening wine.

Natural wine within the meaning of this Act shall be deemed to be the product made from the normal alcoholic fermentation of the juice of sound, ripe grapes, without addition or abstraction, except such as may occur in the usual cellar treatment of clarifying and aging: Provided, however, That the product made from the juice of sound, ripe grapes by complete fermentation of the must under proper cellar treatment and corrected by the addition (under the supervision of a gauger or storekeeper-gauger in the capacity of gauger) of a solution of water and pure cane, beet, or dextrose sugar (containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis) to the must or to the wine, to correct natural deficiencies, when such addition shall not increase the volume of the resultant product more than 35 per centum, and the resultant product does not contain less than five parts per thousand of acid before fermentation and not more than 13 per centum of alcohol after complete fermentation, shall be deemed to be wine within the meaning of this Act, and may be labeled, transported, and sold as "wine," qualified by the name of the locality where produced, and may be further qualified by the name of its own particular type or variety: And provided further, That wine as defined in this section may be sweetened with cane sugar or beet sugar or pure condensed grape must and fortified under the provisions of this Act, and wines so sweetened or fortified shall be considered sweet wine within the meaning of this Act. (40 Stat. 1109.)

This section is § 610 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For corresponding provisions in § 401 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6110a.

§ 6110g. (Act Feb. 24, 1919, c. 18, § 611.) Tax on still wines and compounds sold as still wines.

Upon all still wines, including vermuth, and all artificial or imitation wines or compounds sold as still wine, which are hereafter produced in or imported into the United States, or which on the day after the passage of this Act are on any winery premises or other bonded premises or in transit thereto or at any customhouse, there shall be levied, collected, and paid, in lieu of the internal-revenue taxes now imposed thereon by law, taxes at rates as follows, when sold, or removed for consumption or sale:

On wines containing not more than 14 per centum of absolute alcohol, 16 cents per wine gallon, the per centum of alcohol taxable under this section to be reckoned by volume and not by weight;

On wines containing more than 14 per centum and not exceeding 21 per centum of absolute alcohol, 40 cents per wine gallon;

On wines containing more than 21 per centum and not exceeding 24 per centum of absolute alcohol, $1 per wine gallon;

All such wines containing more than 24 per centum of absolute alcohol by volume shall be classed as distilled spirits and shall pay tax accordingly. (40 Stat. 1110.)

This section is § 611 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

The taxes imposed by this section are in lieu of those imposed by § 402[a] of the Revenue Act of 1916, U. S. Comp. St. 1916, § 6110b[a], and § 309 of

the Revenue Act of 1917 (see note to § 6110c, ante); U. S. Comp. St. Temp. Supp. 1917, § 6110c; U. S. Comp. St. 1918, § 6110b[a], 6110c.

§ 6110h. (Act Feb. 24, 1919, c. 18, § 612.) Withdrawal for fortification of grape brandy or wine spirits from fruit distillery or special bonded warehouse.

Under such regulations and official supervision and upon the giving of such notices, entries, bonds, and other security as the Commissioner, with the approval of the Secretary, may prescribe, any producer of wines defined under the provisions of this title, may withdraw from any fruit distillery or special bonded warehouse grape brandy, or wine spirits, for the fortification of such wines on the premises where actually made: Provided, That there shall be levied and assessed against the producer of such wines a tax (in lieu of the internal-revenue tax now imposed thereon by law) of 60 cents per proof gallon of grape brandy or wine spirits whenever withdrawn and hereafter so used by him in the fortification of such wines during the preceding month, which assessment shall be paid by him within ten months from the date of notice thereof: Provided further, That nothing contained in this section shall be construed as exempting any wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this title. (40 Stat. 1110.)

This section is § 612 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For corresponding provision in § 402[c] of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6110b[c].

§ 6111. (Act Oct. 1, 1890, c. 1244, § 42, as amended, Act Oct. 22, 1914, c. 331, § 2, Act Sept. 8, 1916, c. 463, § 402(c), and Act Feb. 24, 1919, c. 18, § 617.) Fortifying pure sweet wines with wine spirits.

Any producer of pure sweet wines may use in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, wine spirits produced by any duly authorized distiller, and the Commissioner of Internal Revenue, in determining the liability of any distiller of wine spirits to assessment under section 3309 of the Revised Statutes, is authorized to allow such distiller credit in his computations for the wine spirits withdrawn to be used in fortifying sweet wines under this Act. (26 Stat. 621. 38 Stat. 747. 39 Stat. 784. 40 Stat. 1111.)

This section was again amended by § 617 of the Revenue Act of 1918, cited above, to read as set forth above.

This amendment made no change in this section as it was last amended by Act Sept. 8, 1916, c. 463, § 402(c). Said § 402 was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6111a. (Act Oct. 3, 1917, c. 63, § 312.) [Repealed.]

This section of the Revenue Act of 1917 contained provisions similar to those of Act Feb. 24, 1919, c. 18, § 615, post, § 6111aa. It was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6111aa. (Act Feb. 24, 1919, c. 18, § 615.) Same; floor tax on grape brandy or wine spirits for fortification of sweet wines.

Upon all sweet wines held for sale by the producer thereof upon the day after the passage of this Act there shall be levied, assessed, collected, and paid a floor tax equivalent to 30 cents per proof gallon upon the grape brandy or wine spirits used in the fortification of such wine. (40 Stat. 1111.)

This section is § 615 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

The tax imposed by this section is in lieu of the similar taxes imposed by § 312 of the Revenue Act of 1917. See note to § 6111a, ante.

§ 6112. (Act Oct. 1, 1890, c. 1244, § 43, as amended Act Aug. 27, 1894, c. 349, § 68, Act June 7, 1906, c. 3046, § 1, Act Oct. 22, 1914, c. 331, § 2, Act Sept. 8, 1916, c. 463, § 402(c), and Act Feb. 24, 1919, c. 18, § 617.) Same; wine spirits and sweet wine defined.

The wine spirits mentioned in section 42 is the product resulting from the distillation of fermented grape juice, to which water may have been added prior to, during, or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof, and shall be held to include the product from grapes or their residues commonly known as grape brandy, and shall include commercial grape brandy which may have been colored with burnt sugar or caramel; and the pure sweet wine which may be fortified with wine spirits under the provisions of this Act is fermented or partially fermented grape juice only, with the usual cellar treatment, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, except as herein expressly provided: Provided, That the addition of pure boiled or condensed grape must or pure crystallized cane or beet sugar, or pure dextrose sugar containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis, or water, or any or all of them, to the pure grape juice before fermentation, or to the fermented product of such grape juice, or to both, prior to the fortification herein provided for, either for the purpose of perfecting sweet wines according to commercial standards or for mechanical purposes, shall not be excluded by the definition of pure sweet wine aforesaid: Provided, however, That the cane or beet sugar, or pure dextrose sugar added for sweetening purposes shall not be in excess of 11 per centum of the weight of the wine to be fortified: And provided further, That the addition of water herein authorized shall be under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe: Provided, however, That records kept in accordance with such regulations as to the percentage of saccharine, acid, alcoholic, and added water content of the wine offered for fortification shall be open to inspection by any official of the Department of Agriculture thereto duly authorized by the Secretary of Agriculture; but in no case shall such wines to which water has been added be eligible for fortification under the provisions of this Act, where the same, after fermentation and before fortification, have an alcoholic strength of less than 5 per centum of their volume. (26 Stat. 621. 28 Stat. 568. 34 Stat. 215. 38 Stat. 747. 39 Stat. 785. 40 Stat. 1111.)

This section was again amended by § 617 of the Revenue Acts of 1918, cited above, to read as set forth above.

This amendment made no change in this section as it was last amended by Act Sept. 8, 1916, c. 463, § 402(c). Said § 402(c) was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6114. (Act Oct. 1, 1890, c. 1244, § 45, as amended Act Oct. 22, 1914, c. 331, § 2, Act Sept. 8, 1916, c. 463, § 402(c), and Act Feb. 24, 1919, c. 18, § 617.) Same; withdrawal of wine spirits.

Under such regulations and official supervision, and upon the execution of such entries and the giving of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, any producer of pure sweet wines as defined by this Act may withdraw wine spirits from any special bonded warehouse in original packages or from any registered distillery in any quantity not less than eighty wine gallons, and may use so much of the same as may be required by him under such regulations, and after the filing of

such notices and bonds and the keeping of such records and the rendition of such reports as to materials and products and the disposition of the same as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, in fortifying the pure sweet wines made by him, and for no other purpose, in accordance with the foregoing limitations and provisions; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized whenever he shall deem it to be necessary for the prevention of violations of this law to prescribe that wine spirits withdrawn under this section shall not be used to fortify wines except at a certain distance prescribed by him from any distillery, rectifying house, winery, or other establishment used for producing or storing distilled spirits, or for making or storing wines other than wines which are so fortified, and that in the building in which such fortification of wines is practiced no wines or spirits other than those permitted by this regulation shall be stored in any room or part of the building in which fortification of wines is practiced. The use of wine spirits for the fortification of sweet wines under this Act shall be under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall provide by regulations the time within which wines so fortified with the wine spirits so withdrawn may be subject to inspection, and for final accounting for the use of such wine spirits and for rewarehousing or for payment of the tax on any portion of such wine spirits which remain not used in fortifying pure sweet wines. (26 Stat. 622. 38 Stat. 747. 39 Stat. 785. 40 Stat. 1112.)

This section was again amended by § 617 of the Revenue Act of 1918, cited above, to read as set forth above.

This amendment made no change in this section as it was last amended by Act Sept. 8, 1916, c. 463, § 402(c). Said § 402(c) was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§§ 6114a–6114e. [Repealed.]

These sections, which were a part of § 402 of the Revenue Act of 1916, were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6114ff. (Act Feb. 24, 1919, c. 18, § 618(a).) Removal of domestic wines to bonded premises; tax on product of wines used as material.

(a) Under such regulations and upon the execution of such notices, entries, bonds, and other security as the Commissioner, with the approval of the Secretary, may prescribe, domestic wines subject to the tax imposed by section 611 may be removed from the winery where produced, free of tax, for storage on other bonded premises or from such premises to other bonded premises (but not more than one such additional removal shall be allowed), or for exportation from the United States or for use as distilling material at any regularly registered distillery: Provided, however, That the distiller using any such wine as material shall, subject to the provisions of section 3309 of the Revised Statutes, as amended, be held to pay the tax on the product of such wines as will include both the alcoholic strength therein produced by fermentation and that obtained from the brandy or wine spirits added to such wines at the time of fortification. (40 Stat. 1113.)

This section is paragraph (a) of § 618 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For corresponding provisions in § 402(d) of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6114a.

For R. S. § 3309, referred to in this section, see U. S. Comp. St. 1916, § 6089.

§ 6114g. (Act Feb. 24, 1919, c. 18, § 618(b).) Production of grape wine on bonded premises and transportation for distilling material for nonalcoholic wines.

(b) Under regulations prescribed by the Commissioner with the approval of the Secretary, it shall be lawful to produce grape wines on bonded winery premises by the usual method, and to transport and use the same, and like wines heretofore produced and now stored on bonded winery premises, as distilling material for the production of nonbeverage spirits in the production of nonalcoholic wines, containing less than ½ of 1 per centum of alcohol by volume, in any fruit brandy or industrial distillery: Provided, That all alcoholic spirits so obtained at any industrial distillery shall be denatured, and all spirits so obtained at any fruit distillery shall be removed and used only for nonbeverage purposes or for denaturation. (40 Stat. 1113.)

This section is paragraph (b) of § 618 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

§ 6114h. (Act Feb. 24, 1919, c. 18, § 613.) Tax on domestic and imported sparkling wines.

Upon the following articles which are hereafter produced in or imported into the United States, or which on the day after the passage of this act are on any winery premises or other bonded premises or in transit thereto or at any customhouse, there shall be levied, collected, and paid taxes at rates as follows, when sold, or removed for consumption or sale:

On each bottle or other container of champagne or sparkling wine, 12 cents on each one-half pint or fraction thereof;

On each bottle or other container of artificially carbonated wine, 6 cents on each one-half pint or fraction thereof;

On each bottle or other container of liqueurs, cordials, or similar compounds, by whatever name sold or offered for sale, containing sweet wine fortified with grape brandy, 6 cents on each one-half pint or fraction thereof.

The tax imposed by this section shall, in the case of any article upon which a corresponding internal-revenue tax is now imposed by law, be in lieu of such tax. (40 Stat. 1110.)

This section is § 613 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For tax on wines enumerated in this section imposed by § 402(e) of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6114b.

§ 6114i. (Act Feb. 24, 1919, c. 18, § 614.) Floor tax on still and sparkling wines.

Upon all articles specified in section 611 or 613 upon which the internal-revenue tax now imposed by law has been paid and which are on the day after the passage of this Act held by any person and intended for sale, there shall be levied, collected, and paid a floor tax equal to the difference between the tax imposed by this Act and the tax so paid. (40 Stat. 1111.)

This section is § 614 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

Sections 611 and 613 of the Revenue Act of 1918, referred to in this section, are set forth ante, §§ 6110g, 6114h.

Corresponding provisions were contained in § 310 of the Revenue Act of 1917. See note to § 6110d, ante.

§ 6114j. (Act Feb. 24, 1919, c. 18, § 616.) Payment of tax by affixing stamp; notice, bond and inventories; wines held by retailers or produced for family use.

The taxes imposed by section 611 or 613 shall be paid by stamp on removal of the wines from the customhouse, winery, or other bonded place of storage for consumption or sale, and every person hereafter producing, or having in his possession or under his control when this title takes effect, any wines subject to the tax imposed in section 611 or 613, shall file such notice, describing the premises on which such wines are produced or stored; shall execute a bond in such form; shall make such inventories under oath; and shall, prior to sale or removal for consumption, affix to each cask or vessel containing such wine such marks, labels, or stamps as the Commissioner, with the approval of the Secretary, may from time to time prescribe; and the premises described in such notice shall, for the purpose of this Act, be regarded as bonded premises. But the provisions of this section, except as to payment of tax and the affixing of the required stamps or labels, shall not apply to wines held by retail dealers, as defined in section 3244 of the Revised Statutes, nor, subject to regulations prescribed by the Commissioner, with the approval of the Secretary, shall the tax imposed by section 611 apply to wines produced for the family use of the duly registered producer thereof and not sold or otherwise removed from the place of manufacture and not exceeding in any case two hundred gallons per year. (40 Stat. 1111.)

This section is § 616 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

Sections 611 and 613 of the Revenue Act of 1918, referred to in this section, are set forth ante, §§ 6110g, 6114h.

For R. S. § 3244, also referred to in this section, see U. S. Comp. St. 1916, § 5971(4).

For corresponding provisions in §§ 402[b], 402(e) of the Revenue Act of 1916, see U. S. Comp. St. 1916, §§ 6110b[b], 6114b.

§ 6114k. (Act Feb. 24, 1919, c. 18, § 619.) Collection of tax on imported still wines, sparkling wines, and imported liqueurs by assessment.

The collection of the tax on imported still wines, including vermuth, and sparkling wines, including champagne, and on imported liqueurs, cordials, and similar compounds, may be made within the discretion of the Commissioner, with the approval of the Secretary, by assessment instead of by stamps. (40 Stat. 1113.)

This section is § 619 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For corresponding provision in § 402(e) of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6114b.

§ 6114*l*. (Act Feb. 24, 1919, c. 18, § 620.) Violations of §§ 610–621 of Revenue Act of 1918; mixing or blending; use of tax-paid grains for fortification.

Whoever evades or attempts to evade any tax imposed by sections 611 to 615, both inclusive, or any requirement of sections 610 to 621, both inclusive, or regulation issued pursuant thereto, or whoever, otherwise than as provided in such sections, recovers or attempts to recover any spirits from domestic or imported wine, or whoever rectifies, mixes, or compounds with distilled spirits any domestic wines, other than in the manufacture of liqueurs, cordials, or similar compounds, shall, on conviction, be punished for each such offense by a fine of not exceeding $5,000, or imprisonment for not more than five years, or both, and in addition thereto by a penalty of double the tax evaded, or attempted to be evaded, to be assessed and collected in the same manner as taxes are assessed and collected, and all

wines, spirits, liqueurs, cordials, or similar compounds as to which such violation occurs shall be forfeited to the United States. But the provisions of this section and the provisions of section 3244 of the Revised Statutes, as amended, relating to rectification, or other internal-revenue laws of the United States, shall not be held to apply to or prohibit the mixing or blending of wines subject to tax under the provisions of sections 611 to 615, both inclusive, with each other or with other wines for the sole purpose of perfecting such wines according to commercial standards: Provided, That nothing herein contained shall be construed as prohibiting the use of tax-paid grain or other ethyl alcohol in the fortification of sweet wines as defined in section 610 of this Act and section 43 of the Act entitled "An Act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1890, as amended by this Act. (40 Stat. 1113.)

This section is § 620 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

Section 610 of the Revenue Act of 1918, is set forth ante, § 6110f; § 611 is set forth ante, § 6110g; § 612 is set forth ante, § 6110h; § 613 is set forth ante, § 6114h; § 614 is set forth ante, § 6114i; § 615 is set forth ante, § 6111aa; § 616 is set forth ante, § 6114j; § 617 is set forth ante, §§ 6111, 6112, 6114; § 618 is set forth ante, §§ 6114ff, 6114g; § 619 is set forth ante, § 6114k; and § 621 is set forth post, § 6114m.

For R. S. § 3244, also referred to in this section, see U. S. Comp. St. 1916, § 5971(3).

Act Oct. 1, 1890, c. 1244, § 43, as amended by § 617 of the Revenue Act of 1918, also referred to in this section, is set forth ante, § 6112.

For corresponding provisions in § 402(f) of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6114c.

§ 6114m. (Act Feb. 24, 1919, c. 18, § 621.) Spirit meters, locks, seals; gaugers or storekeeper-gaugers.

The Commissioner, by regulations to be approved by the Secretary, may require the use at each fruit distillery of such spirit meters, and such locks and seals to be affixed to fermenters, tanks, or other vessels and to such pipe connections as may in his judgment be necessary or expedient, and is hereby authorized to assign to any such distillery and to each winery where wines are to be fortified such number of gaugers or storekeeper-gaugers in the capacity of gaugers as may be necessary for the proper supervision of the manufacture of brandy or the making or fortifying of wines subject to tax imposed by this section; and the compensation of such officers shall not exceed $5 per diem while so assigned, together with their actual and necessary traveling expenses, and also a reasonable allowance for their board bills, to be fixed by the Commissioner, with the approval of the Secretary, but not to exceed $2.50 per diem for such board bills. (40 Stat. 1114.)

This section is § 621 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For corresponding provisions in § 402(g) of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6114d.

§ 6114n. (Act Feb. 24, 1919, c. 18, § 622.) Allowance for unavoidable loss of wines during cellar treatment.

The Commissioner, with the approval of the Secretary, is hereby authorized to make such allowances for unavoidable loss of wines while on storage or during cellar treatment as in his judgment may be just and proper. (40 Stat. 1114.)

This section is § 622 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For corresponding provision in § 402(h) of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6114e.

§ 6127a. [Repealed.]

This section, which was § 403 of the Revenue Act of 1916, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6127aa. (Act Feb. 24, 1919, c. 18, § 624.) Transfer in tanks or tank cars for export.

Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, alcohol or other distilled spirits of a proof strength of not less than one hundred and eighty degrees intended for export free of tax may be drawn from receiving cisterns at any distillery, or from storage tanks in any distillery warehouse, for transfer to tanks or tank cars for export from the United States, and all provisions of existing law relating to the exportation of distilled spirits not inconsistent herewith shall apply to spirits removed for export under the provisions of this Act. (40 Stat. 1114.)

This section is § 624 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For corresponding provision in § 403 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6127a.

§ 6137a. (Act Feb. 24, 1919, c. 18, § 603.) Removal of ethyl alcohol to central denaturing bonded warehouse for denaturing; removal free of tax for use of United States or nations at war with Germany; leakage.

Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, ethyl alcohol of not less than 180 degrees proof, produced at any central distilling and denaturing plant established under the provisions of subsection 2, paragraph N, of section IV of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, may be removed from such plant to any central denaturing bonded warehouse for denaturation, or may, before or after denaturation, be removed from such plant or from such denaturing bonded warehouse, free of tax, for use of the United States or for shipment to any nation while engaged against the German Government in the present war, and the removal herein authorized may be made in such tank vessels, tank cars, drums, casks, or other containers as may be approved by the Commissioner. It shall be lawful, under regulations prescribed by the Commissioner, with the approval of the Secretary, for an allowance to be made for leakage or loss by unavoidable accident and without fault or negligence of the distiller, owner, carrier, or his agents or employees, which may occur during the transportation of such spirits or while the same are lawfully stored on either of the premises herein described. (40 Stat. 1107.)

This section is § 603 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For Act Oct. 3, 1913, c. 16, § IV, N, subsec. 2, referred to in this section, see U. S. Comp. St. 1916, § 6137.

CHAPTER FIVE—FERMENTED LIQUORS

Sec.
6144. Tax on fermented liquors; cancellation of stamps.
6144a, 6144b. [Repealed.]
6144bb. Tax; amount; fractional parts of barrel.
6151a. [Repealed.]
6151aa. Removal to contiguous industrial distillery without payment of tax.
6161. Withdrawing from unstamped packages for bottling or bottling on brewery premises; withdrawal by pipe-line; regulations; penalties; forfeitures.

§ 6144. (Act June 13, 1898, c. 448, § 1, as amended, Act March 2, 1901, c. 806, § 1, and Act April 12, 1902, c. 500, § 1.) Tax on fermented liquors; cancellation of stamps.

Cited without definite application,
Niles v. Central Manufacturers' Mut. Ins. Co. (C. C. A.) 252 F. 564.

§ 6144a. [Repealed.]

This section which was § 400 of the Revenue Act of 1916, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6144b. (Act Oct. 3, 1917, c. 63, § 307.) [Repealed.]

This section of the Revenue Act of 1917 was repealed by section 1400 of the Revenue Act of 1918, post, § 6371¾a.

The text of the section was as follows:

"On and after the passage of this Act there shall be levied and collected on all beer, lager beer, ale, porter, and other similar fermented liquor, containing one-half per centum or more of alcohol, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, in addition to the tax now imposed by law, a tax of $1.50 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law."

A tax in lieu of the tax imposed by this section was imposed by Revenue Act of 1918, § 608, post, § 6144bb.

§ 6144bb. (Act Feb. 24, 1919, c. 18, § 608.) Tax; amount; fractional parts of barrel.

There shall be levied and collected on all beer, lager beer, ale, porter, and other similar fermented liquor, containing one-half of one per centum, or more, of alcohol, brewed or manufactured and hereafter sold, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, in lieu of the internal-revenue taxes now imposed thereon by law, a tax of $6.00 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law, to be collected under the provisions of existing law. (40 Stat. 1109.)

This section is § 608 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

The tax imposed by this section is in lieu of those imposed by R. S. § 3339, Act June 13, 1898, c. 448, § 1, as amended, § 400 of the Revenue Act of 1916, U. S. Comp. St. 1916, §§ 6143, 6144, 6144a, and § 307 of the Revenue Act of 1917. See note to § 6144b, ante.

§ 6151a. (Act Oct. 3, 1917, c. 63, § 308.) [Repealed.]

This section of the Revenue Act of 1917 contained provisions similar to those of Act Feb. 24, 1919, c. 18, § 609, post, § 6151aa. It was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6151aa. (Act Feb. 24, 1919, c. 18, § 609.) Removal to contiguous industrial distillery without payment of tax.

From and after the passage of this Act taxable fermented liquors may be conveyed without payment of tax from the brewery premises where produced to a contiguous industrial distillery of either class established under the Act entitled "An Act to reduce tariff

duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, to be used as distilling material, and the residue from such distillation, containing less than one-half of 1 per centum of alcohol by volume, which is to be used in making beverages, may be manipulated by cooling, flavoring, carbonating, settling, and filtering on the distillery premises or elsewhere.

The removal of the taxable fermented liquor from the brewery to the distillery and the operation of the distillery and removal of the residue therefrom shall be under the supervision of such officer or officers as the Commissioner shall deem proper, and the Commissioner, with the approval of the Secretary, is hereby authorized to make such regulations from time to time as may be necessary to give force and effect to this section and to safeguard the revenue. (40 Stat. 1109.)

This section is § 609 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

There was a corresponding provision in § 308 of the Revenue Act of 1917. See note to § 6151a, ante.

§ 6161. (R. S. § 3354, as amended Act June 18, 1890, c. 431, Act Sept. 8, 1916, c. 463, § 406, and Act Feb. 24, 1919, c. 18, § 627.) Withdrawing from unstamped packages for bottling or bottling on brewery premises; withdrawal by pipe-line; regulations; penalties; forfeitures.

Every person who withdraws any fermented liquor from any hogshead, barrel, keg, or other vessel upon which the proper stamp has not been affixed for the purpose of bottling the same, or who carries on or attempts to carry on the business of bottling fermented liquor in any brewery or other place in which fermented liquor is made, or upon any premises having communication with such brewery, or any warehouse, shall be liable to a fine of $500, and the property used in such bottling or business shall be liable to forfeiture: Provided, however, That this section shall not be construed to prevent the withdrawal and transfer of unfermented, partially fermented, or fermented liquors from any of the vats in any brewery by way of a pipe line or other conduit to another building or place for the sole purpose of bottling the same, such pipe line or conduit to be constructed and operated in such manner and with such cisterns, vats, tanks, valves, cocks, faucets, and gauges, or other utensils or apparatus, either on the premises of the brewery or the bottling house, and with such changes of or additions thereto, and such locks, seals, or other fastenings, and under such rules and regulations as shall be from time to time prescribed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, and all locks and seals prescribed shall be provided by the Commissioner of Internal Revenue at the expense of the United States: Provided further, That the tax imposed in section 3339 of the Revised Statutes shall be paid on all fermented liquor removed from a brewery to a bottling house by means of a pipe or conduit, at the time of such removal, by the cancellation and defacement, by the collector of the district or his deputy, in the presence of the brewer, of the number of stamps denoting the tax on the fermented liquor thus removed. The stamps thus canceled and defaced shall be disposed of and accounted for in the manner directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. And any violation of the rules and regulations hereafter prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in pursuance of these provisions, shall be subject to the penalties above provided by this section. Every owner, agent, or super-

intendent of any brewery or bottling house who removes, or connives at the removal of, any fermented liquor through a pipe line or conduit, without payment of the tax thereon, or who attempts in any manner to defraud the revenue as above, shall forfeit all the liquors made by and for him, and all the vessels, utensils, and apparatus used in making the same. (26 Stat. 161. 39 Stat. 789. 40 Stat. 1115.)

This section was again amended by § 627 of the Revenue Act of 1918, cited above, to read as set forth above.

This amendment made no change in the section as it was last amended by § 406 of the Revenue Act of 1916. Said § 406 was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

For R. S. § 3339, referred to in this section, see U. S. Comp. St. 1916, § 6143.

CHAPTER FIVE A—SIRUPS, EXTRACTS, SOFT DRINKS, MINERAL WATERS, AND CARBONIC ACID GAS

This Chapter, inserted here as additional to the original chapters of Title XXXV of the Revised Statutes, includes §§ 628, 629, 630, of the War Revenue Act of 1918, approved Feb. 24, 1919. The sections included in this Chapter were a part of Title VI thereof, entitled "Tax on Beverages." See, also, note to Chapter Eleven C, of this Title, post.

§§ 6161½a–6161½c. (Act Oct. 3, 1917, c. 63, §§ 313–315.) [Repealed.]

These sections of the Revenue Act of 1917 were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a. Taxes in lieu of those imposed by this act were imposed by the Revenue Act of 1918, §§ 628–630, set forth post, §§ 6161½d–6161½f. The text of the repealed provisions is as follows:

"Sec. 313. There shall be levied, assessed, collected, and paid—

"(a) Upon all prepared sirups or extracts (intended for use in the manufacture or production of beverages, commonly known as soft drinks, by soda fountains, bottling establishments, and other similar places) sold by the manufacturer, producer, or importer thereof, if so sold for not more than $1.30 per gallon, a tax of 5 cents per gallon; if so sold for more than $1.30 and not more than $2 per gallon, a tax of 8 cents per gallon; if so sold for more than $2 and not more than $3 per gallon, a tax of 10 cents per gallon; if so sold for more than $3 and not more than $4 per gallon, a tax of 15 cents per gallon; and if so sold for more than $4 per gallon, a tax of 20 cents per gallon; and

"(b) Upon all unfermented grape juice, soft drinks, or artificial mineral waters (not carbonated), and fermented liquors containing less than one-half per centum of alcohol, sold by the manufacturer, producer, or importer thereof, in bottles or other closed containers, and upon all ginger ale, root beer, sarsaparilla, pop, and other carbonated waters or beverages, manufactured and sold by the manufacturer, producer, or importer of the carbonic acid gas used in carbonating the same, a tax of 1 cent per gallon; and

"(c) Upon all natural mineral waters or table waters, sold by the producer, bottler, or importer thereof, in bottles or other closed containers, at over 10 cents per gallon, a tax of 1 cent per gallon.

"Sec. 314. Each such manufacturer, producer, bottler, or importer shall make monthly returns under oath to the collector of internal revenue for the district in which is located the principal place of business, containing such information necessary for the assessment of the tax, and at such times and in such manner, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe.

"Sec. 315. Upon all carbonic acid gas in drums or other containers (intended for use in the manufacture or production of carbonated water or other drinks) sold by the manufacturer, producer, or importer thereof, there shall be levied, assessed, collected, and paid a tax of 5 cents per pound. Such tax shall be paid by the purchaser to the vendor thereof and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section five hundred and three."

§ 6161½d. (Act Feb. 24, 1919, c. 18, § 628.) Tax; amount.

There shall be levied, assessed, collected, and paid in lieu of the taxes imposed by sections 313 and 315 of the Revenue Act of 1917—

(a) Upon all beverages derived wholly or in part from cereals or substitutes therefor, and containing less than one-half of one per centum of alcohol, sold by the manufacturer, producer, or importer, in bottles or other closed containers, a tax equivalent to 15 per centum of the price for which so sold; and upon all unfermented grape juice, ginger ale, root beer, sarsaparilla, pop, artificial mineral waters (carbonated or not carbonated), other carbonated waters or beverages, and other soft drinks, sold by the manufacturer, producer, or importer, in bottles or other closed containers, a tax equivalent to 10 per centum of the price for which so sold; and

(b) Upon all natural mineral waters or table waters, sold by the producer, bottler, or importer thereof, in bottles or other closed containers, at over 10 cents per gallon, a tax of 2 cents per gallon. (40 Stat. 1116.)

This section is § 628 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For §§ 313, 315 of the Revenue Act of 1917, referred to in this section, see notes to §§ 6161½a–6161½c, ante.

§ 6161½e. (Act Feb. 24, 1919, c. 18, § 629.) Returns of manufacturers, producers, bottlers or importers; time for payment of tax; penalty.

Each manufacturer, producer, bottler, or importer of any of the articles enumerated in section 628 shall make monthly returns under oath in duplicate and pay the taxes imposed in respect to such articles by such section to the collector for the district in which is located the principal place of business, containing such information necessary for the assessment of the tax, and at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due. (40 Stat. 1116.)

This section is § 629 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

For corresponding provision in § 314 of the Revenue Act of 1917, see note under §§ 6161½a–6161½c, ante.

§ 6161½f. (Act Feb. 24, 1919, c. 18, § 630.) Tax on soda fountains, ice-cream parlors.

On and after May 1, 1919, there shall be levied, assessed, collected, and paid a tax of 1 cent for each 10 cents or fraction thereof of the amount paid to any person conducting a soda fountain, ice-cream parlor, or other similar place of business, for drinks commonly known as soft drinks, compounded or mixed at such place of business, or for ice cream, ice-cream sodas, sundaes, or other similar articles of food or drink, when any of the above are sold on or after such date for consumption in or in proximity to such place of business. Such tax shall be paid by the purchaser to the vendor at the time of the sale and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section 502. (40 Stat. 1116.)

This section is § 630 of the Revenue Act of 1918 (Title VI—Tax on Beverages), cited above.

Section 502 of the Revenue Act of 1918, referred to in this section, is set forth post, § 6309½c.

CHAPTER SIX—TOBACCO AND SNUFF

Sec.
6168. (a) Dealers in leaf tobacco; statements; bonds; numbers assigned to.
(b) Same; inventories; invoices; records; reports.
(c) Same; sales or shipments by.
(d) Same; tax on tobacco sold, removed or shipped in violation of subdivision (c).
(e) Same; offenses; punishment.
(f) Same; who are.
6169. Packages of tobacco and snuff.
6169a. [Repealed.]
6174a–6174c. [Repealed.]
6174d. Tax on tobacco and snuff.
6175. [Repealed.]

§ 6168. (R. S. § 3360, as amended Act March 1, 1879, c. 125, § 14, and Act Feb. 24, 1919, c. 18, § 704.) (a) Dealers in leaf tobacco; statements; bonds; numbers assigned to.

(a) Every dealer in leaf tobacco shall file with the collector of the district in which his business is carried on, a statement in duplicate, subscribed under oath, setting forth the place, and, if in a city, the street and number of the street, where his business is to be carried on, and the exact location of each place where leaf tobacco is held by him on storage, and, whenever he adds to or discontinues any of his leaf tobacco storage places, he shall give immediate notice to the collector of the district in which he is registered.

Every such dealer shall give a bond with surety, satisfactory to, and to be approved by, the collector of the district, in such penal sum as the collector may require, not less than $500; and a new bond may be required in the discretion of the collector or under instructions of the Commissioner.

Every such dealer shall be assigned a number by the collector of the district, which number shall appear in every inventory, invoice and report rendered by the dealer, who shall also obtain certificates from the collector of the district setting forth the place where his business is carried on and the places designated by the dealer as the places of storage of his tobacco, which certificates shall be posted conspicuously within the dealer's registered place of business, and within each designated place of storage.

(b) Same; inventories; invoices; records; reports.

(b) Every dealer in leaf tobacco shall make and deliver to the collector of the district a true inventory of the quantity of the different kinds of tobacco held or owned, and where stored by him, on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the first day of January, such inventory to be made under oath and rendered in such form as may be prescribed by the Commissioner.

Every dealer in leaf tobacco shall render such invoices and keep such records as shall be prescribed by the Commissioner, and shall enter therein, day by day, and upon the same day on which the circumstance, thing or act to be recorded is done or occurs, an accurate account of the number of hogsheads, tierces, cases and bales, and quantity of leaf tobacco contained therein, purchased or received by him, on assignment, consignment, for storage, by transfer or otherwise, and of whom purchased or received, and the number of hogsheads, tierces, cases and bales, and the quantity of leaf tobacco contained therein, sold by him, with the name and residence in each instance of the person to whom sold, and if shipped, to whom shipped, and to what district; such records shall be kept at his place of business at all times and preserved for a period of two years,

and the same shall be open at all hours for the inspection of any internal-revenue officer or agent.

Every dealer in leaf tobacco on or before the tenth day of each month, shall furnish to the collector of the district a true and complete report of all purchases, receipts, sales and shipments of leaf tobacco made by him during the month next preceding, which report shall be verified and rendered in such form as the Commissioner, with the approval of the Secretary, shall prescribe.

(c) Same; sales or shipments by.

(c) Sales or shipments of leaf tobacco by a dealer in leaf tobacco shall be in quantities of not less than a hogshead, tierce, case, or bale, except loose leaf tobacco comprising the breaks on warehouse floors, and except to a duly registered manufacturer of cigars for use in his own manufactory exclusively.

Dealers in leaf tobacco shall make shipments of leaf tobacco only to other dealers in leaf tobacco, to registered manufacturers of tobacco, snuff, cigars or cigarettes, or for export.

(d) Same; tax on tobacco sold, removed or shipped in violation of subdivision (c).

(d) Upon all leaf tobacco sold, removed or shipped by any dealer in leaf tobacco in violation of the provisions of subdivision (c), or in respect to which no report has been made by such dealer in accordance with the provisions of subdivision (b), there shall be levied, assessed, collected and paid a tax equal to the tax then in force upon manufactured tobacco, such tax to be assessed and collected in the same manner as the tax on manufactured tobacco.

(e) Same; offenses; punishment.

(e) Every dealer in leaf tobacco

(1) who neglects or refuses to furnish the statement, to give bond, to keep books, to file inventory or to render the invoices, returns or reports required by the Commissioner, or to notify the collector of the district of additions to his places of storage; or

(2) who ships or delivers leaf tobacco, except as herein provided; or

(3) who fraudulently omits to account for tobacco purchased, received, sold, or shipped;

shall be fined not less than $100 or more than $500, or imprisoned not more than one year, or both.

(f) Same; who are.

(f) For the purposes of this section a farmer or grower of tobacco shall not be regarded as a dealer in leaf tobacco in respect to the leaf tobacco produced by him. (20 Stat. 345. 40 Stat. 1119.)

This section was again amended by § 704 of the Revenue Act of 1918, cited above, to read as set forth above. Prior to this amendment this section read as follows: "Every dealer in leaf-tobacco shall make daily entries in two books kept for that purpose, one book to be furnished by the government, under such regulations as the Commissioner of Internal Revenue shall prescribe, of the number of hogsheads, cases, and pounds of leaf-tobacco purchased or received by him on assignment, consignment, transfer, or otherwise, and of whom purchased or received, and the number of hogsheads, cases, or pounds sold by him, with the name and residence, in each instance, of the person to whom sold, and, if shipped, to whom shipped, and to what district; one of these books shall be kept at his place of business, and shall be open at all hours to the inspection of any internal-revenue officer or agent, and the other shall, at the end of each and every year, and upon the discontinuance of business of any leaf-dealer during any year, be handed over to the collector of his district for the use of the government. And every dealer in leaf-tobacco who willfully neglects or refuses to keep the books herein provided for, and in the manner which shall be prescribed by the Commissioner of Internal Revenue, or to transfer to the collector of his district, as herein provided, the duplicate copy containing his daily transactions, as aforesaid, shall be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not more than one year."

§ 6169. (R. S. § 3362, as amended Act Feb. 27, 1877, c 69, § 1, Act March 1, 1879, c. 125, § 14, Act Jan. 9, 1883, c. 16, Act July 1, 1902, c. 1371, § 1, Act Aug. 5, 1909, c. 6, § 30, and Feb. 24, 1919, c. 18, § 701(b).) Packages of tobacco and snuff.

All manufactured tobacco shall be put up and prepared by the manufacturer for sale, or removal for sale or consumption, in packages of the following description and in no other manner:

All smoking tobacco, snuff, fine-cut chewing tobacco, all cut and granulated tobacco, all shorts, the refuse of fine-cut chewing, which has passed through a riddle of thirty-six meshes to the square inch, and all refuse scraps, clippings, cuttings, and sweepings of tobacco, and all other kinds of tobacco not otherwise provided for, in packages containing one-eighth of an ounce, three-eighths of an ounce, and further packages with a difference between each package and the one next smaller of one-eighth of an ounce up to and including two ounces, and further packages with a difference between each package and the one next smaller of one-fourth of an ounce up to and including four ounces, and packages of five ounces, six ounces, seven ounces, eight ounces, ten ounces, twelve ounces, fourteen ounces, and sixteen ounces: Provided, That snuff may, at the option of the manufacturer, be put up in bladders and in jars containing not exceeding twenty pounds.

All cavendish, plug, and twist tobacco, in wooden packages not exceeding two hundred pounds net weight.

And every such wooden package shall have printed or marked thereon the manufacturer's name and place of manufacture, the registered number of the manufactory, and the gross weight, the tare, and the net weight of the tobacco in each package: Provided, That these limitations and descriptions of packages shall not apply to tobacco and snuff transported in bond for exportation and actually exported: And provided further, That perique tobacco, snuff flour, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco, may be sold in bulk as material, and without the payment of tax, by one manufacturer directly to another manufacturer, or for export, under such restrictions, rules, and regulations as the Commissioner of Internal Revenue may prescribe: And provided further, That wood, metal, paper, or other materials may be used separately or in combination for packing tobacco, snuff, and cigars, under such regulations as the Commissioner of Internal Revenue may establish. (19 Stat. 248. 20 Stat. 345. 22 Stat. 401. 32 Stat. 714. 36 Stat. 108. 40 Stat. 1117.)

This section was again amended by § 701 of the Revenue Act of 1918, cited above, to read as set forth above. Prior to this amendment this section read as follows:

"All manufactured tobacco shall be put up and prepared by the manufacturer for sale, or removal, for sale or consumption, in packages of the following description and in no other manner:

"All smoking tobacco, snuff, fine-cut chewing tobacco, all cut and granulated tobacco, all shorts, the refuse of fine-cut chewing, which has passed through a riddle of thirty-six meshes to the square inch, and all refuse scraps, clippings, cuttings, and sweepings of tobacco, and all other kinds of tobacco not otherwise provided for, in packages containing one-half ounce, three-fourths of an ounce, and further packages with a difference between each package and the one next smaller of one-fourth of an ounce up to and including four ounces, and packages of six ounces, seven ounces, eight ounces, ten ounces, twelve ounces, fourteen ounces, and sixteen ounces: Provided, That snuff may, at the option of the manufacturer, be put up in bladders and in jars containing not exceeding twenty pounds.

"All cavendish, plug, and twist tobacco, in wooden packages not exceeding two hundred pounds net weight.

"And every such wooden package shall have printed or marked thereon the manufacturer's name and place of manufacture, the registered number of the manufactory, and the gross weight, the tare, and the net weight of the

tobacco in each package: Provided, That these limitations and descriptions of packages shall not apply to tobacco and snuff transported in bond for exportation and actually exported: And provided further, That perique tobacco, snuff flour, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco, may be sold in bulk as material, and without the payment of tax, by one manufacturer directly to another manufacturer, or for export, under such restrictions, rules, and regulations as the Commissioner of Internal Revenue may prescribe: And provided further, That wood, metal, paper, or other materials may be used separately or in combination for packing tobacco, snuff, and cigars, under such regulations as the Commissioner of Internal Revenue may establish."

§ 6169a. (Act Oct. 3, 1917, c. 63, § 401.) [Repealed.]

This section of the Revenue Act of 1917 authorized tobacco and snuff to be put up in packages containing ⅛, ⅜, ⅝, ⅞, 1⅛, 1⅜, 1⅝, 1⅞, and 5 ounces. It was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§§ 6174a–6174c. (Act Oct. 3, 1917, c. 63, §§ 401–403.) [Repealed.]

These sections of the Revenue Act of 1917 were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a. A tax in lieu of the tax imposed by the repealed provisions was imposed by Revenue Act of 1918, § 701(a), post, § 6174d. The text of the repealed sections is as follows:

"Sec. 401. That upon all tobacco and snuff hereafter manufactured and sold, or removed for consumption or use, there shall be levied and collected, in addition to the tax now imposed by law upon such articles, a tax of 5 cents per pound, to be levied, collected, and paid under the provisions of existing law. [The section also contains the provision as explained in the note to § 6169a, ante.]

"Sec. 402. Sections four hundred [§ 6202a, post], four hundred and one, and four hundred and four shall take effect thirty days after the passage of this Act: Provided, That after the passage of this Act and before the expiration of the aforesaid thirty days, cigarettes and manufactured tobacco and snuff may be put up in the packages now provided for by law or in the packages provided for in sections four hundred and four hundred and one.

"Sec. 403. There shall also be levied and collected, upon all manufactured tobacco and snuff in excess of one hundred pounds or upon cigars or cigarettes in excess of one thousand, which were manufactured or imported, and removed from factory or custom-house prior to the passage of this Act, bearing tax-paid stamps affixed to such articles for the payment of the taxes thereon, and which are, on the day after this Act is passed, held and intended for sale by any person, corporation, partnership, or association, and upon all manufactured tobacco, snuff, cigars, or cigarettes, removed from factory or customs house after the passage of this Act but prior to the time when the tax imposed by section four hundred or section four hundred and one upon such articles takes effect, an additional tax equal to one-half the tax imposed by such sections upon such articles."

§ 6174d. (Act Feb. 24, 1919, c. 18, § 701(a).) Tax on tobacco and snuff.

(a) Upon all tobacco and snuff manufactured in or imported into the United States, and hereafter sold by the manufacturer or importer, or removed for consumption or sale, there shall be levied, collected, and paid, in lieu of the internal-revenue taxes now imposed thereon by law, a tax of 18 cents per pound, to be paid by the manufacturer or importer thereof. (40 Stat. 1117.)

This section is paragraph (a) of § 701 of the Revenue Act of 1918 (Title VII—Tax on Cigars, Tobacco, and Manufactures Thereof), cited above.

For taxes imposed upon tobacco and snuff by R. S. § 3368, as amended, and § 401 of the Revenue Act of 1917, see U. S. Comp. St. 1916, § 6174, and note to § 6174a, ante.

§ 6175. [Repealed.]

This section, which was Act Aug. 5, 1909, c. 6, § 35, 36 Stat. 110, was repealed by § 704 of the Revenue Act of 1918, said repeal to take effect April 1, 1919.

CHAPTER SEVEN—CIGARS

Sec.
6202a. [Repealed.]
6204. Tax on cigars and cigarettes.
6204a, 6204b. [Repealed.]
6204c. (a) Cigars and cigarettes; tax; amount.
(b) Same; retail price.
(c) Same; labels.
(d) Packages of cigarettes and small cigars; stamps.
6204d. Floor tax on cigars, cigarettes, tobacco and snuff.
6204e. Cigarette paper tax; bonds of manufacturers.

§ 6202a. (Act Oct. 3, 1917, c. 63, § 400.) [Repealed.]

This section of the Revenue Act of 1917, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

The text of the repealed provisions is as follows:

"Every manufacturer of cigarettes (including small cigars weighing not more than three pounds per thousand) shall put up all the cigarettes and such small cigars that he manufactures or has manufactured for him, and sells or removes for consumption or use, in packages or parcels containing five, eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty, eighty, or one hundred cigarettes each, and shall securely affix to each of said packages or parcels a suitable stamp denoting the tax thereon and shall properly cancel the same prior to such sale or removal for consumption or use under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in a like manner, in addition to the import stamp indicating inspection of the custom-house before they are withdrawn therefrom."

§ 6204. (R. S. § 3394, as amended, Act March 3, 1875, c. 127, § 2, Act July 24, 1897, c. 11, § 10, Act July 1, 1902, c. 1371, § 2, and Act Aug. 5, 1909, c. 6, § 33.) Tax on cigars and cigarettes.

Insertion of coupons in packages.—The permission, if any, granted by Act July 1, 1902, § 2, amending this section, to inclose redeemable coupons in packages of tobacco, does not invalidate state restrictions upon retail sales of such packages. Rast v. Van Deman & Lewis Co., 36 S. Ct. 370, 240 U. S. 342, 60 L. Ed. 679, reversing order Van Deman & Lewis Co. v. Rast (D. C.) 214 F. 827; Pitney v. State of Washington, 36 S. Ct. 385, 60 L. Ed. 703.

§§ 6204a, 6204b. (Act Oct. 3, 1917, c. 63, §§ 400, 404.) [Repealed.]

These sections of the Revenue Act of 1917, were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a. The corresponding provisions in the Revenue Act of 1918 are set forth post, as §§ 6204c, 6204e.

The text of the repealed provisions is as follows:

"Sec. 400. Upon cigars and cigarettes, which shall be manufactured and sold, or removed for consumption or sale, there shall be levied and collected, in addition to the taxes now imposed by existing law, the following taxes, to be paid by the manufacturer or importer thereof: (a) on cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, 25 cents per thousand; (b) on cigars made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, if manufactured or imported to retail at 4 cents or more each, and not more than 7 cents each, $1 per thousand; (c) if manufactured or imported to retail at more than 7 cents each and not more than 15 cents each, $3 per thousand; (d) if manufactured or imported to retail at more than 15 cents each and not more than 20 cents each, $5 per thousand; (e) if manufactured or imported to retail at more than 20 cents each, $7 per thousand: Provided, That the word 'retail' as used in this section shall mean the ordinary retail price of a single cigar, and that the Commissioner of Internal Revenue may, by regulation, require the manufacturer or importer to affix to each box or container a conspicuous label indicating by letter the clause of this section under which the cigars therein contained have been tax-paid, which must correspond with the tax-paid stamp on said box or container; (f) on cigarettes made of tobacco, or any substitute therefor, made in or imported into the United States, and weighing not more than three pounds per thousand, 80 cents per thousand; weighing more than three pounds per thousand, $1.20 per thousand."

"Sec. 404. There shall be levied, assessed, and collected upon cigarette paper made up into packages, books, sets, or tubes, made up in or imported

into the United States and intended for use by the smoker in making cigarettes the following taxes: On each package, book, or set, containing more than twenty-five but not more than fifty papers, one-half of 1 cent; containing more than fifty but not more than one hundred papers, 1 cent; containing more than one hundred papers, 1 cent for each one hundred papers or fractional part thereof; and upon tubes, 2 cents for each one hundred tubes or fractional part thereof."

§ 6204c. (Act Feb. 24, 1919, c. 18, § 700.) (a) Cigars and cigarettes; tax; amount.

Upon cigars and cigarettes manufactured in or imported into the United States, and hereafter sold by the manufacturer or importer, or removed for consumption or sale, there shall be levied, collected, and paid under the provisions of existing law, in lieu of the internal-revenue taxes now imposed thereon by law, the following taxes, to be paid by the manufacturer or importer thereof—

On cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, $1.50 per thousand;

On cigars made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, if manufactured or imported to retail at not more than 5 cents each, $4 per thousand;

If manufactured or imported to retail at more than 5 cents each and not more than 8 cents each, $6 per thousand;

If manufactured or imported to retail at more than 8 cents each and not more than 15 cents each, $9 per thousand;

If manufactured or imported to retail at more than 15 cents each and not more than 20 cents each, $12 per thousand;

If manufactured or imported to retail at more than 20 cents each, $15 per thousand;

On cigarettes made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, $3 per thousand;

Weighing more than three pounds per thousand, $7.20 per thousand.

(b) Same; retail price.

Whenever in this section reference is made to cigars manufactured or imported to retail at not over a certain price each, then in determining the tax to be paid regard shall be had to the ordinary retail price of a single cigar.

(c) Same; labels.

The Commissioner may, by regulation, require the manufacturer or importer to affix to each box, package, or container a conspicuous label indicating the clause of this section under which the cigars therein contained have been tax-paid, which must correspond with the tax-paid stamp on such box or container.

(d) Packages of cigarettes and small cigars; stamps.

Every manufacturer of cigarettes (including small cigars weighing not more than three pounds per thousand) shall put up all the cigarettes and such small cigars that he manufactures or has manufactured for him, and sells or removes for consumption or sale, in packages or parcels containing five, eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty, eighty, or one hundred cigarettes each, and shall securely affix to each of such packages or parcels a suitable stamp denoting the tax thereon and shall properly cancel the same prior to such sale or removal for consumption or sale under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; and all cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in a like manner, in addition to the import stamp indi-

cating inspection of the customhouse before they are withdrawn therefrom. (40 Stat. 1116.)

This section is § 700 of the Revenue Act of 1918 (Title VII—Tax on Cigars, Tobacco, and Manufactures Thereof), cited above.

For taxes imposed upon cigars and cigarettes by R. S. § 3394, as amended, and § 400 of the Revenue Act of 1917, see U. S. Comp. St. 1916, § 6204, and note to § 6204a, ante.

§ 6204d. (Act Feb. 24, 1919, c. 18, § 702.) Floor tax on cigars, cigarettes, tobacco and snuff.

Upon all the articles enumerated in section 700 or 701, which were manufactured or imported, and removed from factory or customhouse on or prior to the date of the passage of this Act, and upon which the tax imposed by existing law has been paid, and which are, on the day after the passage of this Act, held by any person and intended for sale, there shall be levied, assessed, collected, and paid a floor tax equal to the difference between (a) the tax imposed by this Act upon such articles according to the class in which they are placed by this title, and (b) the tax imposed upon such articles by existing law other than section 403 of the Revenue Act of 1917. (40 Stat. 1118.)

This section is § 702 of the Revenue Act of 1918 (Title VII—Tax on Cigars, Tobacco, and Manufactures Thereof), cited above.

For corresponding provision of § 402 of the Revenue Act of 1917, see note under §§ 6174a–6174c, ante.

Sections 700 and 701 of the Revenue Act of 1918, referred to in this section, are set forth ante, §§ 6204c, 6174d.

For § 403 of the Revenue Act of 1917, also referred to in this section, see note to §§ 6174a–6174c, ante.

§ 6204e. (Act Feb. 24, 1919, c. 18, § 703.) Cigarette paper; tax; bonds of manufacturers.

There shall be levied, collected, and paid, in lieu of the taxes imposed by section 404 of the Revenue Act of 1917, upon cigarette paper made up into packages, books, sets, or tubes, made up in or imported into the United States and hereafter sold by the manufacturer or importer to any person (other than to a manufacturer of cigarettes for use by him in the manufacture of cigarettes) the following taxes, to be paid by the manufacturer or importer: On each package, book, or set, containing more than twenty-five but not more than fifty papers, ½ cent; containing more than fifty but not more than one hundred papers, 1 cent; containing more than one hundred papers, ½ cent for each fifty papers or fractional part thereof; and upon tubes, 1 cent for each fifty tubes or fractional part thereof.

Every manufacturer of cigarettes purchasing any cigarette paper made up into tubes (a) shall give bond in an amount and with sureties satisfactory to the Commissioner that he will use such tubes in the manufacture of cigarettes or pay thereon a tax equivalent to the tax imposed by this section, and (b) shall keep such records and render under oath such returns as the Commissioner finds necessary to show the disposition of all tubes purchased or imported by such manufacturer of cigarettes. (40 Stat. 1118.)

This section is § 703 of the Revenue Act of 1918 (Title VII—Tax on Cigars, Tobacco, and Manufactures Thereof), cited above.

For § 404 of the Revenue Act of 1917, referred to in this section, see note to §§ 6204a, 6204b, ante.

CHAPTER SEVEN A—OLEOMARGARINE, ADULTERATED BUTTER, AND PROCESS OR RENOVATED BUTTER

Sec.
6215. Butter, definition of.
6218. Oleomargarine; packing; retailing.
6220. Tax on oleomargarine.
6225. Stamps on emptied packages to be destroyed; penalty for neglect, etc.
6229. Fraud by manufacturer of oleomargarine; penalty.
6233. Butter, adulterated butter, and process or renovated butter, definition of.

§ 6215. (Act Aug. 2, 1886, c. 840, § 1.) Butter, definition of.

Construction and operation of law in general.—Enactment of Oleomargarine Act under Const. art. 1, § 8, par. 1, held not to limit power of Congress under paragraph 3 of same section; hence Meat Inspection and Pure Food Acts June 30, 1906 (Comp. St. 1916, §§ 8717 et seq.), apply to manufacturers of oleomargarine. Brougham v. Blanton Mfg. Co., 243 F. 503, 156 C. C. A. 201.

§ 6218. (Act Aug. 2, 1886, c. 840, § 6, as amended, Act Oct. 1, 1918, c. 178.) Oleomargarine; packing; retailing.

All oleomargarine shall be packed by the manufacturer thereof in firkins, tubs, or other wooden or paper packages not before used for that purpose, each containing not less than ten pounds, and marked, stamped, and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all sales made by the manufacturers of oleomargarine, and wholesale dealers in oleomargarine shall be in original stamped packages.

Retail dealers in oleomargarine must sell only from original stamped packages, in quantities not exceeding ten pounds, and shall pack the oleomargarine sold by them in suitable wooden or paper packages, which shall be marked and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden or paper packages as above described, or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any packages or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than $1,000, and be imprisoned not more than two years. (24 Stat. 210. 40 Stat. 1008.)

This section was amended by Act Oct. 1, 1918, c. 178, cited above, to read as set forth above. Prior to this amendment the section read as follows:

"All oleomargarine shall be packed by the manufacturer thereof in firkins, tubs, or other wooden packages not before used for that purpose, each containing not less than ten pounds, and marked, stamped, and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all sales made by manufacturers of oleomargarine, and wholesale dealers in oleomargarine shall be in original stamped packages. Retail dealers in oleomargarine must sell only from original stamped packages, in quantities not exceeding ten pounds, and shall pack the oleomargarine sold by them in suitable wooden or paper packages, which shall be marked and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden or paper packages as above described, or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any

package denoting a less amount of tax than that required by law, shall be fined for each offense not more than one thousand dollars, and be imprisoned not more than two years."

Notes of Decisions

Constitutionality.—See U. S. v. Doremus (D. C.) 246 F. 958.

Construction and application in general.—In view of the federal law regulating the manufacture, packing, and shipment of oleomargarine, the placing by a nonresident manufacturer of a jobbers' profit sharing coupon in its original shipping boxes and provisions for the redemption thereof are all parts of one commercial transaction, and as such constitute interstate commerce. State v. Weigle (Wis.) 168 N. W. 385.

Evidence.—In prosecution for violating the oleomargarine laws, a witness held to have qualified as an expert to testify whether the oleomargarine in tubs was factory packed. Kreuzer v. U. S. (C. C. A.) 254 F. 34.

In a prosecution for violating the oleomargarine laws, the overruling of objections to testimony by a deputy collector of internal revenue, who took part in the raid, as to what another participant in the raid said about the barricade, etc., held not prejudicial error, where he also repeated what he saw and heard the defendant say and do. Id.

In a prosecution for violating the oleomargarine law as a retail dealer, monthly returns made to the collector of internal revenue by a manufacturer and wholesaler, showing deliveries of such product, held inadmissible, not being public records. U. S. v. Elder (D. C.) 232 F. 267.

§ 6220. (Act Aug. 2, 1886, c. 840, § 8, as amended, Act May 9, 1902, c. 784, § 3.) Tax on oleomargarine.

Prosecution and punishment.—Where defendant was indicted for violating this section and section 13 (Comp. St. 1916, § 6225), the fact that the court, after having sentenced defendant on those counts charging violation of this section, sentenced him under section 13, relating to destruction of stamps on emptied packages, did not nullify the first sentence, constituting a double punishment, though the latter was not imposed until after writ of error and supersedeas was obtained. Kreuzer v. U. S. (C. C. A.) 254 F. 34.

Under Oleomargarine Act Aug. 2, 1886, §§ 3, 8, as amended by Act May 9, 1902, §§ 2, 3, and section 17 (Comp. St. 1916, §§ 5967, 6220, 6229), an indictment charging that defendants, as manufacturers of artificially colored oleomargarine, defrauded the government of its revenues, is not bad because not specifying whether defendants merely added artificial coloration or manufactured the whole product. U. S. v. Orr (D. C.) 233 F. 718.

§ 6225. (Act Aug. 2, 1886, c. 840, § 13.) Stamps on emptied packages to be destroyed; penalty for neglect, etc.

Sentence.—Where defendant was indicted for violating Act Aug. 2, 1886, § 8, as amended by Act May 9, 1902, § 3 (Comp. St. 1916, § 6220), and this section, the fact that the court, after having sentenced defendant on those counts charging violation of section 8, which relates to tax on oleomargarine, etc., sentenced him under this section, did not nullify the first sentence, constituting a double punishment, though the latter was not imposed until after writ of error and supersedeas was obtained. Kreuzer v. U. S. (C. C. A.) 254 F. 34.

§ 6229. (Act Aug. 2, 1886, c. 840, § 17.) Fraud by manufacturer of oleomargarine; penalty.

Conspiracy to defraud.—Only one overt act is essential to a conviction of a conspiracy to defraud the United States of taxes on artificially colored oleomargarine. Tillinghast v. Richards (D. C.) 233 F. 710; U. S. v. Orr (D. C.) 233 F. 717.

Indictment.—An indictment charging a conspiracy to defraud the United States of taxes on artificially colored oleomargarine, held to contain a sufficient averment of overt acts; it being unnecessary to allege that the scheme was completed or the government defrauded. U. S. v. Orr (D. C.) 233 F. 717.

Under Oleomargarine Act Aug. 2, 1886, §§ 3, 8 (as amended by Act May 9, 1902, §§ 2, 3), and section 17 (Comp. St. 1916, §§ 5967, 6220, 6229), an indictment charging that defendants, as manufacturers of artificially colored oleomargarine, defrauded the government of its revenues, is not bad because not specifying whether defendants merely added artificial coloration or manufactured the whole product. U. S. v. Orr (D. C.) 233 F. 718.

§ 6233. (Act May 9, 1902, c. 784, § 4.) Butter, adulterated butter, and process or renovated butter, definition of.

What is "adulterated butter."—Butter made, without intent, that abnormal quantity of water be absorbed, though containing over 16 per cent., held despite rule of Commissioner of Internal Revenue, approved by Secretaries of Treasury and Agriculture, not adulterated, within this section, and no tax could be imposed on manufacturer as one of adulterated butter. Baldwin Co-operative Creamery Ass'n v. Williams (D. C.) 233 F. 607.

CHAPTER SEVEN E—OPIUM FOR SMOKING

§ 6287a. (Act Jan. 17, 1914, c. 10, § 1.) Tax on opium manufactured for smoking purposes.

Validity.—This section held constitutional though the tax is so high as to be prohibitive of the traffic, and though it discriminates against aliens. Lee Mow Lin v. U. S. (C. C. A.) 250 F. 694.

Indictment.—An indictment charging an alien with engaging in the manufacture of smoking opium, in violation of this section, need not aver that defendant had not given a bond as required of manufacturers who are citizens. Lee Mow Lin v. U. S. (C. C. A.) 250 F. 694.

Evidence.—Expert testimony held admissible on the question whether smoking opium, analyzed by the witness, was of domestic or foreign manufacture. Lee Mow Lin v. U. S. (C. C. A.) 250 F. 694.

Cited without definite application, U. S. v. O'Hara (D. C.) 242 F. 749.

§ 6287e. (Act Jan. 17, 1914, c. 10, § 5.) Penalty for violations of provisions of act; forfeiture of opium prepared for smoking found without stamps.

Sentence.—This section is valid to support a sentence of five years. Lee Mow Lin v. U. S. (C. C. A.) 250 F. 694.

CHAPTER SEVEN F—OPIUM, COCA LEAVES, AND COMPOUNDS, MANUFACTURERS, ETC., THEREOF

Sec.
6287g. Persons required to register and pay tax; unlawful transactions; laws applicable; regulations.
6287h. Sale, etc., of said drugs unlawful, except on written order.
6287k. Duplicate order forms, etc., and statements, etc., to be open to inspection.
6287l. Certain preparations and remedies excepted.
6287n. Possession or control of drugs by person not registered, etc., unlawful; exceptions.
6287o. Violations of act; punishment.
6287r. Forfeiture and disposition of opium seized.

§ 6287g. (Act Dec. 17, 1914, c. 1, § 1, as amended, Act Feb. 24, 1919, c. 18, § 1006.) Persons required to register and pay tax; unlawful transactions; laws applicable; regulations.

On or before July 1 of each year every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away opium or coca leaves, or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name or style, place of business and place or places where such business is to be carried on, and pay the special taxes hereinafter provided;

Every person who on January 1, 1919, is engaged in any of the activities above enumerated, or who between such date and the passage of this Act first engages in any of such activities shall within 30 days after the passage of this Act make like registration,

and shall pay the proportionate part of the tax for the period ending June 30, 1919; and

Every person who first engages in any of such activities after the passage of this Act shall immediately make like registration and pay the proportionate part of the tax for the period ending on the following June 30th;

Importers, manufacturers, producers, or compounders, $24 per annum; wholesale dealers, $12 per annum; retail dealers, $6 per annum; physicians, dentists, veterinary surgeons, and other practitioners lawfully entitled to distribute, dispense, give away, or administer any of the aforesaid drugs to patients upon whom they in the course of their professional practice are in attendance, shall pay $3 per annum.

Every person who imports, manufactures, compounds, or otherwise produces for sale or distribution any of the aforesaid drugs shall be deemed to be an importer, manufacturer, or producer.

Every person who sells or offers for sale any of said drugs in the original stamped packages, as hereinafter provided, shall be deemed a wholesale dealer.

Every person who sells or dispenses from original stamped packages, as hereinafter provided, shall be deemed a retail dealer: Provided, That the office, or if none, the residence, of any person shall be considered for the purpose of this Act his place of business; but no employee of any person who has registered and paid special tax as herein required, acting within the scope of his employment, shall be required to register and pay special tax provided by this section: Provided further, That officials of the United States, Territorial, District of Columbia, or insular possessions, State or municipal governments, who in the exercise of their official duties engage in any of the business herein described, shall not be required to register, nor pay special tax, nor stamp the aforesaid drugs as hereinafter prescribed, but their right to this exemption shall be evidenced in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe.

It shall be unlawful for any person required to register under the provisions of this Act to import, manufacture, produce, compound, sell, deal in, dispense, distribute, administer, or give away any of the aforesaid drugs without having registered and paid the special tax as imposed by this section.

That the word "person" as used in this Act shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person; and all provisions of existing law relating to special taxes, as far as necessary, are hereby extended and made applicable to this section.

That there shall be levied, assessed, collected, and paid upon opium, coca leaves, any compound, salt, derivative, or preparation thereof, produced in or imported into the United States, and sold, or removed for consumption or sale, an internal-revenue tax at the rate of 1 cent per ounce, and any fraction of an ounce in a package shall be taxed as an ounce, such tax to be paid by the importer, manufacturer, producer, or compounder thereof, and to be represented by appropriate stamps, to be provided by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the stamps herein provided shall be so affixed to the bottle or other container as to securely seal the stopper, covering, or wrapper thereof.

The tax imposed by this section shall be in addition to any import duty imposed on the aforesaid drugs.

It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this section by the person in whose possession same may be found; and the possession of any original stamped package containing any of the aforesaid drugs by any person who has not registered and paid special taxes as required by this section shall be prima facie evidence of liability to such special tax: Provided, That the provisions of this paragraph shall not apply to any person having in his or her possession any of the aforesaid drugs which have been obtained from a registered dealer in pursuance of a prescription, written for legitimate medical uses, issued by a physician, dentist, veterinary surgeon, or other practitioner registered under this Act; and where the bottle or other container in which such drug may be put up by the dealer upon said prescription bears the name and registry number of the druggist, serial number of prescription, name and address of the patient, and name, address, and registry number of the person writing said prescription; or to the dispensing, or administration, or giving away of any of the aforesaid drugs to a patient by a registered physician, dentist, veterinary surgeon, or other practitioner in the course of his professional practice, and where said drugs are dispensed or administered to the patient for legitimate medical purposes, and the record kept as required by this Act of the drugs so dispensed, administered, distributed, or given away.

And all the provisions of existing laws relating to the engraving, issuance, sale, accountability, cancellation, and destruction of tax-paid stamps provided for in the internal-revenue laws are, in so far as necessary, hereby extended and made to apply to stamps provided by this section.

That all unstamped packages of the aforesaid drugs found in the possession of any person, except as herein provided, shall be subject to seizure and forfeiture, and all the provisions of existing internal-revenue laws relating to searches, seizures, and forfeitures of unstamped articles are hereby extended to and made to apply to the articles taxed under this Act and the persons upon whom these taxes are imposed.

Importers, manufacturers, and wholesale dealers shall keep such books and records and render such monthly returns in relation to the transactions in the aforesaid drugs as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations require.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying the provisions of this Act into effect. (38 Stat. 785. 40 Stat. 1130.)

This section was amended by § 1006 of the Revenue Act of 1918, cited above, to read as set forth above. Prior to this amendment this section read as follows:

"On and after the first day of March, nineteen hundred and fifteen, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name or style, place of business, and place or places where such business is to be carried on: Provided, That the office, or if none, then the residence of any person shall be considered for the purposes of this Act to be his place of business. At the time of such registry and on or before the first day of July, annually thereafter, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs shall pay to the said collector a special tax at the rate of $1 per annum: Provided, That no

employee of any person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs, acting within the scope of his employment, shall be required to register or to pay the special tax provided by this section: Provided further, That the person who employs him shall have registered and paid the special tax as required by this section: Provided further, That officers of the United States Government who are lawfully engaged in making purchases of the above-named drugs for the various departments of the Army and Navy, the Public Health Service, and for Government hospitals and prisons, and officers of any State government, or of any county or municipality therein, who are lawfully engaged in making purchases of the above-named drugs for State, county, or municipal hospitals or prisons, and officials of any Territory or insular possession or the District of Columbia or of the United States who are lawfully engaged in making purchases of the above-named drugs for hospitals or prisons therein shall not be required to register and pay the special tax as herein required.

"It shall be unlawful for any person required to register under the terms of this Act to produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away any of the aforesaid drugs without having registered and paid the special tax provided for in this section.

"That the word 'person' as used in this Act shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person; and all provisions of existing law relating to special taxes, so far as applicable, including the provisions of section thirty-two hundred and forty of the Revised Statutes of the United States are hereby extended to the special tax herein imposed.

"That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying the provisions of this Act into effect."

Notes of Decisions

Constitutionality.—In a prosecution for the violation of the Harrison Drug Act, regulating the sale of narcotics, where no question of seizure was involved, defendant cannot attack the validity of that act because of its provisions authorizing searches and seizures. Thurston v. U. S., 241 F. 335, 154 C. C. A. 215, certiorari denied 38 S. Ct. 9, 62 L. Ed. 529.

Harrison Anti-Narcotic Act Dec. 17, 1914 (Comp. St. 1916, §§ 6287g–6287q), was within the constitutional powers of Congress, and is valid. U. S. v. Jin Fuey Moy (D. C.) 253 F. 213.

The Harrison Anti-Narcotic Act (Comp. St. 1916, §§ 6287g–6287q) is valid as a revenue measure, having substantial relation to the raising of revenue, by bringing the traffic in such drugs into the open, and it is immaterial that another purpose of Congress may have been the suppression of the drug habit. Hughes v. U. S. (C. C. A.) 253 F. 543, 545.

Construction of statute in general.—This section does not provide that one intending to deal in drugs shall register at his place of business, but that he shall register at place where business is to be carried on. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

Harrison Drug Act did not in any way affect Act Jan. 17, 1914, c. 9 (Comp. St. 1916, § 6287a), amending earlier Act Feb. 9, 1909, c. 100, prohibiting importation of smoking opium, and declaring presumption of illegality of importation of such opium. Gee Woe v. U. S. (C. C. A.) 250 F. 428.

The Harrison Anti-Narcotic Act should be read in the light of the previous legislation of Congress in restraint of the traffic in opium. U. S. v. Jin Fuey Moy (D. C.) 253 F. 213.

Departmental regulations.—This section does not empower them to make unlawful a druggist's business in the drugs, if under section 2 (Comp. St. 1916, § 6287h) it is not so. U. S. v. Joseph Fleming & Son Co. (D. C.) 251 F. 932.

Violation of statute.—One merely having possession of opium or derivatives of coca leaves for his own use is not a violator of Harrison Drug Act, §§ 1, 8 (Comp. St. 1916, §§ 6287g, 6287n). Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

Indictment.—Under this section, person intending to dispose of opium, etc., must register at place where he intends to carry on business, and indictment charging conspiracy and disposition in First district of Illinois by accused and another, who was not therein registered, is not defective for failure to aver such other had not registered his place of business. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

Indictments charging violation of this section held defective in failing to allege that morphine sulphate was derivative of opium, and that cocaine was derivative of coca leaves. U. S. v. Hammers (D. C.) 241 F. 542.

Under Act Dec. 17, 1914, c. 1, §§ 1, 8 (Comp. St. 1916, §§ 6287g, 6287n), indictment for having possession of opium, etc., held not required to negative an innocent possession by alleging

that the possession was for purposes of sale. U. S. v. O'Hara (D. C.) 242 F. 749.

Evidence.—Evidence that morphine, heroin, and cocaine are derivatives of opium and coca leaves is unnecessary, on prosecution for violation of the Harrison Anti-Narcotic Act (Comp. St. 1916, §§ 6287g–6287q); it being a matter of meaning of words long in common use, about which there is no obscurity, controversy, or dispute. Hughes v. U. S. (C. C. A.) 253 F. 543, 545.

The court will not take judicial notice that cocaine, morphine, and morphine sulphate are derivatives of opium and coca leaves. U. S. v. Hammers (D. C.) 241 F. 542.

Trial and sentence.—The refusal of a charge requested by accused, directing the jury to find him not guilty under one count contained in the indictment, is not error, though the evidence did not sustain a conviction under that count. Baldwin v. U. S., 238 F. 793, 151 C. C. A. 643.

Under Rev. St. § 1024 (Comp. St. 1916, § 1690), government cannot, in a prosecution for conspiring to violate and for violating Harrison Drug Act, be required at close of its case to elect on which of acts conviction would be sought; several charges being joined in one indictment. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

§ 6287h. (Act Dec. 17, 1914, c. 1, § 2.) Sale, etc., of said drugs unlawful, except on written order.

Constitutionality.—This section is not invalid on the ground that its provisions are in no sense provisions of a revenue measure, but are purely police restrictions. Fyke v. U. S. (C. C. A.) 254 F. 225.

In view of reserved police power of states and legislation of state of Texas, held, that indictment under this section, charging that Texas physician sold and dispensed heroin, derivative of opium, not under written order issued in blank by commissioner of internal revenue, and not in regular course of his professional practice, states no cause of action; statute, in so far as it is purely a police regulation not being valid. U. S. v. Doremus (D. C.) 246 F. 958.

This section is not invalid as a revenue provision, though its chief purpose is to control distribution, by empowering physicians exclusively to distribute the drug only as a medicine, and thereby suppress consumption by addicts. U. S. v. Rosenberg (D. C.) 251 F. 963.

Construction and application in general.—This section applies not only to registered dealers, but to all sellers, for revenue is raised from the sale of prohibited drugs. Fyke v. U. S. (C. C. A.) 254 F. 225.

Under this section, a dealer's business, under exception (b), is lawful if he sells only on proper prescription, however much is prescribed; there being no limitation therein or in exception (a) as to amount physician may prescribe. U. S. v. Joseph Fleming & Son Co. (D. C.) 251 F. 932.

Physicians dispensing narcotics.—Relative to violation of the Harrison Anti-Narcotic Act (Comp. St. 1916, §§ 6287g–6287q) by selling without written orders from purchasers, it is immaterial that defendant is a physician; his sales not being in the practice of his profession, but as a registered dealer. Hughes v. U. S. (C. C. A.) 253 F. 543, 545.

Sale, barter, exchange, or gift.—Where parties had agreed on all terms of sale of narcotic drugs in violation of Harrison Act, and only payment and delivery remained, sale was properly treated as consummated. Hammer v. U. S., 249 F. 336, 161 C. C. A. 344.

The provision of this section, making it a criminal offense to "sell, barter, exchange, or give away" certain narcotic drugs, except on orders on prescribed forms, is not limited to cases where title to the prescribed drug was in him who undertook to dispense it. U. S. v. Jin Fuey Moy (D. C.) 253 F. 213.

Failure to keep order or record.—Offense of giving order for opium and failing to preserve duplicate, so as to be readily accessible, in violation of Anti-Drug Act, is committed when ready accessibility first fails after order's acceptance, and is capable of continuity. U. S. v. Gaag (D. C.) 237 F. 728.

Regulations.—Harrison Anti-Narcotic Law, § 1 (Comp. St. 1916, § 6287g), authorizing designated government officers to make rules and regulations for carrying the provisions of the act into effect, does not empower them to make unlawful a druggist's business in the drugs, if under this section it is not so. U. S. v. Joseph Fleming & Son Co. (D. C.) 251 F. 932.

Indictment.—Under Harrison Act Dec. 17, 1914, §§ 2, 8 (Comp. St. 1916, §§ 6287h, 6287n), an indictment for conspiracy to violate the act is not defective because it alleges that one of defendants was a physician registered under the act and that the other was a proprietor of a drug store. Thurston v. U. S., 241 F. 335, 154 C. C. A. 215, certiorari denied 38 S. Ct. 9, 62 L. Ed. 531.

An indictment charging a violation

of Harrison Drug Act need not negative exemptions contained therein; provisions of section 8 (Comp. St. 1916, § 6287n) being applicable to all exemptions contained in act. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

Indictment charging violation of Anti-Drug Act, in that defendant gave order for opium and failed to preserve duplicate so as to be accessible, need not allege offense as of day certain, charge being omission to perform statutory duty, but must allege offense was committed within two years after acceptance of order. U. S. v. Gaag (D. C.) 237 F. 728.

In prosecution for violating this section, held, that state must negative exception in favor of dispensing of drugs by duly registered physicians to patients personally attended, and indictment failing to negative exception is defective. U. S. v. Hammers (D. C.) 241 F. 542.

Indictment charging defendant with giving a prescription for and so dispensing pounds of opium held to charge no offense under the Harrison Law. U. S. v. Reynolds (D. C.) 244 F. 991.

In an indictment of a physician under this section for dispensing opium "not in the course of his professional practice," the phrase quoted, following the language of the statute, is not bad as a conclusion of the pleader, as it states the ultimate facts. U. S. v. Rosenberg (D. C.) 251 F. 963.

Indictment under this section, charging that defendant did sell, barter, exchange, and give away narcotic drugs, contrary to its provisions, held sufficient. U. S. v. Jin Fuey Moy (D. C.) 253 F. 213.

Evidence and burden of proof.—A dealer in narcotic drugs has the burden of showing registry and payment of special tax imposed by Harrison Act. Gee Woe v. U. S. (C. C. A.) 250 F. 428.

In a prosecution under Harrison Drug Act Dec. 17, 1914 (Comp. St. 1916, §§ 6287g–6287q), wherein defendant had not testified in his examination in chief as to his alleged offer to bribe an officer to delay his arrest, questions relative thereto were not proper cross-examination. Paquin v. U. S. (C. C. A.) 251 F. 579.

In a prosecution for violating the Harrison Drug Act, evidence held sufficient to sustain the conviction. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

In prosecution for unlawful sale of narcotics in violation of Harrison Act, which sale occurred at point far distant from defendant's residence, evidence that defendant was engaged in business of dispensing narcotics at his residence held admissible, and not subject to attack as disclosing other offenses. Hammer v. U. S., 249 F. 336, 161 C. C. A. 344.

What is a lawful business in the sale of narcotics being defined by this section, it is error, on prosecution for violation thereof, to admit evidence of what constitutes a lawful business therein, varying from the statutory definition. U. S. v. Joseph Fleming & Son Co. (D. C.) 251 F. 932.

§ 6287k. (Act Dec. 17, 1914, c. 1, § 5.) Duplicate order forms, etc., and statements, etc., to be open to inspection.

Cited without definite application,
Thurston v. U. S. (C. C. A.) 241 F. 335.

§ 6287*l*. (Act Dec. 17, 1914, c. 1, § 6, as amended, Act Feb. 24, 1919, c. 18, § 1007.) Certain preparations and remedies excepted.

The provisions of this Act shall not be construed to apply to the manufacture, sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semisolid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use, only, except liniments, ointments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substitute for them: Provided, That such remedies and preparations are manufactured, sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this Act: Provided further, That any manufacturer, producer, compounder, or vendor (including dispensing physicians) of the preparations and remedies mentioned in this section shall keep a record of all sales, exchanges, or gifts of such prep-

arations and remedies in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall direct. Such record shall be preserved for a period of two years in such a way as to be readily accessible to inspection by any officer, agent or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officers named in section 5 of this Act, and every such person so possessing or disposing of such preparations and remedies shall register as required in section 1 of this Act and, if he is not paying a tax under this Act, he shall pay a special tax of $1 for each year, or fractional part thereof, in which he is engaged in such occupation, to the collector of internal revenue of the district in which he carries on such occupation as provided in this Act. The provisions of this Act as amended shall not apply to decocainized coca leaves or preparations made therefrom, or to other preparations of coca leaves which do not contain cocaine. (38 Stat. 789. 40 Stat. 1132.)

This section was amended by § 1007 of the Revenue Act of 1918, cited above, to read as set forth above. Prior to this amendment this section read as follows: "The provisions of this Act shall not be construed to apply to the sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semisolid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substitute for them: Provided, That such remedies and preparations are sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this Act. The provisions of this Act shall not apply to decocainized coca leaves or preparations made therefrom, or to other preparations of coca leaves which do not contain cocaine."

§ 6287n. (Act Dec. 17, 1914, c. 1, § 8.) Possession or control of drugs by person not registered, etc., unlawful; exceptions.

Validity.—Const. Amend. 6, does not preclude Congress from exacting, as it has in this section, that it shall not be necessary to negative in any indictment any of the statutory exemptions or exceptions therein. Fyke v. U. S. (C. C. A.) 254 F. 225.

Construction and application in general.—This section held to make possession of prohibited drugs unlawful, and not merely to provide a rule of evidence for violations of section 1. U. S. v. O'Hara (D. C.) 242 F. 749.

Persons to whom statute applies.—This section refers to those only who are required by that statute to register and pay the special tax. U. S. v. Jin Fuey Moy, 36 S. Ct. 658, 241 U. S. 394, 60 L. Ed. 1061, affirming judgment (D. C.) 225 F. 1003.

For unregistered dealer in opium to have possession of opium is a violation of this section. Gee Woe v. U. S. (C. C. A.) 250 F. 428.

Keeping for personal use.—One merely having possession of opium or derivatives of coca leaves for his own use is not a violator of Harrison Drug Act, §§ 1, 8 (Comp. St. 1916, § 6287g, 6287n), and hence purchaser for his own use, who testified in a prosecution for violation of the Drug Act, cannot be treated as an accomplice of seller and accused, his coconspirator. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

Despite construction of this section, held, that accused, though he appeared to have obtained smoking opium from a source having no direct connection with importation, is liable under Act Jan. 17, 1914, §§ 2, 3 (Comp. St. 1916, §§ 8801, 8801a), unless he can rebut the presumption of unlawful importation. U. S. v. Ah Hung (D. C.) 243 F. 762.

Indictment.—Under Harrison Act Dec. 17, 1914, §§ 2, 8 (Comp. St. 1916, §§ 6287h, 6287n), an indictment for conspiracy to violate the act is not defective, because it alleges that one of defendants was a physician registered under the act and that the other was a proprietor of a drug store. Thurston v. U. S., 241 F. 335, 154 C. C. A. 215, certiorari denied 38 S. Ct. 9, 62 L. Ed. 529.

An indictment charging a violation of the Harrison Narcotic Act (Comp. St. 1916, §§ 6287g–6287q) held to sufficient-

ly negative any of the exemptions and exceptions therein contained. Fyke v. U. S. (C. C. A.) 254 F. 225.

Under Act Dec. 17, 1914, c. 1, §§ 1, 8 (Comp. St. 1916, §§ 6287g, 6287n), indictment for having possession of opium, etc., held not required to negative an innocent possession by alleging that the possession was for purposes of sale. U. S. v. O'Hara (D. C.) 242 F. 749.

Indictment charging conspiracy to commit an offense denounced by Harrison Act of December 17, 1914, relating to narcotic drugs need not negative exceptions found in statute defining offense which was object of conspiracy. U. S. v. D'Arcy (D. C.) 243 F. 739.

§ 6287o. (Act Dec. 17, 1914, c. 1, § 9.) Violations of act; punishment.

Construction and application.—Rule of strict construction applies to criminal provisions of the Harrison Anti-Narcotic Act. U. S. v. Doremus (D. C.) 246 F. 958.

Nature of offense.—Violation of Anti-Drug Act, by giving order for opium and failing to preserve duplicate so as to be readily accessible, is in nature merely a misdemeanor, and not a true crime, though made a felony by Penal Code, § 335 (Comp. St. 1916, § 10509). U. S. v. Gaag (D. C.) 237 F. 728.

Indictment.—An indictment charging that defendant sold narcotic drugs in violation of the Harrison Narcotic Act held sufficient to charge a violation of the act, and show defendant to be subject to the penalty prescribed by this section, regardless of whether it was alleged defendant was required to register. Fyke v. U. S. (C. C. A.) 254 F. 225.

An indictment charging a physician and a druggist with conspiring to violate the Harrison Act, regulating the sale of narcotics, held fully to inform the defendants of the charge, so as to be sufficient to put them on trial. Thurston v. U. S., 241 F. 335, 154 C. C. A. 215, certiorari denied 38 S. Ct. 9, 62 L. Ed. 529.

Indictment charging offense of conspiracy to violate Harrison Act held to sufficiently aver place of commission of overt acts. U. S. v. D'Arcy (D. C.) 243 F. 739.

Trial.—In a prosecution under Harrison Drug Act Dec. 17, 1914 (Comp. St. 1916, §§ 6287g–6287q), the indictment not charging defendant's attempt to bribe an officer, and there being no evidence thereof, or as to defendant's character, except on defendant's cross-examination, it was improper for the prosecuting attorney in argument to comment on the fact that defendant, long after the offense was committed, had offered money to an officer if the latter, would defer the arrest. Paquin v. U. S. (C. C. A.) 251 F. 579.

Evidence.—In a prosecution for conspiring to violate and violating Harrison Drug Act, evidence of accused's assistance to his coconspirator in prior prosecution for violating state drug acts held admissible to show relations between parties, etc. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

In prosecution for conspiring to violate and violating the Harrison Drug Act, evidence held sufficient to establish the venue in the district laid in the indictment. Id.

Judgment and sentence.—Where the evidence abundantly supported more than one of the five counts charging the defendant with violating Drug Registration Act Dec. 17, 1914, and the sentence imposed was such as could have been imposed under this section of that act for a single offense, the judgment will not be reversed for errors affecting only one count. Baldwin v. U. S., 238 F. 793, 151 C. C. A. 643.

The appellate court cannot substitute its own discretion for that of the District Court, and, those believing lighter punishments than those imposed for violation of the Harrison Drug Act would have vindicated the law, punishment imposed cannot be treated as excessive. Wallace v. U. S., 243 F. 300, 156 C. C. A. 80, certiorari denied 38 S. Ct. 11, 245 U. S. 650, 62 L. Ed. 531.

§ 6287r. (Act Feb. 24, 1919, c. 18, § 1008.) Forfeiture and disposition of opium seized.

All opium, its salts, derivatives, and compounds, and coca leaves, salts, derivatives, and compounds thereof, which may now be under seizure or which may hereafter be seized by the United States Government from any person or persons charged with any violation of the Act of October 1, 1890, as amended by the Acts of March 3, 1897, February 9, 1909, and January 17, 1914, or the Act of December 17, 1914, shall upon conviction of the person or persons from whom seized be confiscated by and forfeited to the United States; and the Secretary is hereby authorized to deliver for medical or scientific purposes to any department, bureau, or other agency of

the United States Government, upon proper application therefor under such regulation as may be prescribed by the Commissioner, with the approval of the Secretary, any of the drugs so seized, confiscated, and forfeited to the United States.

The provisions of this section shall also apply to any of the aforesaid drugs seized or coming into the possession of the United States in the enforcement of any of the above-mentioned Acts where the owner or owners thereof are unknown. None of the aforesaid drugs coming into possession of the United States under the operation of said Acts, or the provisions of this section, shall be destroyed without certification by a committee appointed by the Commissioner, with the approval of the Secretary, that they are of no value for medical or scientific purposes. (40 Stat. 1132.)

This section is § 1008 of the Revenue Act of 1918 (Title X—Special Taxes), cited above.

For the acts relating to opium, etc., referred to in this section, see U. S. Comp. St. 1916, §§ 6287a–6287f, 8800–8801f.

CHAPTER EIGHT—BANKS AND BANKERS

§ 6293. (R. S. § 3409.) Taxes, when payable.

Cited without definite application, Wainwright v. Pennsylvania R. Co. (D. C.) 253 F. 459.

CHAPTER EIGHT A—SPECIAL EXCISE TAX ON CORPORATIONS

§§ 6300–6309. [Superseded.]

These sections of the U. S. Compiled Statutes, 1913, consisted of the provisions of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 38, 36 Stat. 112, imposing a special excise tax on corporations, and subsequent acts amendatory thereof, relating to such tax. These provisions were continued in force for a limited time by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, S. Said provisions were however wholly superseded by Act Sept. 8, 1916, c. 463, Title I, part II (U. S. Comp. St. 1916, §§ 6336j–6336x), imposing an income tax on corporations, and by § 407 of said Act Sept. 8, 1916, c. 463 (U. S. Comp. St. 1916, § 5980a), imposing a special tax on corporations. These sections were accordingly omitted from the United States Compiled Statutes of 1916. But, owing to the fact that, for the calendar years 1911 and 1912, the net income of corporations for the purpose of determining the War-Profits and Excess-Profits Tax is to be ascertained and returned in accordance with the provisions of these sections, by Act Feb. 24, 1919, c. 18, § 320, post, § 6336$^{7}/_{16}$g, these sections are now inserted in full below.

The text of Act Aug. 5, 1909, c. 6, § 38, is as follows:

[§ 6300.] "Every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the Acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its Territories, Alaska, and the District

of Columbia during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations or insurance companies, subject to the tax hereby imposed: Provided, however, That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual."

[§ 6301.] "Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: Provided, That in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds."

[§ 6302.] "Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December

thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company, has its principal place of business, or, in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth, (first) the total amount of the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint stock company or association, or insurance company, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association, or insurance company, within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company, within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its Territories, Alaska, and the District of Columbia; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint stock company or association or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its Territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue."

[§ 6303.] "Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint stock company

or association, or insurance company, is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint stock company or association, or insurance company, has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

[§ 6304.] "Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

[§ 6305.] "Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

[§ 6306.] "Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

[§ 6307.] "Eighth. If any of the corporations, joint stock companies or associations, or insurance companies, aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall ren-

der a false or fraudulent return, such corporation, joint stock company or association, or insurance company, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

"Any person authorized by law to make, render, sign, or verify any return who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

"All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

"Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books, as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process."

The text of the amendatory Act of March 4, 1913, c. 142, § 1, is as follows:

[§ 6308.] "For classifying, indexing, exhibiting, and properly caring for the returns of all corporations required by section thirty-eight of the tariff Act approved August fifth, nineteen hundred and nine, including the employment in the District of Columbia of such clerical and other personal services and for rent of such quarters as may be necessary, $30,000: Provided, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President."

The text of Act March 3, 1913, c. 120, is as follows:

[§ 6309.] "Any corporation, joint-stock company, association, or any insurance company subject to the special excise tax provided by section thirty-eight of the Act of August fifth, nineteen hundred and nine, known as the special excise corporation-tax law, which has been or may be compelled to pay or become liable for any additional tax within the provisions of subsection five of said section thirty-eight, which additional tax has been or may hereafter be imposed for a neglect to file a return as provided in said corporation-tax law on or before the first of March of any year, may, within one year after the passage of this act, or within one year after the date of notice of assessment where such notice is given after the passage of this act, make application to the Commissioner of Internal Revenue for a refund of such additional tax. And the Commissioner of Internal Revenue, with the advice and consent of the Solicitor of Internal Revenue, is hereby directed to remit, abate, or pay back all such additional taxes in excess of $100 for any single year whenever in any case it appears to his satisfaction that the additional tax was assessed or imposed solely because of a neglect to make a return at the time or times specified in said act, and without any intention or design on the part of any officer of such corporation, joint-stock company, association, or insurance company to hinder or delay the United States in the collection of the tax originally assessed."

Notes of Decisions

Decisions affecting § 6300

1. Constitutionality in general.—The Corporation Excise Tax Law, in so far as it imposes taxes upon income resulting from exportation of goods and sale in foreign countries, is not invalid as imposing a tax on exports; the exportation being complete before the income, which presupposed a successfully completed transaction, arises for taxation. Wm. E. Peck & Co. v. Lowe (D. C.) 234 F. 125.

4. Construction and operation of statute in general.—Legislative purpose of Corporation Tax Act Aug. 5, 1909, imposing on every corporation organized for profit an excise tax equivalent to 1 per cent. on the entire net income above $5,000 received from all sources during the year, was not to tax property as such, or the mere conversion of property into money, but to tax conduct of business of corporations organized for profit. Doyle v. Mitchell Bros. Co., 38 S. Ct. 467, 247 U. S. 179, 62 L. Ed. 1054, affirming judgment 235 F. 686, 149 C. C. A. 106, L. R. A. 1917E, 568, which affirmed Mitchell Bros. Co. v. Doyle (D. C.) 225 F. 437.

Corporation Excise Tax Act Aug. 5, 1909, § 38, must be construed as imposing an excise tax upon the right to do business in corporate form; so, if persons choose the corporate form for business, the corporate income may be estimated upon the assumption that the form is to be regarded as the reality. U. S. v. Oregon-Washington R. & Nav. Co. (C. C. A.) 251 F. 211.

Whether a mutual insurance association is exempt from tax under the proviso of the Corporation Tax Act as a fraternal beneficiary society depends on whether or not it has a fraternal side and object, and not upon whether it makes a profit. Commercial Travelers'

Life & Accident Ass'n v. Rodway (D. C.) 235 F. 370.

5. "Income received" and "net income."—Royalties received by corporate owners of lands leased for mining and removing merchantable iron ore therein held income, within Act Aug. 5, 1909, § 38, imposing a tax measured by annual income on doing business in corporate capacity. Von Baumbach v. Sargent Land Co., 37 S. Ct. 201, 242 U. S. 503, 61 L. Ed. 460, reversing judgment 219 F. 31, 134 C. C. A. 649.

Where a corporation in 1902 purchased stock of another corporation, which it sold in 1911 at an advance of $210,000, that portion of the profit which can be deemed to have accrued since January 1, 1909, must be deemed income, on which the corporation may be taxed under Corporation Tax Act, § 38. Hays v. Gauley Mountain Coal Co., 38 S. Ct. 470, 247 U. S. 189, 62 L. Ed. 1061, reversing judgment Gauley Mountain Coal Co. v. Hays, 230 F. 110, 144 C. C. A. 408.

Where railroad company purchased stock in another company prior to January 1, 1909, and sold it at profit thereafter, proceeds of the sale cannot be considered as income, within Corporation Tax Act Aug. 5, 1909, § 38, except to extent that selling price exceeded ascertained market value of stock on December 31, 1908. U. S. v. Cleveland, C., C. & St. L. Ry. Co., 38 S. Ct. 472, 247 U. S. 195, 62 L. Ed. 1064, affirming judgment Cleveland, C., C. & St. L. Ry. Co. v. U. S., 242 F. 18, 154 C. C. A. 610.

That Act Aug. 5, 1909, § 38, imposes excise tax measured by income, instead of tax on income, held not to affect meaning of the word "income." Biwabik Mining Co. v. U. S., 242 F. 9, 154 C. C. A. 601, certiorari granted U. S. v. Biwabik Mining Co., 38 S. Ct. 11, 245 U. S. 648, 62 L. Ed. 530.

Under Corporation Tax Act 1909, rent payments made by lessee company directly to shareholders of lessor should be deemed income of lessor company subject to taxation, though payments did not, under lease, come into hands of lessor. Blalock v. Georgia Ry. & Electric Co., 246 F. 387, 158 C. C. A. 451.

Interest payments of railway companies which organized and purchased stock of a terminal railway company on account of mortgage given by such terminal company held part of terminal company's income for purpose of determining the amount of its tax under the Corporation Excise Tax Act of August 5, 1909. Houston Belt & Terminal Ry. Co. v. U. S. (C. C. A.) 250 F. 1.

Under Corporation Excise Tax Act Aug. 5, 1909, § 38, the term "income" must be accepted as those more or less periodic earnings, as distinguished from permanent sources of wealth; hence, where the sole stockholder of a corporation which furnished the capital released a debt in favor of the corporation, such sum should be treated as capital rather than income, though such a release cannot be treated as a mere matter of bookkeeping, but as adding to the corporate assets. U. S. v. Oregon-Washington R. & Nav. Co. (C. C. A.) 251 F. 211.

Where receivers operated the railroad, funds in their hands, represented by net proceeds in operating road over and above expense and authorized expenditures paid out by them, are not subject to tax under federal Income Tax Act as net earnings. Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 236 F. 813.

Within Act August 5, 1909, c. 6, § 38 (1, 2), held that interest paid brokerage corporation by its customers on account of securities purchased for them by corporation, but on which customers paid only part of price, must be treated as gross income, without deducting interest paid by corporation on such securities on which it had paid only part of price. Altheimer & Rawlings Inv. Co. v. Allen (D. C.) 246 F. 270, judgment affirmed (C. C. A.) 248 F. 688.

So-called dividends of mutual life insurance company operating on level premium plan, consisting of portion of premium charged in excess of costs of insurance and returned annually to policy holders after first year, so, as far as used, to reduce subsequent premiums, held not "income received," and therefore not subject to tax, under Corporation Tax Act, § 38. Northwestern Mut. Life Ins. Co. v. Fink (D. C.) 248 F. 568.

Mutual life company's return under Corporation Tax Act, § 38, imposing excise tax on insurance companies of 1 per cent. on net income above $5,000, should not include premiums and interest due, but not received. Id.

Where a corporation is doing the business for which it was organized, the income derived from such business is taxable under act Aug. 5, 1909. Rio Grande Junction Ry. Co. v. U. S., 51 Ct. Cl. 274.

Under Act Aug. 5, 1909, c. 6, and Act Oct. 3, 1913, c. 16, the taxes levied upon "net income received" were intended to include only the receipt of actual cash, and did not include contemplated revenue due and unpaid, and the term "net income accrued" did not include that which did not exist except on paper. Maryland Casualty Co. v. U. S., 52 Ct. Cl. 201.

What constitutes taxable income under Act Aug. 5, 1909, 36 Stat. 112. See Chicago & A. R. Co. v. U. S., 53 Ct. Cl. 41.

6. Carrying on or doing business.—Railroad companies handling large tracts of land owned by them held engaged in business, within Act Aug. 5, 1909, § 38, imposing excise tax on carrying on of business in corporate capacity. Von Baumbach v. Sargent Land

Co., 37 S. Ct. 201, 242 U. S. 503, 61 L. Ed. 460, reversing judgment 219 F. 31, 134 C. C. A. 649.

Under Corporation Tax Law, § 38, when a corporation ceases the conduct of the business subject to a tax by turning it over to another, it ceases to be subject to the tax. Public Service Ry. Co. v. Herold, 229 F. 902, 144 C. C. A. 184.

A corporation which has ceased to pursue the business for which it was organized and has rented its property is not subject to excise tax, under the Corporation Tax Law, for doing business, because it collects and disburses its rentals, or renews or pays its indebtedness. McCoach v. Continental Passenger Ry. Co. of Philadelphia, 233 F. 976, 147 C. C. A. 650, affirming judgment Philadelphia Traction Co. v. McCoach (D. C.) 224 F. 800.

On a lease of its property by a corporation, the corporation held to have ceased doing business, within the meaning of the Corporation Tax Law. New York Mail & Newspaper Transp. Co. v. Anderson, 234 F. 590, 148 C. C. A. 356.

Street railway corporation which leased its lines and property to another corporation in 1897, and had not since operated them, was not in 1913 "engaged in business," within Corporation Tax Law of 1909, § 38, so as to be subject to tax imposed by such law. West End St. Ry. Co. v. Malley, 246 F. 625, 158 C. C. A. 581, certiorari denied 38 S. Ct. 423, 246 U. S. 671, 62 L. Ed. 931.

A Canadian company held to have engaged in and transacted business in the United States rendering its net income liable to taxation under Revenue Act Aug. 5, 1909, § 38, and Income Tax Law Oct. 3, 1913, § 2, A, subd. 1, and G (a). Laurentide Co. v. Durey (D. C.) 231 F. 223.

7. Organization for profit.—A corporation formed by owners of lands to handle the property is organized for profit, within Act Aug. 5, 1909, § 38, imposing an excise tax. Von Baumbach v. Sargent Land Co., 37 S. Ct. 201, 242 U. S. 503, 61 L. Ed. 460, reversing judgment 219 F. 31, 134 C. C. A. 649.

A terminal company owning and operating a union station held a corporation "organized for profit," "engaged in business," and subject to the special excise tax under Act Aug. 5, 1909, § 38. Boston Terminal Co. v. Gill, 246 F. 664, 158 C. C. A. 620.

A terminal railway company organized by four other companies which owned its stock though not organized for profit is subject to the Corporation Excise Tax Act of August 5, 1909. Houston Belt & Terminal Ry. Co. v. U. S. (C. C. A.) 250 F. 1.

Decisions affecting § 6301

Computation of income in general.—In computing income of corporation under Corporation Tax Law, as distinguished from capital assets, neither government nor corporation is bound by book valuations. In determining whether a corporation was entitled to deduct from its gross income value of stumpage cut during year, for purpose of computing its income under Corporation Tax Act August 5, 1909, failure of corporation to enter on its books value of stumpage, determined as of time act went into effect, is immaterial. Doyle v. Mitchell Bros. Co., 38 S. Ct. 467, 247 U. S. 179, 62 L. Ed. 1054, affirming judgment 235 F. 686, 149 C. C. A. 106, L. R. A. 1917E, 568, which affirmed Mitchell Bros. Co. v. Doyle (D. C.) 225 F. 437.

Deduction of taxes.—State, county, and municipal taxes paid by a bank under Laws Fla. 1907, c. 5596, § 8, constitute a liability of the bank, and not its stockholders, and are to be deducted from the gross income of the bank. U. S. v. Guaranty Trust & Savings Bank (D. C.) 253 F. 291.

Deduction of interest.—A corporation chartered as a bank, which disposed of bonds and securities, held not entitled to deduct from its gross income interest paid on such securities, on the theory that under Act Aug. 5, 1909, § 38, par. 2, imposing a tax on corporations, such interest was paid on deposits. Middlesex Banking Co. v. Eaton, 233 F. 87, 147 C. C. A. 157, affirming judgment (D. C.) 221 F. 86.

Under Corporation Tax Act Aug. 5, 1909, corporation engaged in brokerage business, which bought and carried securities for customers on margins, receiving interest payments from them, must list all such interest as part of its gross income, and in computing net income cannot, though it did not purchase securities outright and paid interest on balance due, deduct interest on such indebtedness in excess of amount of its paid-up capital. Altheimer & Rawlings Inv. Co. v. Allen, 248 F. 688, 160 C. C. A. 588, affirming judgment (D. C.) 246 F. 270.

Deduction of operating expenses.—Operating expenses to be deducted from gross income in computing excise tax on railroad company held cost of labor and materials going into actual operating of the road and property of the company. Grand Rapids & I. Ry. Co. v. Doyle (D. C.) 245 F. 792.

Deduction of expense of maintenance.—Maintenance of railroad company's property, cost of which is to be deducted in computing excise tax, held to mean the upkeep or preserving of the condition of the property, without additions or improvements, so that cost of additions and betterments, amounting to improvement of railroad company's property and adding to its value, held not to be deducted in ascertaining net income taxable, under Tariff Act 1909,

§ 38. Grand Rapids & I. Ry. Co. v. Doyle (D. C.) 245 F. 792.

Deduction of dividends received by corporation as stockholder.—Where dividends declared out of accumulated earnings by subsidiary corporations were paid to the main corporation by such corporation taking over debtor and creditor accounts between the subsidiaries, held, that the dividend was taxable under the Corporate Excise Act of 1909. Lewellyn v. Gulf Oil Corporation, 245 F. 1, 158 C. C. A. 1, reversing judgment Gulf Oil Corporation v. Lewellyn (D. C.) 242 F. 709. Certiorari granted Id., 38 S. Ct. 190, 62 L. Ed. 539.

Allowance for depreciation of property.—Income taxes of corporations imposed by corporation excise laws cannot be based on amounts which were erroneously carried in a special reserve account, when they should have been noted as depletion reserve, representing depreciation of corporate assets. Forty Fort Coal Co. v. Kirkendall (D. C.) 233 F. 704.

Under Act Aug. 5, 1909, § 38, imposing excise taxes to be computed on the net income of corporations, and providing for deduction from the gross income of expenses for maintenance, etc., and losses, etc., including a reasonable allowance for depreciation, a corporate shipowner is entitled to deduct necessary repairs; that item not being included in "depreciation," which means the lessening in value due to obsolescence, etc. San Francisco & P. S. S. Co. v. Scott (D. C.) 253 F. 854.

Mining corporation.—Exhaustion of ore body from mining is not to be considered in determining reasonable depreciation which, under Act Aug. 5, 1909, § 38, is to be deducted from net annual income of corporate owner when assessing the excise tax. Von Baumbach v. Sargent Land Co., 37 S. Ct. 201, 242 U. S. 503, 61 L. Ed. 460, reversing judgment 219 F. 31, 134 C. C. A. 649.

Corporation to which mining lease was assigned held not a purchaser of ore in place, so as to be entitled, under Corporation Tax Act Aug. 5, 1909, § 38, to deduct from gross income from extraction of ores, value of ore in place in mine, for computation of net income. U. S. v. Biwabik Mining Co., 38 S. Ct. 462, 247 U. S. 116, 62 L. Ed. 1017, reversing judgment Biwabik Mining Co. v. U. S., 242 F. 9, 154 C. C. A. 601.

Under Corporation Tax Act Aug. 5, 1909, § 38, a mining corporation, for the purpose of determining its net income, is entitled to deduct from its gross income no amount whatever on account of depletion or exhaustion of ore bodies, caused by operations for year during which tax was assessed. Goldfield Consol. Mines Co. v. Scott, 38 S. Ct. 465, 247 U. S. 126, 62 L. Ed. 1022.

Under Corporation Tax Act Aug. 5, 1909, § 38, a mining corporation is not entitled, in ascertainment of its net income, to a deduction against gross proceeds from the mining and treatment of ores to the extent of the cost value of the ore in the mine before it was mined, ascertained in accordance with the regulations of the Treasury Department. Id.

A corporation engaged in mining coal cannot, under Corporation Excise Tax Law, be taxed on full value of coal mined, on theory that it all represented income, where part of value of coal represented depletion in assets of corporation in its mines. Forty Fort Coal Co. v. Kirkendall (D. C.) 233 F. 704.

Lumber corporation.—Under Corporation Tax Act Aug. 5, 1909, § 38, a corporation engaged in manufacturing lumber from its own stumpage is entitled, for the purpose of computing its net income, to deduct from its gross income value of stumpage cut as of time act went into effect. Doyle v. Mitchell Bros. Co., 38 S. Ct. 467, 247 U. S. 179, 62 L. Ed. 1054, affirming judgment 235 F. 686, 149 C. C. A. 106, L. R. A. 1917E, 568, which affirmed Mitchell Bros. Co. v. Doyle (D. C.) 225 F. 437.

Income of insurance company.—Amounts of accrued unpaid losses, which insurance companies are required by state insurance commissioner, under Act Pa. June 1, 1911 (P. L. 607), to schedule each year as liabilities, are not reserve funds required by law, within Corporation Excise Tax Law, § 38. McCoach v. Insurance Co. of North America, 37 S. Ct. 709, 244 U. S. 585, 61 L. Ed. 1333, reversing judgment Insurance Co. of North America v. McCoach, 224 F. 657, 140 C. C. A. 167.

When a word which has a known legal meaning is used in a statute, it must be assumed that it is used in its legal sense, in the absence of an indication to the contrary; therefore the term "reserve funds," used in Excise Tax Law Aug. 5, 1909, § 38, must be given the signification known in the general law of insurance, and since, under Acts Tenn. 1895, c. 160, §§ 1, 8, 16, reserve funds are not required by law to be so maintained as to include additional sums reserved to satisfy unpaid losses, accrued or prospective, no deductions for amounts so reserved, though required by the insurance commission, can be allowed. National Life & Accident Ins. Co. v. Craig (C. C. A.) 251 F. 524.

So-called dividends paid by stock company engaged in writing insurance, to nonparticipating stockholders, cannot be considered in computing company's income for taxation under Corporation Excise Tax Act of 1909. Prudential Ins. Co. of America v. Herold (D. C.) 247 F. 681.

Under Corporation Excise Tax Act of 1909, held that, where a New Jersey corporation engaged in insurance business was required by New Jersey Commissioner of Banking and Insurance to provide reserve for all policies written though premiums were not fully paid, all sums paid into reserve must be excluded in computing corporate income for taxation. Id.

Inclusion of supplementary contracts, as exhibiting reserve liability, in calculation of annual net addition to reserve, to be deducted from income of mutual life insurance company, held warranted under Corporation Tax Act, § 38. Northwestern Mut. Life Ins. Co. v. Fink (D. C.) 248 F. 568.

The exemption stated of "net additions" to reserve funds was only intended to cover such additions as were required by law and not such as business prudence suggested. Maryland Casualty Co. v. U. S., 52 Ct. Cl. 201.

The sums released from reserve funds are not exempt from taxation as reserve funds, for when they cease to be reserve funds they are then income and subject to taxation as "income from all sources." Id.

Decisions affecting § 6302

System of accounting.—A system of accounting allowing two months to local agencies in which to report cash premium receipts, in view of the regulations, does not clearly reflect income. Maryland Casualty Co. v. U. S., 52 Ct. Cl. 201.

Decisions affecting § 6304.

False return.—Under Act Aug. 5, 1909, imposing excise tax of 1 per cent. on net income of corporations, and providing for new assessment in case of false and fraudulent reports, and for recovery of additional taxes, the word "false" means untrue or incorrect, and does not necessarily mean "intentionally" or "fraudulently" false. U. S. v. Nashville, C. & St. L. Ry., 249 F. 678, 161 C. C. A. 588.

Suits to recover tax.—In view of Rev. St. § 3213 (Comp. St. 1916, § 5937), held that, under Act Aug. 5, 1909, § 38, subds. 5, 8, United States may maintain action against corporation for excise taxes based on income omitted, though Commissioner of Internal Revenue made no reassessment, etc., within time prescribed. U. S. v. Nashville, C. & St. L. Ry., 249 F. 678, 161 C. C. A. 588.

Neither the limitation contained in this paragraph nor any other statute of limitations bars an action by the United States to recover the difference between the amount of the tax levied and paid and the amount which should have been levied and paid, if the corporation's return had correctly stated its net income. U. S. v. Minneapolis Threshing Mach. Co. (D. C.) 229 F. 1019.

Decisions affecting § 6307

Action to recover tax.—In view of Rev. St. § 3213 (Comp. St. 1916, § 5937), held that, under Act Aug. 5, 1909, § 38, subds. 5, 8, United States may maintain action against corporation for excise taxes based on income omitted, though Commissioner of Internal Revenue made no reassessment, etc., within time prescribed. U. S. v. Nashville, C. & St. L. Ry., 249 F. 678, 161 C. C. A. 588.

Complaint or declaration.—Declaration in action by United States against railroad corporation held to sufficiently aver that deductions from gross corporate income were not authorized under Act Aug. 5, 1909, § 38. U. S. v. Nashville, C. & St. L. Ry., 249 F. 678, 161 C. C. A. 588.

Refund.—As Corporation Tax Act imposes an excise tax, and declares that all laws relating to collection, remission, and refund of internal revenue taxes so far as applicable shall apply, Rev. St. § 3225 (Comp. St. 1916, § 5948), part of law relating to refund of internal revenue taxes, is applicable. Camp Bird v. Howbert, 249 F. 27, 161 C. C. A. 87, certiorari granted 38 S. Ct. 578, 247 U. S. 509. 62 L. Ed. 1241, and judgment reversed, 39 S. Ct. 7, 63 L. Ed. —.

—— **Additional tax.**—In view of fact that it was enacted as part of legislation imposing a general system of internal revenue to meet financial burdens of the Civil War, Rev. St. § 3225 (Comp. St. 1916, § 5948), in its application to taxes collected under Corporation Tax Act, does not authorize recovery of sums paid on a second assessment, where return was false, but not fraudulent. Camp Bird v. Howbert, 249 F. 27, 161 C. C. A. 87, certiorari granted 38 S. Ct. 578, 247 U. S. 509, 62 L. Ed. 1241, and judgment reversed, 39 S. Ct. 7, 63 L. Ed. —.

CHAPTER EIGHT B—EXCISE TAX ON DEALINGS IN COTTON FUTURES

§ 6309a. (Act Aug. 11, 1916, c. 313.) [Sec. 1.] Short title of act.

Construction and application of act in general.—There is nothing in this act of Congress, known as the "United States Cotton-Futures Act," approved August 18, 1914, which invalidates Civ. Code Ga. 1910, § 4257, making the engaging in the business of dealing in futures on margin a misdemeanor. Arthur v. State, 92 S. E. 637, 146 Ga. 827.

§ 6309e. [Sec. 5.] (Act Aug. 11, 1916, c. 313, as amended Act March 4, 1919, c. 125, § 6.) Tax on exchange or board of trade contracts of sale of cotton for future delivery; tax not levied on contracts complying with conditions prescribed.

No tax shall be levied under this Act on any contract of sale mentioned in section three hereof if the contract comply with each of the following conditions:

First. Conform to the requirements of section four of, and the rules and regulations made pursuant to, this Act.

Second. Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture, except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled: Provided, That middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

Third. Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section and no other grade or grades.

Fourth. Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

Fifth. Provide that cotton that, because of the presence of extraneous matter of any character, or irregularities or defects, is reduced in value below that of low middling, or cotton that is below the grade of low middling, or, if tinged, cotton that is below the grade of strict middling, or, if yellow stained, cotton that is below the grade of good middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed," shall not be delivered on, under, or in settlement of such contract.

Sixth. Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the

person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

Seventh. Provide that all tenders of cotton and settlements therefor under such contract shall be in accordance with the classification thereof made under the regulations of the Secretary of Agriculture by such officer or officers of the Government as shall be designated for the purpose, and the costs of such classification shall be fixed, assessed, collected, and paid as provided in such regulations. All moneys collected as such costs may be used as a revolving fund for carrying out the purposes of this subdivision, and section nineteen of this Act is amended accordingly.

The provisions of the third, fourth, fifth, sixth, and seventh subdivisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States cotton futures Act, section five."

The Secretary of Agriculture is authorized to prescribe regulations for carrying out the purposes of the seventh subdivision of this section, and the certificates of the officers of the Government as to the classification of any cotton for the purposes of said subdivision shall be accepted in the courts of the United States in all suits between the parties to such contract, or their privies, as prima facie evidence of the true classification of the cotton involved. (39 Stat. 476. 40 Stat. 1351.)

§ 6309ee. (Act March 4, 1919, c. 125, § 6.) Effect of amendment of Act Aug. 11, 1916, c. 319, § 5.

The foregoing amendments to section five of said Act shall become effective on and after the approval of this Act, but nothing herein shall be construed to diminish any authority conferred on any official of the United States necessary to enable him to carry out any duties remaining to be performed by him under said Act as unamended, or to impair the effect of such Act as to any contract subject to its provisions entered into prior to the effective date of said amendments, or to impair the effect of the findings of the Secretary of Agriculture upon any dispute referred to him under said section five as unamended. (40 Stat. 1352.)

This section is a part of § 6 of an act entitled "An act to enable the President to carry out the price guaranties made to producers of wheat of the crops of nineteen hundred and eighteen and nineteen hundred and nineteen and to protect the United States against undue enhancement of its liabilities thereunder," cited above.

For amendments referred to in this section, see ante, § 6309e.

§ 6309i. [Sec. 8.] (Act Aug. 11, 1916, c. 313, as amended, Act March 4, 1919, c. 125, § 6.) Bona fide spot markets; mode of determining.

In determining, pursuant to the provisions of this Act, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: Provided, That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of

grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with section six of this Act, he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event, differences in value of cotton of various grades involved in contracts made pursuant to section five of this Act shall be determined in compliance with such rules and regulations. Provided further, That it shall be the duty of any person engaged in the business of dealing in cotton, when requested by the Secretary of Agriculture or any agent acting under his instructions, to answer correctly to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of the number of bales, the classification, the price or bona fide price offered, and other terms of purchase or sale, of any cotton involved in any transaction participated in by him, or to produce all books, letters, papers, or documents in his possession or under his control relating to such matter. Any such person who shall, within a reasonable time prescribed by the Secretary of Agriculture or such agent, willfully fail or refuse to answer such questions or to produce such books, letters, papers, or documents, or who shall willfully give any answer that is false or misleading, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $500. (39 Stat. 479. 40 Stat. 1352.)

This section was amended by Act March 4, 1919, c. 125, § 6, cited above, by adding to the section, as originally enacted, the last proviso, as set forth above.

CHAPTER EIGHT C—TRANSPORTATION FACILITIES BY PUBLIC UTILITIES

§§ 6309⅛a–6309⅛d. (Act Oct. 3, 1917, c. 63, §§ 500–503.) [Repealed.]

These sections of the Revenue Act of 1917 contained provisions imposing a tax on transportation by public utilities. They were repealed by § 1400 of the Revenue Act of 1918. The latter act also provided for a similar tax on transportation facilities. See post, §§ 6309⅛a–6309⅛c, 6371¾a. Inasmuch as these provisions were by the repealing act continued in force for the assessment and collection of accrued taxes and penalties, they are set forth here.

The text of Act Oct. 3, 1917, c. 63, is as follows:

"Sec. 500. From and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid (a) a tax equivalent to three per centum of the amount paid for the transportation by rail or water or by any form of mechanical motor power when in competition with carriers by rail or water of property by freight consigned from one point in the United States to another; (b) a tax of 1 cent for each 20 cents, or fraction thereof, paid to any person, corporation, partnership, or association, engaged in the business of transporting parcels or packages by express over regular routes between fixed terminals, for the transportation of any package, parcel, or shipment by express from one point in the United States to another: Provided, That nothing herein contained shall be construed to require the carrier collecting such tax to list separately in any bill of lading, freight receipt, or other similar document, the amount of the tax herein levied, if the total amount of the freight and tax be therein stated; (c) a tax equivalent to eight per centum of the amount paid for the transportation of persons by rail or water, or by any form of mechanical motor power on a regular established line when in competition with carriers by rail or water, from one point in the United States to another or to any point in Canada or Mexico, where the ticket therefor is sold or issued in the United States, not including the amount paid for commutation or season tickets for trips less than thirty miles, or for

transportation the fare for which does not exceed 35 cents, and a tax equivalent to ten per centum of the amount paid for seats, berths, and staterooms in parlor cars, sleeping cars, or on vessels. If a mileage book used for such transportation or accommodation has been purchased before this section takes effect, or if cash fare be paid, the tax imposed by this section shall be collected from the person presenting the mileage book, or paying the cash fare, by the conductor or other agent, when presented for such transportation or accommodation, and the amount so collected shall be paid to the United States in such manner and at such times as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe; if a ticket (other than a mileage book) is bought and partially used before this section goes into effect it shall not be taxed, but if bought but not so used before this section takes effect, it shall not be valid for passage until the tax has been paid and such payment evidenced on the ticket in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe; (d) a tax equivalent to five per centum of the amount paid for the transportation of oil by pipe line; (e) a tax of 5 cents upon each telegraph, telephone, or radio, dispatch, message, or conversation, which originates within the United States, and for the transmission of which a charge of 15 cents or more is imposed: Provided, That only one payment of such tax shall be required, notwithstanding the lines or stations of one or more persons, corporations, partnerships, or associations shall be used for the transmission of such dispatch, message, or conversation.

"Sec. 501. The taxes imposed by section five hundred shall be paid by the person, corporation, partnership, or association paying for the services or facilities rendered.

"In case such carrier does not, because of its ownership of the commodity transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such commodity if the carrier received payment for such transportation: Provided, That in case of a carrier which on May first, nineteen hundred and seventeen, had no rates or tariffs on file with the proper Federal or State authority, the tax shall be computed on the basis of the rates or tariffs of other carriers for like services as ascertained and determined by the Commissioner of Internal Revenue: Provided further, That nothing in this or the preceding section shall be construed as imposing a tax (a) upon the transportation of any commodity which is necessary for the use of the carrier in the conduct of its business as such and is intended to be so used or has been so used; or (b) upon the transportation of company material transported by one carrier, which constitutes a part of a railroad system, for another carrier which is also a part of the same system.

"Sec. 502. No tax shall be imposed under section five hundred upon any payment received for services rendered to the United States, or any State, Territory, or the District of Columbia. The right to exemption under this section shall be evidenced in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe.

"Sec. 503. Each person, corporation, partnership, or association receiving any payments referred to in section five hundred shall collect the amount of the tax, if any, imposed by such section from the person, corporation, partnership, or association making such payments, and shall make monthly returns under oath, in duplicate, and pay the taxes so collected and the taxes imposed upon it under paragraph two of section five hundred and one to the collector of internal revenue of the district in which the principal office or place of business is located. Such returns shall contain such information, and be made in such manner, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe."

CHAPTER EIGHT D—INSURANCE POLICIES

§§ 6309¼a, 6309¼b. (Act Oct. 3, 1917, c. 63, §§ 504, 505.) [Repealed.]

These sections of the Revenue Act of 1917 were repealed by § 1400 of the Revenue Act of 1918. Taxes in lieu of those imposed by the repealed act were imposed by the Revenue Act of 1918, §§ 503, 504. See post, §§ 6309⅓d, 6309⅓e, 6371¾a. Inasmuch as the repealing act continued these sections in force for the collection of accrued taxes and penalties, they are set forth in full here.

The text of sections 504 and 505 was as follows:

"Sec. 504. From and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid the following taxes on the issuance of insurance policies:

"(a) Life insurance: A tax equivalent to 8 cents on each $100 or fractional part thereof of the amount for which any life is insured under any policy of insurance, or other instrument, by whatever name the same is called: Provided, That on all policies for life insurance only by which a life is insured not in excess of $500, issued on the industrial or weekly-payment plan of insurance, the tax shall be forty per centum of the amount of the first weekly premium: Provided further, That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

"(b) Marine, inland, and fire insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or other instrument by whatever name the same is called whereby insurance is made or renewed upon property of any description (including rents or profits), whether against peril by sea or inland waters, or by fire or lightning, or other peril: Provided, That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

"(c) Casualty insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or obligation of the nature of indemnity for loss, damage, or liability (except bonds taxable under subdivision two of schedule A of Title VIII) issued or executed or renewed by any person, corporation, partnership, or association, transacting the business of employer's liability, workmen's compensation, accident, health, tornado, plate glass, steam boiler, elevator, burglary, automatic sprinkler, automobile, or other branch of insurance (except life insurance, and insurance described and taxed in the preceding subdivision): Provided, That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

"(d) Policies issued by any person, corporation, partnership, or association, whose income is exempt from taxation under Title I of the Act entitled 'An Act to increase the revenue, and for other purposes,' approved September eighth, nineteen hundred and sixteen, shall be exempt from the taxes imposed by this section.

"Sec. 505. Every person, corporation, partnership, or association, issuing policies of insurance upon the issuance of which a tax is imposed by section five hundred and four, shall, within the first fifteen days of each month, make a return under oath, in duplicate, and pay such tax to the collector of internal revenue of the district in which the principal office or place of business of such person, corporation, partnership, or association is located. Such returns shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe."

CHAPTER EIGHT DD—TAX ON TRANSPORTATION AND OTHER FACILITIES, AND ON INSURANCE

The provisions constitute Title V of the Revenue Act of 1918. Said Title is entitled "Tax on Transportation and other Facilities, and on Insurance."

Sec.
6309⅓a. Tax on transportation facilities.
(a) Freight.
(b) Express.
(c) Passengers.
(d) Sleeping cars.
(e) Oil by pipe line.
(f) Telegraph, telephone, cable, or radio messages.
(g) Leased telegraph or telephone wires.
(h) Exemptions.
6309⅓b. Same; by whom paid; computation.
6309⅓c. Same; collection; returns; when payable.

INSURANCE

6309⅓d. Tax on insurance policies.
(a) Life insurance.
(b) Marine, inland, and fire insurance.
(c) Casualty insurance.
(d) Exemption.
6309⅓e. Same; returns; when due; penalty.

§ 6309⅓a. (Act Feb. 24, 1919, c. 18, § 500.) Tax on transportation facilities.

From and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 500 of the Revenue Act of 1917—

(a) Freight.

A tax equivalent to 3 per centum of the amount paid for the transportation on or after such date, by rail or water or by any form of mechanical motor power when in competition with carriers by rail or water, of property by freight transported from one point in the United States to another; and a like tax on the amount paid for such transportation within the United States of property transported from a point without the United States to a point within the United States;

(b) Express.

A tax of 1 cent for each 20 cents or fraction thereof of the amount paid to any person for the transportation on or after such date, by rail or water or by any form of mechanical motor power when in competition with express by rail or water, of any package, parcel, or shipment, by express, transported from one point in the United States to another; and a like tax on the amount paid for such transportation within the United States of property transported from a point without the United States to a point within the United States;

(c) Passengers.

A tax equivalent to 8 per centum of the amount paid for the transportation on or after such date of persons by rail or water, or by any form of mechanical motor power on a regular established line when in competition with carriers by rail or water, from one point in the United States to another or to any point in Canada or Mexico, where the ticket or order therefor is sold or issued in the United States, not including the amount paid for commutation or season tickets for trips less than thirty miles, or for transportation the fare for which does not exceed 42 cents: Provided, That where such water transportation lines are in competition between American ports with foreign water transportation lines from adjacent foreign ports, the tax imposed under this subdivision on amounts paid for water transportation between American ports shall not exceed

the amount of the transportation tax to which such foreign water transportation lines are subjected by their government corresponding to this tax;

(d) Sleeping cars.

A tax equivalent to 8 per centum of the amount paid for seats, berths, and staterooms in parlor cars, sleeping cars, or on vessels, used on or after such date in connection with transportation upon which tax is imposed by subdivision (c);

(e) Oil by pipe line.

A tax equivalent to 8 per centum of the amount paid for the transportation on or after such date of oil by pipe line;

(f) Telegraph, telephone, cable, or radio messages.

In the case of each telegraph, telephone, cable, or radio, dispatch, message, or conversation, which originates on or after such date within the United States, and for the transmission of which the charge is more than 14 cents and not more than 50 cents, a tax of 5 cents; and if the charge is more than 50 cents, a tax of 10 cents: Provided, That only one payment of such tax shall be required, notwithstanding the lines or stations of one or more persons are used for the transmission of such dispatch, message, or conversation; and

(g) Leased telegraph or telephone wires.

A tax equivalent to 10 per centum of the amount paid after such date to any telegraph or telephone company for any leased wire or talking circuit special service furnished after such date. This subdivision shall not apply to the amount paid for so much of such service as is utilized (1) in the collection and dissemination of news through the public press, or (2) in the conduct, by a common carrier or telegraph or telephone company, of its business as such;

(h) Exemptions.

No tax shall be imposed under this section upon any payment received for services rendered to the United States or to any State or Territory or the District of Columbia. The right to exemption under this subdivision shall be evidenced in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe. (40 Stat. 1101.)

This section is § 500 of the Revenue Act of 1918, cited above.

The taxes imposed by this section are in lieu of those imposed by § 500 of the Revenue Act of 1917, see note to § 6309⅓a, ante.

For provisions corresponding to the provisions of paragraph h in § 502 of the Revenue Act of 1917, see note to § 6309⅓c, ante.

§ 6309⅓b. (Act Feb. 24, 1919, c. 18, § 501.) Same; by whom paid; computation.

(a) The taxes imposed by section 500 shall be paid by the person paying for the services or facilities rendered.

(b) If a mileage book used for transportation or accommodation was purchased before November 1, 1917, or if cash fare is paid, the tax imposed by section 500 shall be collected from the person presenting the mileage book, or paying the cash fare, by the conductor or other agent, when presented for such transportation or accommodation, and the amount so collected shall be paid to the United States in such manner and at such times as the Commissioner, with the approval of the Secretary, may prescribe; if a ticket (other than a mileage book) was bought and partially used before November 1, 1917, it shall not be taxed, but if bought but not so used before section 500 takes effect, it shall not be valid for passage until the tax has been paid and such payment evidenced on the ticket in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

(c) The taxes imposed by section 500 shall apply to all services or facilities specified in such section when rendered for hire, whether or not the agency rendering them is a common carrier. In case a carrier (other than a pipe line) principally engaged in rendering transportation services or facilities for hire does not, because of its ownership of the goods transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such goods if the carrier received payment for such transportation, such tax, if it can not be computed from actual rates or tariffs of the carrier, to be computed on the basis of the rates or tariffs of other carriers for like services as determined by the Commissioner. In the case of any carrier (other than a pipe line) the principal business of which is to transport goods belonging to it on its own account and which only incidentally renders services for hire, the tax shall apply to such services or facilities only as are actually rendered by it for hire. Nothing in this or the preceding section shall be construed as imposing a tax (1) upon the transportation of any commodity which is necessary for the use of the carrier in the conduct of its business as such and is intended to be so used or has been so used; or (2) upon the transportation of company material transported by one carrier, which constitutes a part of a railroad system, for another carrier which is also a part of the same system.

(d) The tax imposed by subdivision (e) of section 500 shall apply to all transportation of oil by pipe line. In case no charge for transportation is made, by reason of ownership of the commodity transported, or for any other reason, the person transporting by pipe line shall pay a tax equivalent to the tax which would be imposed if such person received payment for such transportation, and if the tax cannot be computed from actual bona fide rates or tariffs, it shall be computed (1) on the basis of the rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or (2) if no such rates or tariffs exist, on the basis of a reasonable charge for such transportation, as determined by the Commissioner. (40 Stat. 1102.)

This section is § 501 of the Revenue Act of 1918, cited above.

For corresponding provision of § 501 of the Revenue Act of 1917, see note to § 6309⅛b, ante.

§ 6309⅓c. (Act Feb. 24, 1919, c. 18, § 502.) Same; collection; returns; when payable.

Each person receiving any payments referred to in section 500 shall collect the amount of the tax, if any, imposed by such section from the person making such payments, and shall make monthly returns under oath, in duplicate, and pay the taxes so collected and the taxes imposed upon it under subdivision (c) or (d) of section 501 to the collector of the district in which the principal office or place of business is located.

No carrier collecting the taxes imposed by subdivision (a) or (b) of section 500 shall be required to list the amount of such tax separately in any bill of lading, freight or express receipt, or other similar document, if the total amount of the transportation charge and the tax is stated therein.

Any person making a refund of any payment upon which tax is collected under this section may repay therewith the amount of the tax collected on such payment; and the amount so repaid may be credited against amounts included in any subsequent monthly return.

The returns required under this section shall contain such information, and be made at such times and in such manner, as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due. (40 Stat. 1103.)

This section is § 502 of the Revenue Act of 1918, cited above.

For corresponding provision of § 503 of the Revenue Act of 1917, see note to § 6309⅓d, ante.

INSURANCE

§ 6309⅓d. (Act Feb. 24, 1919, c. 18, § 503.) Tax on insurance policies.

From and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 504 of the Revenue Act of 1917, the following taxes on the issuance of insurance policies, including, in the case of policies issued outside the United States (except those taxable under subdivision 15 of Schedule A of Title XI), their delivery within the United States by any agent or broker, whether acting for the insurer or the insured; such taxes to be paid by the insurer, or by such agent or broker:

For subdiv. 15 of Schedule A of Title XI, mentioned in this paragraph, see post, § 6318p(15).

(a) Life insurance.

Life insurance: A tax equivalent to 8 cents on each $100 or fractional part thereof of the amount for which any life is insured under any policy of insurance, or other instrument, by whatever name the same is called: Provided, That on all policies for life insurance only by which a life is insured not in excess of $500, issued on the industrial or weekly or monthly payment plan of insurance, the tax shall be 40 per centum of the amount of the first weekly premium or 20 per centum of the amount of the first monthly premium, as the case may be: Provided further, That on policies of group life insurance, covering groups of not less than 25 lives in the employ of the same person, for the benefit of persons other than the employer, the tax shall be equivalent to 4 cents on each $100 of the aggregate amount for which the group policy is issued and of any net increase in the amount of the insurance under such policy: And provided further, That on all policies covering life, health, and accident insurance combined in one policy by which a life is insured not in excess of $500, issued on the industrial, or weekly or monthly payment plan of insurance, the tax shall be 40 per centum of the amount of the first weekly premium or 20 per centum of the amount of the first monthly premium, as the case may be;

(b) Marine, inland, and fire insurance.

Marine, inland, and fire insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or other instrument by whatever name the same is called whereby insurance is made or renewed upon property of any description (including rents or profits), whether against peril by sea or inland waters, or by fire or lightning, or other peril;

(c) Casualty insurance.

Casualty insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of

insurance or obligation of the nature of indemnity for loss, damage, or liability (except bonds and policies taxable under subdivision 2 of schedule A of Title XI) issued or executed or renewed by any person transacting the business of employer's liability, workmen's compensation, accident, health, tornado, plate glass, steam boiler, elevator, burglary, automatic sprinkler, automobile, or other branch of insurance (except life insurance, and insurance described and taxed in the preceding subdivision): Provided, That in case of policies of insurance issued on the industrial or weekly or monthly payment plan the tax shall be 40 per centum of the amount of the first weekly premium or 20 per centum of the amount of the first monthly premium, as the case may be;

For subdiv. 2 of Schedule A of Title XI, referred to in this paragraph, see post, § 6318p(2).

(d) Exemption.

Policies issued by any corporation enumerated in section 231, and policies of reinsurance, shall be exempt from the taxes imposed by this section. (40 Stat. 1104.)

This section is § 503 of the Revenue Act of 1918, cited above.

The taxes imposed by this section are in lieu of those imposed by § 504 of the Revenue Act of 1917. See note to § 6309¼a, ante.

For section 231 of this act, mentioned in this paragraph, see post, § 6336⅛o.

§ 6309⅓e. (Act Feb. 24, 1919, c. 18, § 504.) Same; returns; when due; penalty.

Every person issuing policies of insurance upon the issuance of which a tax is imposed by section 503 shall make monthly returns under oath, in duplicate, and pay such tax to the collector of the district in which the principal office or place of business of such person is located. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due. (40 Stat. 1104.)

This section is § 504 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 505 of the Revenue Act of 1917, see note to § 6309¼b, ante.

CHAPTER EIGHT E—THEATER, ETC., ADMISSIONS AND CLUB DUES OR FEES

§§ 6309½a–6309½c. (Act Oct. 3, 1917, c. 63, §§ 700–702.) [Repealed.]

These sections of the Revenue Act of 1917 were repealed by § 1400 of the Revenue Act of 1918, post, § 6371¾a. Similar provisions are contained in the Revenue Act of 1918, and are set forth post as §§ 6309⅝a–6309⅝c. Inasmuch as the repealed sections were continued in force for the collection of accrued taxes and penalties, they are set forth here:

"Sec. 700. From and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid (a) a tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription, to be paid by the person paying for such admission: Provided, That the tax on admission of children under twelve years of age where an admission charge for such children is made shall in every case be 1 cent; and (b) in the case of persons (except bona fide employees, municipal officers on official business, and children under twelve years of age) admitted free to any place at a time when and under circumstances under which an admission charge is made to other persons of the same class, a tax of 1 cent for each 10 cents or fraction thereof of the price so charged to such other persons for the same or similar accommodations, to be paid by the person so admitted; and (c) a tax of 1 cent for each 10 cents or fraction thereof paid for admission to any public performance for profit at any cabaret or other similar entertainment to which the charge for admission is wholly or in part included in the price paid for refreshment, service, or merchandise; the amount paid for such admission to be computed under rules prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, such tax to be paid by the person paying for such refreshment, service, or merchandise. In the case of persons having the permanent use of boxes or seats in an opera house or any place of amusement or a lease for the use of such box or seat in such opera house or place of amusement there shall be levied, assessed, collected, and paid a tax equivalent to ten per centum of the amount for which a similar box or seat is sold for performance or exhibition at which the box or seat is used or reserved by or for the lessee or holder. These taxes shall not be imposed in the case of a place the maximum charge for admission to which is 5 cents, or in the case of shows, rides, and other amusements, (the maximum charge for admission to which is 10 cents) within outdoor general amusement parks, or in the case of admissions to such parks.

"No tax shall be levied under this title in respect to any admissions all the proceeds of which inure exclusively to the benefit of religious, educational, or charitable institutions, societies, or organizations, or admissions to agricultural fairs none of the profits of which are distributed to stockholders or members of the association conducting the same.

"The term 'admission' as used in this title includes seats and tables, reserved or otherwise, and other similar accommodations, and the charges made therefor.

"Sec. 701. From and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid, a tax equivalent to ten per centum of any amount paid as dues or membership fees (including initiation fees), to any social, athletic, or sporting club or organization, where such dues or fees are in excess of $12 per year; such taxes to be paid by the person paying such dues or fees: Provided, That there shall be exempted from the provisions of this section all amounts paid as dues or fees to a fraternal beneficiary society, order, or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

"Sec. 702. Every person, corporation, partnership, or association (a) receiving any payments for such admission, dues, or fees, shall collect the amount of the tax imposed by section seven hundred or seven hundred and one from the person making such payments, or (b) admitting any person free to any place for admission to which a charge is made shall collect the amount of the tax imposed by section seven hundred from the person so admitted, and (c) in either case shall make returns and payments of the amount so collected, at the same time and in the same manner as provided in section five hundred and three of this Act."

CHAPTER EIGHT EE—TAX ON ADMISSIONS AND DUES

These provisions constitute Title VIII of the Revenue Act of 1918. Said Title is entitled "Tax on Admissions and Dues."

§ 6309⅝a. (Act Feb. 24, 1919, c. 18, § 800.) Tax on admissions to places of amusement; amount; exemptions.

(a) From and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 700 of the Revenue Act of 1917—

(1) A tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place on or after such date, including admission by season ticket or subscription, to be paid by the person paying for such admission;

(2) In the case of persons (except bona fide employees, municipal officers on official business, persons in the military or naval forces of the United States when in uniform, and children under twelve years of age) admitted free or at reduced rates to any place at a time when and under circumstances under which an admission charge is made to other persons, a tax of 1 cent for each 10 cents or fraction thereof of the price so charged to such other persons for the same or similar accommodations, to be paid by the person so admitted;

(3) Upon tickets or cards of admission to theaters, operas, and other places of amusement, sold at news stands, hotels, and places other than the ticket offices of such theaters, operas, or other places of amusement, at not to exceed 50 cents in excess of the sum of the established price therefor at such ticket offices plus the amount of any tax imposed under paragraph (1), a tax equivalent to 5 per centum of the amount of such excess; and if sold for more than 50 cents in excess of the sum of such established price plus the amount of any tax imposed under paragraph (1), a tax equivalent to 50 per centum of the whole amount of such excess, such taxes to be returned and paid, in the manner provided in section 903, by the person selling such tickets;

(4) A tax equivalent to 50 per centum of the amount for which the proprietors, managers, or employees of any opera house, theater, or other place of amusement sell or dispose of tickets or cards of admission in excess of the regular or established price or charge therefor, such tax to be returned and paid, in the manner provided in section 903, by the person selling such tickets;

(5) In the case of persons having the permanent use of boxes or seats in an opera house or any place of amusement or a lease for the use of such box or seat in such opera house or place of amusement (in lieu of the tax imposed by paragraph (1)), a tax equivalent to 10 per centum of the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by or for the lessee or holder, such tax to be paid by the lessee or holder; and

(6) A tax of 1½ cents for each 10 cents or fraction thereof of the amount paid for admission to any public performance for profit at any roof garden, cabaret, or other similar entertainment, to which the charge for admission is wholly or in part included in the price paid for refreshment, service, or merchandise; the amount paid for such admission to be deemed to be 20 per centum of the amount paid for refreshment, service, and merchandise; such tax to be paid by the person paying for such refreshment, service, or merchandise.

(b) No tax shall be levied under this title in respect to any admissions all the proceeds of which inure exclusively to the benefit of religious, educational, or charitable institutions, societies, or organizations, societies for the prevention of cruelty to children or animals, or exclusively to the benefit of organizations conducted for the sole purpose of maintaining symphony orchestras and receiving substantial support from voluntary contributions, none of the profits of which are distributed to members of such organizations, or exclusively to the benefit of persons in the military or naval forces of the United States, or admissions to agricultural fairs none of the profits of which are distributed to stockholders or members of the association conducting the same.

(c) The term "admission" as used in this title includes seats and tables, reserved or otherwise, and other similar accommodations, and the charges made therefor.

(d) The price (exclusive of the tax to be paid by the person paying for admission) at which every admission ticket or card is sold shall be conspicuously and indelibly printed, stamped, or written on the face or back thereof, together with the name of the vendor if sold other than at the ticket office of the theater, opera, or other place of amusement. Whoever sells an admission ticket or card on which the name of the vendor and price is not so printed, stamped, or written, or at a price in excess of the price so printed, stamped, or written thereon, is guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $100. (40 Stat. 1120.)

This section is § 800 of the Revenue Act of 1918, cited above.

The taxes imposed by this section are in lieu of the taxes imposed by § 700 of the Revenue Act of 1917 (see note to §§ 6309½a–6309½c, ante).

§ 6309⅝b. (Act Feb. 24, 1919, c. 18, § 801.) Tax on club dues or fees; exemptions.

From and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 701 of the Revenue Act of 1917, a tax equivalent to 10 per centum of any amount paid on or after such date, for any period after such date, (a) as dues or membership fees (where the dues or fees of an active resident annual member are in excess of $10 per year) to any social, athletic, or sporting club or organization; or (b) as initiation fees to such a club or organization, if such fees amount to more than $10, or if the dues or membership fees (not including initiation fees) of an active resident annual member are in excess of $10 per year; such taxes to be paid by the person paying such dues or fees: Provided, That there shall be exempted from the provisions of this section all amounts paid as dues or fees to a fraternal society, order, or association, operating under the lodge system. In the case of life memberships a life member shall pay annually, at the time for the payment of dues by active resident annual members, a tax equivalent to the tax upon the amount paid by such a member, but shall pay no tax upon the amount paid for life membership. (40 Stat. 1121.)

This section is § 801 of the Revenue Act of 1918, cited above.

The taxes imposed by this section are in lieu of the taxes imposed by § 701 of the Revenue Act of 1917 (see note to §§ 6309½a–6309½c, ante).

§ 6309⅝c. (Act Feb. 24, 1919, c. 18, § 802.) Collection; returns; payment.

Every person (a) receiving any payments for such admission, dues, or fees shall collect the amount of the tax imposed by section 800 or 801 from the person making such payments, or (b) admitting any person free to any place for admission to which a charge is made, shall collect the amount of the tax imposed by section 800 from the person so admitted. Every club or organization having

life members, shall collect from such members the amount of the tax imposed by section 801. In all the above cases returns and payments of the amount so collected shall be made at the same time and in the same manner as provided in section 502. (40 Stat. 1121.)

This section is § 802 of the Revenue Act of 1918, cited above.

For corresponding provision in § 702 of the Revenue Act of 1917, see note to §§ 6309½a–6309½c, ante.

CHAPTER EIGHT F—MISCELLANEOUS ARTICLES

§§ 6309¾a–6309¾d. (Act Oct. 3, 1917, c. 63, §§ 600–603.) [Repealed.]

These sections of the Revenue Act of 1917 were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a. The corresponding provisions in the new act are set forth post, as §§ 6309⅘a, 6309⅘f–6309⅘h, and ante, § 5980o. Inasmuch as the repealing act continued these sections in force for the collection of accrued taxes and penalties, they are set forth here:

"Sec. 600. There shall be levied, assessed, collected, and paid—

"(a) Upon all automobiles, automobile trucks, automobile wagons, and motorcycles, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold; and

"(b) Upon all piano players, graphophones, phonographs, talking machines, and records used in connection with any musical instrument, piano player, graphophone, phonograph, or talking machine, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold; and

"(c) Upon all moving-picture films (which have not been exposed) sold by the manufacturer or importer a tax equivalent to one-fourth of 1 cent per linear foot; and

"(d) Upon all positive moving-picture films (containing a picture ready for projection) sold or leased by the manufacturer, producer, or importer, a tax equivalent to one-half of 1 cent per linear foot; and

"(e) Upon any article commonly or commercially known as jewelry, whether real or imitation, sold by the manufacturer, producer, or importer thereof, a tax equivalent to three per centum of the price for which so sold; and

"(f) Upon all tennis rackets, golf clubs, baseball bats, lacrosse sticks, balls of all kinds, including baseballs, foot balls, tennis, golf, lacrosse, billiard and pool balls, fishing rods and reels, billiard and pool tables, chess and checker boards and pieces, dice, games and parts of games, except playing cards and children's toys and games, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold; and

"(g) Upon all perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, tooth and mouth washes, dentifrices, tooth pastes, aromatic cachous, toilet soaps and powders, or any similar substance, article, or preparation by whatsoever name known or distinguished, upon all of the above which are used or applied or intended to be used or applied for toilet purposes, and which are sold by the manufacturer, importer, or producer, a tax equivalent to two per centum of the price for which so sold; and

"(h) Upon all pills, tablets, powders, tinctures, troches or lozenges, sirups, medicinal cordials or bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters (except those taxed under section three hundred and thirteen of this Act), essences, spirits, oils, and all medicinal preparations, compounds, or compositions whatsoever, the manufacturer or producer of which claims to have any private formula, secret, or occult art for making or preparing the same, or has or claims to have any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended, or exposed for sale under any letters patent, or trade-mark, or which, if prepared by any formula, published or unpublished, are held out or recommended to the public by the makers, venders, or proprietors thereof as proprietary medicines or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body, and which are sold by the manufacturer, producer, or importer, a tax equivalent to two per centum of the price for which so sold; and

"(i) Upon all chewing gum or substitute therefor sold by the manufacturer, producer, or importer, a tax equivalent to two per centum of the price for which so sold; and

"(j) Upon all cameras sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold.

"Sec. 601. Each manufacturer, producer, or importer of any of the articles enumerated in section six hundred shall make monthly returns under oath in duplicate and pay the taxes imposed on such articles by this title to the collector of internal revenue for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe.

"Sec. 602. Upon all articles enumerated in subdivisions (a), (b), (e), (f), (g), (h), (i), or (j) of section six hundred, which on the day this Act is passed are held and intended for sale by any person, corporation, partnership, or association, other than (1) a retailer who is not also a wholesaler, or (2) the manufacturer, producer, or importer thereof, there shall be levied, assessed, collected, and paid a tax equivalent to one-half the tax imposed by each such subdivision upon the sale of the articles therein enumerated. This tax shall be paid by the person, corporation, partnership, or association so holding such articles.

"The taxes imposed by this section shall be assessed, collected, and paid in the same manner as provided in section ten hundred and two in the case of additional taxes upon articles upon which the tax imposed by existing law has been paid.

"Nothing in this section shall be construed to impose a tax upon articles sold and delivered prior to May ninth, nineteen hundred and seventeen, where the title is reserved in the vendor as security for the payment of the purchase money.

"Sec. 603. On the day this Act takes effect, and thereafter on July first in each year, and also at the time of the original purchase of a new boat by a user, if on any other date than July first, there shall be levied, assessed, collected, and paid upon the use of yachts, pleasure boats, power boats, and sailing boats, of over five net tons, and motor boats with fixed engines, not used exclusively for trade or national defense, or not built according to plans and specifications approved by the Navy Department, an excise tax to be based on each yacht or boat, at rates as follows: Yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, of over five net tons, length not over fifty feet, 50 cents for each foot, length over fifty feet and not over one hundred feet, $1 for each foot, length over one hundred feet, $2 for each foot; motor boats of not over five net tons with fixed engines, $5.

"In determining the length of such yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, the measurement of over-all length shall govern.

"In the case of a tax imposed at the time of the original purchase of a new boat on any other date than July first, the amount to be paid shall be the same number of twelfths of the amount of the tax as the number of calendar months, including the month of sale, remaining prior to the following July first."

CHAPTER EIGHT G—EXCISE TAXES

These provisions constitute Title IX of the Revenue Act of 1918. Said Title is entitled "Excise Taxes."

Sec.
6309 4/5a. Tax on certain articles sold or leased.
(1) Automobile trucks and automobile wagons.
(2) Automobiles and motorcycles.
(3) Tires, parts and accessories for automobiles.
(4) Pianos, organs, piano players, phonographs, music boxes, and records therefor.
(5) Sporting goods.
(6) Chewing gum.
(7) Cameras.
(8) Photographic films and plates.
(9) Candy.
(10) Firearms, shells, and cartridges.
(11) Hunting and bowie knives.
(12) Dirk knives, daggers, etc.
(13) Electric fans.
(14) Thermos bottles.
(15) Cigar or cigarette holders and pipes.
(16) Automatic slot-device vending machines.
(17) Liveries.
(18) Hunting garments.
(19) Articles made of fur.
(20) Yachts, motor boats, pleasure boats and canoes.
(21) Toilet soap.
6309 4/5b. Same; sale or lease price.
6309 4/5c. Same; sculpture, paintings, statuary, etc.
6309 4/5d. Same; returns; time for payment; penalty.
6309 4/5e. Tax on articles sold in excess of certain prices; by whom payable.
6309 4/5f. Tax on jewelry; returns; time for payment; penalty.
6309 4/5g. Tax on moving picture films.
6309 4/5h. Tax on perfumes, toilet articles, patent medicines, etc.

§ 6309 4/5a. (Act Feb. 24, 1919, c. 18, § 900.) Tax on certain articles sold or leased.

There shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold or leased—

(1) Automobile trucks and automobile wagons.

Automobile trucks and automobile wagons, (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), 3 per centum;

(2) Automobiles and motorcycles.

Other automobiles and motorcycles, (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum;

(3) Tires, parts and accessories for automobiles.

Tires, inner tubes, parts, or accessories, for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum;

(4) Pianos, organs, piano players, phonographs, music boxes, and records therefor.

Pianos, organs (other than pipe organs), piano players, graphophones, phonographs, talking machines, music boxes, and records used in connection with any musical instrument, piano player, graphophone, phonograph, or talking machine, 5 per centum;

(5) Sporting goods.

Tennis rackets, nets, racket covers and presses, skates, snowshoes, skis, toboggans, canoe paddles and cushions, polo mallets, baseball bats, gloves, masks, protectors, shoes and uniforms, football helmets, harness and goals, basket-ball goals and uniforms, golf

bags and clubs, lacrosse sticks, balls of all kinds, including baseballs, footballs, tennis, golf, lacrosse, billiard and pool balls, fishing rods and reels, billiard and pool tables, chess and checker boards and pieces, dice, games and parts of games (except playing cards and children's toys and games), and all similar articles commonly or commercially known as sporting goods, 10 per centum;

(6) Chewing gum.

Chewing gum or substitutes therefor, 3 per centum;

(7) Cameras.

Cameras, weighing not more than 100 pounds, 10 per centum;

(8) Photographic films and plates.

Photographic films and plates, other than moving-picture films, 5 per centum;

(9) Candy.

Candy, 5 per centum;

(10) Firearms, shells, and cartridges.

Firearms, shells, and cartridges, except those sold for the use of the United States, any State, Territory, or possession of the United States, any political subdivision thereof, the District of Columbia, or any foreign country while engaged against the German Government in the present war, 10 per centum;

(11) Hunting and bowie knives.

Hunting and bowie knives, 10 per centum;

(12) Dirk knives, daggers, etc.

Dirk knives, daggers, sword canes, stillettos, and brass or metallic knuckles, 100 per centum;

(13) Electric fans.

Portable electric fans, 5 per centum;

(14) Thermos bottles.

Thermos and thermostatic bottles, carafes, jugs, or other thermostatic containers, 5 per centum;

(15) Cigar or cigarette holders and pipes.

Cigar or cigarette holders and pipes, composed wholly or in part of meerschaum or amber, humidors, and smoking stands, 10 per centum;

(16) Automatic slot-device vending machines.

Automatic slot-device vending machines, 5 per centum, and automatic slot-device weighing machines, 10 per centum; if the manufacturer, producer, or importer of any such machine operates it for profit, he shall pay a tax in respect to each such machine put into operation equivalent to 5 per centum of its fair market value in the case of a vending machine, and 10 per centum of its fair market value in the case of a weighing machine;

(17) Liveries.

Liveries and livery boots and hats, 10 per centum;

(18) Hunting garments.

Hunting and shooting garments and riding habits, 10 per centum;

(19) Articles made of fur.

Articles made of fur on the hide or pelt, or of which any such fur is the component material of chief value, 10 per centum;

(20) Yachts, motor boats, pleasure boats and canoes.

Yachts and motor boats not designed for trade, fishing, or national defense; and pleasure boats and pleasure canoes if sold for more than $15, 10 per centum; and

(21) Toilet soap.

Toilet soaps and toilet soap powders, 3 per centum.

If any manufacturer, producer, or importer of any of the articles enumerated in this section customarily sells such articles both at wholesale and at retail, the tax in the case of any article sold by him at retail shall be computed on the price for which like articles are sold by him at wholesale.

The taxes imposed by this section shall, in the case of any article in respect to which a corresponding tax is imposed by section 600 of the Revenue Act of 1917, be in lieu of such tax. (40 Stat. 1122.)

This section is § 900 of the Revenue Act of 1918, cited above.

The taxes imposed by this section are in lieu of taxes imposed on like articles by § 600 of the Revenue Act of 1917 (see note to § 6309¾a, ante).

§ 6309⅘b. (Act Feb. 24, 1919, c. 18, § 901.) Same; sale or lease price.

If any person manufactures, produces or imports any article enumerated in section 900, or leases or licenses for exhibition any positive motion-picture film containing a picture ready for projection, and, whether through any agreement, arrangement, or understanding, or otherwise, sells, leases or licenses such article at less than the fair market price obtainable therefor, either (a) in such manner as directly or indirectly to benefit such person or any person directly or indirectly interested in the business of such person, or (b) with intent to cause such benefit, the amount for which such article is sold, leased or licensed shall be taken to be the amount which would have been received from the sale, lease or license of such article if sold, leased or licensed at the fair market price. (40 Stat. 1123.)

This section is § 901 of the Revenue Act of 1918, cited above.

§ 6309⅘c. (Act Feb. 24, 1919, c. 18, § 902.) Same; sculpture, paintings, statuary, etc.

There shall be levied, assessed, collected, and paid upon sculpture, paintings, statuary, art porcelains, and bronzes, sold by any person other than the artist, a tax equivalent to 10 per centum of the price for which so sold. This section shall not apply to the sale of any such article to an educational institution or public art museum. (40 Stat. 1123.)

This section is § 902 of the Revenue Act of 1918, cited above.

§ 6309⅘d. (Act Feb. 24, 1919, c. 18, § 903.) Same; returns; time for payment; penalty.

Every person liable for any tax imposed by section 900, 902, or 906, shall make monthly returns under oath in duplicate and pay the taxes imposed by such sections to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due. (40 Stat. 1123.)

This section is § 903 of the Revenue Act of 1918, cited above.

For corresponding provision in § 601 of the Revenue Act of 1917, see note to §§ 6309¾a–6309¾d, ante.

§ 6309⅘e. (Act Feb. 24, 1919, c. 18, § 904.) Tax on articles sold in excess of certain prices; by whom payable.

(a) On and after May 1, 1919, there shall be levied, assessed, collected, and paid a tax equivalent to 10 per centum of so much of the amount paid for any of the following articles as is in excess of the price hereinafter specified as to each such article, when such article is sold by or for a dealer or his estate on or after such date for consumption or use—

(1) Carpets and rugs, including fiber, except imported and American rugs made principally of wool, on the amount in excess of $5 per square yard;

(2) Picture frames, on the amount in excess of $10 each;

(3) Trunks, on the amount in excess of $50 each;

(4) Valises, traveling bags, suit cases, hat boxes used by travelers, and fitted toilet cases, on the amount in excess of $25 each;

(5) Purses, pocketbooks, shopping and hand bags, on the amount in excess of $7.50 each;

(6) Portable lighting fixtures, including lamps of all kinds and lamp shades, on the amount in excess of $25 each;

(7) Umbrellas, parasols, and sun shades, on the amount in excess of $4 each;

(8) Fans, on the amount in excess of $1 each;

(9) House or smoking coats or jackets, and bath or lounging robes, on the amount in excess of $7.50 each;

(10) Men's waistcoats, sold separately from suits, on the amount in excess of $5 each;

(11) Women's and misses' hats, bonnets, and hoods, on the amount in excess of $15 each;

(12) Men's and boys' hats, on the amount in excess of $5 each;

(13) Men's and boys' caps, on the amount in excess of $2 each;

(14) Men's, women's, misses', and boys' boots, shoes, pumps, and slippers, not including shoes or appliances made to order for any person having a crippled or deformed foot or ankle, on the amount in excess of $10 per pair;

(15) Men's and boys' neckties and neckwear, on the amount in excess of $2 each;

(16) Men's and boys' silk stockings or hose, on the amount in excess of $1 per pair;

(17) Women's and misses' silk stockings or hose, on the amount in excess of $2 per pair;

(18) Men's shirts, on the amount in excess of $3 each;

(19) Men's, women's, misses', and boys' pajamas, night gowns, and underwear, on the amount in excess of $5 each; and

(20) Kimonos, petticoats, and waists, on the amount in excess of $15 each.

(b) The tax imposed by this section shall not apply (1) to any article enumerated in paragraphs (2) to (8), both inclusive, of subdivision (a), if such article is made of, or ornamented, mounted, or fitted with, precious metals or imitations thereof or ivory, or (2) to any article made of fur on the hide or pelt, or of which any such fur is the component material of chief value, or to (3) any article enumerated in subdivision (17) or (18) of section 900.

(c) The taxes imposed by this section shall be paid by the purchaser to the vendor at the time of the sale and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section 502. (40 Stat. 1123.)

This section is § 904 of the Revenue Act of 1918, cited above.

For § 502 of this act, mentioned in this section, see ante, § 6309⅕c.

§ 6309⅘f. (Act Feb. 24, 1919, c. 18, § 905.) Tax on jewelry; returns; time for payment; penalty.

On and after April 1, 1919, there shall be levied, assessed, collected, and paid (in lieu of the tax imposed by subdivision (e) of section 600 of the Revenue Act of 1917) upon all articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semiprecious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical instruments); watches; clocks; opera glasses; lorgnettes; marine glasses; field glasses; and binoculars; upon any of the above when sold by or for a dealer or his estate for consumption or use, a tax equivalent to 5 per centum of the price for which so sold.

Every person selling any of the articles enumerated in this section shall make returns under oath in duplicate (monthly or quarterly as the Commissioner, with the approval of the Secretary, may prescribe) and pay the taxes imposed in respect to such articles by this section to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due. (40 Stat. 1124.)

This section is § 905 of the Revenue Act of 1918, cited above.

The tax imposed by this section is in lieu of that imposed by § 600(e) of the Revenue Act of 1917. See note to §§ 6309¾a–6309¾d, ante.

§ 6309⅘g. (Act Feb. 24, 1919, c. 18, § 906.) Tax on moving picture films.

On and after the 1st day of May, 1919, any person engaged in the business of leasing or licensing for exhibition positive motion-picture films containing pictures ready for projection shall pay monthly an excise tax in respect to carrying on such business equal to 5 per centum of the total rentals earned from each such lease or license during the preceding month. If a person owning such a film exhibits it for profit he shall pay a tax equivalent to 5 per centum of the fair rental or license value of such film at the time and place where and for the period during which exhibited. If any such person has, prior to December 6, 1918, made a bona fide contract with any person for the lease or licensing, after the tax imposed by this section takes effect, of such a film for exhibition for profit, and if such contract does not permit the adding of the whole of the tax imposed by this section to the amount to be paid under such contract then the lessee or licensee shall, in lieu of the lessor or licensor, pay so much of such tax as is not so permitted to be added to the contract price. The tax imposed by this section shall be in lieu of the tax imposed by subdivisions (c) and (d) of section 600 of the Revenue Act of 1917. (40 Stat. 1125.)

This section is § 906 of the Revenue Act of 1918, cited above.

The tax imposed by this section is in lieu of that imposed by § 600(c), (d), of the Revenue Act of 1917. See note to §§ 6309¾a–6309¾d, ante.

§ 6309⅘h. (Act Feb. 24, 1919, c. 18, § 907.) Tax on perfumes, toilet articles, patent medicines, etc.

(a) On and after May 1, 1919, there shall be levied, assessed, collected and paid (in lieu of the taxes imposed by subdivisions (g) and (h)

of section 600 of the Revenue Act of 1917) a tax of 1 cent for each 25 cents or fraction thereof of the amount paid for any of the following articles when sold by or for a dealer or his estate on or after such date for consumption or use:

(1) Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, tooth and mouth washes, dentrifrices, tooth pastes, aromatic cachous, toilet powders (other than soap powders), or any similar substance, article, or preparation by whatsoever name known or distinguished, any of the above which are used or applied or intended to be used or applied for toilet purposes;

(2) Pills, tablets, powders, tinctures, troches or lozenges, sirups, medicinal cordials or bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters (except those taxed under section 628 of this Act), essences, spirits, oils, and other medicinal preparations, compounds, or compositions (not including serums and antitoxins), upon the amount paid for any of the above as to which the manufacturer or producer claims to have any private formula, secret, or occult art for making or preparing the same, or has or claims to have any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended, or exposed for sale under any letters patent, or trade-mark, or which (if prepared by any formula, published or unpublished) are held out or recommended to the public by the makers, vendors, or proprietors thereof as proprietary medicines or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body: Provided, That the provisions of this section shall not apply to the sale of vaccines and bacterines which are not advertised to the general lay public, nor to the sale by a physician in personal attendance upon a patient of medicinal preparations not so advertised.

(b) The taxes imposed by this section shall be collected by whichever of the following methods the Commissioner may deem expedient: (1) by stamp affixed to such article by the vendor, the cost of which shall be reimbursed to the vendor by the purchaser; or (2) by payment to the vendor by the purchaser at the time of the sale, the taxes so collected being returned and paid to the United States by such vendor in the same manner as provided in section 502. (40 Stat. 1125.)

This section is § 907 of the Revenue Act of 1918, cited above.

The taxes imposed by this section are in lieu of those imposed by § 600(g), (h), of the Revenue Act of 1917. See note to §§ 6309¾a–6309¾d, ante.

Section 502 of this act, referred to in this section, is set forth ante, § 6309⅛c.

CHAPTER NINE—STAMP TAXES ON SPECIFIC OBJECTS

Sec.
6318a. 6318b. [Repealed.]
6318bb. Tax on bonds and other instruments; exemptions; notes secured by bonds of United States.
6318c–6318h. [Repealed.]
6318hh. Issue, register, or sale of unstamped instruments.
6318hhh. Unstamped instruments as evidence.
6318hhhh. Record of unstamped instruments.

STAMP TAX PROVISIONS OF THE REVENUE ACT OF 1918

6318i. Tax on bonds and other instruments.
6318j. Same; exemptions.
6318k. Same; offenses.
6318l. Same; other offenses.
6318m. Same; cancellation of stamps.
6318n. (a) Same; stamps; preparation and distribution.
(b) Same; stamps; printing.
(c) Same; collection of omitted taxes.
6318o. Same; stamps for Postmaster General, distribution and sale.
6318p. Same; stamps for assistant treasurers or depositaries; bonds; schedule of taxes.

SCHEDULE A—STAMP TAXES

(1) Bonds, debentures, certificates of indebtedness, or corporate securities.
(2) Indemnity and surety bonds, and guaranty and fidelity insurance.
(3) Issues of capital stock.
(4) Sales or transfers of capital stock.
(5) Sales on exchange for future delivery.
(6) Time drafts or checks, and promissory notes; exceptions.
(7) Conveyances of land.
(8) Entries at customhouses.
(9) Entries for withdrawal from customs bonded warehouses.
(10) Passage tickets to port not in United States, Canada, or Mexico.
(11) Voting proxies.
(12) Powers of attorney.
(13) Playing cards.
(14) Parcel-post packages.
(15) Insurance policies.

§§ 6318a, 6318b. (Act Oct. 3, 1917, c. 63, §§ 800, 801.) [Repealed.]

Sections 800 to 807, inclusive, of the Revenue Act of 1917, were repealed by § 1400 of the Revenue Act of 1918, post, § 6371¾a, but by the repealing act were continued in force for the collection of accrued taxes and penalties. The provisions of these sections were similar to those of Revenue Act of 1918, §§ 1100–1107, post, §§ 6318i–6318p, the material differences between the two acts being indicated in the notes to the sections last above cited.

STAMP TAX PROVISIONS OF ACT OCT. 22, 1914, c. 331

Sections 5 to 24, inclusive, of Act Oct. 22, 1914, c. 331, 38 Stat. 753–764, were expressly repealed by Act Sept. 8, 1916, c. 463, § 410, with a saving clause as to taxes which had then accrued under the act. The repealing provision is set forth in U. S. Comp. St. 1916, § 5980*l*. The text of the provisions so repealed is as follows:

"ADHESIVE STAMPS.

"Sec. 5. That on and after the first day of December, nineteen hundred and fourteen, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.

"And there shall also be levied, collected, and paid, for and in respect to the preparations, matters, and things mentioned and described in Schedule B of this Act, manufactured, sold, or removed for sale, the several taxes or sums of money set down in words or figures against the same, respectively, or otherwise specified or set forth in Schedule B of this Act.

"Sec. 6. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty

of a misdemeanor, and upon conviction thereof shall pay a fine of not more than $100, at the discretion of the court.

"Sec. 7. That if any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument, which shall have been provided, or may hereafter be provided, made, or used in pursuance of this Act, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled, the impression, or any part of the impression, of any such stamp, die, plate, or other instrument, as aforesaid, upon any vellum, parchment, or paper, or shall stamp or mark, or cause or procure to be stamped or marked, any vellum, parchment, or paper with any such forged or counterfeited stamp, die, plate, or other instrument, or part of any stamp, die, plate, or other instrument, as aforesaid, with intent to defraud the United States of any of the taxes hereby imposed, or any part thereof; or if any person shall utter, or sell, or expose for sale, any vellum, parchment, paper, article, or thing having thereupon the impression of any such counterfeited stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument, or any such forged, counterfeited, or resembled impression, or part of impression, as aforesaid, knowing the same to be forged, counterfeited, or resembled; or if any person shall knowingly use or permit the use of any stamp, die, plate, or other instrument, which shall have been so provided, made, or used as aforesaid, with intent to defraud the United States; or if any person shall fraudulently cut, tear, or remove, or cause or procure to be cut, torn, or removed, the impression of any stamp, die, plate, or other instrument which shall have been provided, made, or used in pursuance of this Act from any vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall fraudulently use, join, fix, or place, or cause to be used, joined, fixed, or placed, to, with, or upon any vellum, parchment, paper, or any instrument or writing charged or chargeable with any of the taxes hereby imposed, any adhesive stamp, or the impression of any stamp, die, plate, or other instrument, which shall have been provided, made, or used in pursuance of law, and which shall have been cut, torn, or removed from any other vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall willfully remove or cause to be removed, alter or cause to be altered, the canceling or defacing marks of any adhesive stamp with intent to use the same, or to cause the use of the same, after it shall have been once used, or shall knowingly or willfully sell or buy such washed or restored stamp, or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same, or prepare the same with intent for the further use thereof; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, or writing, then, and in every such case, every person so offending, and every person knowingly and willfully aiding, abetting, or assisting in committing any such offenses as aforesaid shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall forfeit the said counterfeit stamps and the articles upon which they are placed, and shall be punished by fine not exceeding $1,000, or by imprisonment and confinement at hard labor not exceeding five years, or both, at the discretion of the court.

"Sec. 8. That in any and all cases where an adhesive stamp shall be used for denoting any tax imposed by this Act, except as hereinafter provided, the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, so that the same may not again be used. And if any person shall fraudulently make use of an adhesive stamp to denote any tax imposed by this Act without so effectually canceling and obliterating such stamp, except as before mentioned, he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $500, or be imprisoned not more than six months, or both, at the discretion of the court: Provided, That instead of cancellation by initials and date, the stamps on the articles enumerated in Schedule B shall be so affixed on the box, bottle, or package that in opening the same, or using the contents thereof, the said stamp shall be effectually destroyed; and in default thereof the party making default shall be liable to the same penalty imposed for neglect to affix said stamp as hereinbefore prescribed in this Act.

"Sec. 9. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, or shall accept or pay, or cause to be accepted or paid, with design to evade the payment of any stamp tax, any promissory note liable to any of the taxes imposed by this Act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax hereby charged thereon, he, she, or they shall be deemed guilty of a misde-

meanor, and upon conviction thereof shall be punished by a fine not exceeding $200, at the discretion of the court.

"Sec. 10. That the collectors of the several districts are hereby authorized and required to furnish to any assistant treasurer of the United States or designated depositary thereof, or any postmaster located in their collection districts, respectively, a suitable quantity of adhesive stamps, without prepayment therefor, and may in advance require of any designated depositary, assistant treasurer of the United States, or postmaster a bond, with sufficient sureties, to an amount equal to the value of the adhesive stamps which may be placed in his hands and remain unaccounted for, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand. And it shall be the duty of such collectors to supply their deputies with, or sell to other parties within their respective districts who may make application therefor, adhesive stamps, upon the same terms allowed by law or under the regulations of the Commissioner of Internal Revenue, who is hereby authorized to make such other regulations, not inconsistent herewith, for the security of the United States and the better accommodation of the public, in relation to the matters hereinbefore mentioned, as he may judge necessary and expedient. And the Secretary of the Treasury may from time to time make such regulations as he may find necessary to insure the safe-keeping or prevent the illegal use of all such adhesive stamps.

"Sec. 11. That any person or persons who shall register, issue, sell, or transfer, or who shall cause to be issued, registered, sold, or transferred, any instrument, document, or paper of any kind or description whatsoever mentioned in Schedule A of this Act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and canceled in the manner required by law, with intent to evade the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $50, or by imprisonment not exceeding six months, or both, in the discretion of the court: Provided, That hereafter in all cases where the party has not affixed to any instrument the stamp required by law thereon at the time of issuing, selling, or transferring the said bonds, debentures, or certificates of stock or of indebtedness, and he or they, or any party having an interest therein, shall be subsequently desirous of affixing such stamp to said instrument, or, if said instrument be lost, to a copy thereof, he or they shall appear before the collector of internal revenue of the proper district, who shall, upon the payment of the price of the proper stamp required by law, and of a penalty of $10, and, where the whole amount of the tax denoted by the stamp required shall exceed the sum of $50, on payment also of interest, at the rate of six per centum, on said tax from the day on which such stamp ought to have been affixed, affix the proper stamp to such bond, debenture, certificate of stock or of indebtedness, or copy, and note upon the margin thereof the date of his so doing, and the fact that such penalty has been paid; and the same shall thereupon be deemed and held to be as valid, to all intents and purposes, as if stamped when made or issued: And provided further, That where it shall appear to said collector, upon oath or otherwise, to his satisfaction, that any such instrument has not been duly stamped, at the time of making or issuing the same, by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States of the stamp, or to evade or delay the payment thereof, then and in such case, if such instrument, or, if the original be lost, a copy thereof, duly certified by the officer having charge of any records in which such original is required to be recorded, or otherwise duly proven to the satisfaction of the collector, shall, within twelve calendar months after the making or issuing thereof, be brought to the said collector of internal revenue to be stamped, and the stamp tax chargeable thereon shall be paid, it shall be lawful for the said collector to remit the penalty aforesaid and to cause such instrument to be duly stamped. And when the original instrument, or a certified or duly proven copy thereof, as aforesaid, duly stamped so as to entitle the same to be recorded, shall be presented to the clerk, register, recorder, or other officer having charge of the original record, it shall be lawful for such officer, upon the payment of the fee legally chargeable for the recording thereof, to make a new record thereof, or to note upon the original record the fact that the error or omission in the stamping of said original instrument has been corrected pursuant to law; and the original instrument or such certified copy, or the record thereof, may be used in all courts and places in the same manner and with like effect as if the instrument had been originally stamped: And provided further, That in all cases where the party has not affixed the stamp required by law upon any such instrument issued, registered, sold, or transferred at a time when and at a place where no collection district was established, it shall be lawful for him or them, or any party having an interest therein, to affix the proper stamp thereto, or, if the original be lost, to a copy thereof. But no right acquired in good faith before the

stamping of such instrument, or copy thereof, as herein provided, if such record be required by law, shall in any manner be affected by such stamping as aforesaid."

See post, § 6318hh.

"Sec. 12. That hereafter no instrument, paper, or document required by law to be stamped, which has been signed or issued without being duly stamped, or with a deficient stamp, nor any copy thereof, shall be recorded until a legal stamp or stamps, denoting the amount of tax, shall have been affixed thereto, as prescribed by law: Provided, That any bond, debenture, certificate of stock, or certificate of indebtedness issued in any foreign country shall pay the same tax as is required by law on similar instruments when issued, sold, or transferred in the United States; and the party to whom the same is issued, or by whom it is sold or transferred, shall, before selling or transferring the same, affix thereon the stamp or stamps indicating the tax required."

See post, § 6318hhh.

"Sec. 13. That it shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law."

See post, § 6318hhhh.

"Sec. 14. That no instrument, paper, or document required by law to be stamped shall be deemed or held invalid and of no effect for the want of a particular kind or description of stamp designated for and denoting the tax charged on any such instrument, paper, or document, provided a legal documentary stamp or stamps denoting a tax of equal amount shall have been duly affixed and used thereon.

"Sec. 15. That all bonds, debentures, or certificates of indebtedness issued by the officers of the United States Government, or by the officers of any State, county, town, municipal corporation, or other corporation exercising the taxing power, shall be, and hereby are, exempt from the stamp taxes required by this Act: Provided, That it is the intent hereby to exempt from the stamp taxes imposed by this Act such State, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing, or municipal capacity: Provided further, That stock and bonds issued by cooperative building and loan associations, mutual ditch or irrigating companies, and building and loan associations or companies that make loans only to their shareholders, shall be exempt from the tax herein provided.

"Sec. 16. That all the provisions of this Act relating to dies, stamps, adhesive stamps, and stamp taxes shall extend to and include (except where manifestly inapplicable) all the articles or objects enumerated in Schedule B, subject to stamp taxes, and apply to the provisions in relation thereto.

"Sec. 17. That on and after December first, nineteen hundred and fourteen, any person, firm, company, or corporation that shall make, prepare, and sell, or remove for consumption or sale, perfumery, cosmetics, preparations, compositions, articles, or things upon which a tax is imposed by this Act, as provided for in Schedule B, without affixing thereto an adhesive stamp or label denoting the tax before mentioned shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than $500, or be imprisoned not more than six months, or both, at the discretion of the court.

"Sec. 18. That any manufacturer or maker of any of the articles for sale mentioned in Schedule B, after the same shall have been so made, and the particulars hereinbefore required as to stamps have been complied with, or any other person who shall take off, remove, or detach, or cause, or permit, or suffer to be taken off, or removed or detached, any stamp, or who shall use any stamp, or any wrapper or cover to which any stamp is affixed, to cover any other article or commodity than that originally contained in such wrapper or cover, with such stamp when first used, with the intent to evade the stamp duties, shall for every such article, respectively, in respect of which any such offense shall be committed, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than $500, or be imprisoned not more than six months, or both, at the discretion of the court, and every such article or commodity as aforesaid shall also be forfeited.

"Sec. 19. That any maker or manufacturer of any of the articles or commodities mentioned in Schedule B, as aforesaid, or any other person who shall sell, send out, remove, or deliver any article or commodity, manufactured as aforesaid, before the tax thereon shall have been fully paid by affixing thereon the proper stamp, as in this Act provided, or who shall hide or conceal, or cause to be hidden or concealed, or who shall remove or convey away, or deposit, or cause to be removed or conveyed away from or deposited in any place, any such article or commodity, to evade the tax chargeable thereon, or any part thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than $500, or be imprisoned not more than six months, or both, at the discretion of the court, together with the

forfeiture of any such article or commodity: Provided, That articles upon which stamp taxes are required by this Act may, when intended for exportation, be manufactured and sold or removed without having stamps affixed thereto, and without being charged with tax as aforesaid; and every manufacturer or maker of any article as aforesaid, intended for exportation, shall give such bonds and be subject to such rules and regulations to protect the revenue against fraud as may be from time to time prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

"Sec. 20. That every manufacturer or maker of any of the articles or commodities provided for in Schedule B, or his foreman, agent, or superintendent shall at the end of each and every month make, sign, and file with the collector of internal revenue for the district in which he resides a declaration in writing that no such article or commodity has, during such preceding month or time when the last declaration was made, been removed, or carried, or sent, or caused or suffered or known to have been removed, carried, or sent from the premises of such manufacturer or maker other than such as have been duly taken account of and charged with the stamp tax, on pain of such manufacturer or maker forfeiting for every refusal or neglect to make such declaration $100; and if any such manufacturer or maker, or his foreman, agent, or superintendent, shall make any false or untrue declaration, such manufacturer or maker, or foreman, agent, or superintendent making the same shall be deemed guilty of a misdemeanor, and upon conviction shall pay a fine of not more than $500, or be imprisoned not more than six months, or both, at the discretion of the court.

"Sec. 21. That the stamp taxes prescribed in this Act on the articles provided for in Schedule B shall attach to all such articles and things sold or removed for sale thirty days after the approval of this Act. Every person, except as otherwise provided in this Act, who offers or exposes for sale any article or thing provided for in said Schedule B, whether the article so offered or exposed is of foreign manufacture and imported or of domestic manufacture, shall be deemed the manufacturer thereof, and shall be subject to all the taxes, liabilities, and penalties imposed by law for the sale of articles without the use of the proper stamp denoting the tax paid thereon; and all such articles of foreign manufacture shall, in addition to the import duty imposed on the same, be subject to the stamp tax prescribed in this Act: Provided further, That internal revenue stamps required by existing law on imported merchandise shall be affixed thereto and canceled at the expense of the owner or importer before the withdrawal of such merchandise for consumption, and the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary for the affixing and canceling of such stamps, not inconsistent herewith.

"Sec. 22. That the Commissioner of Internal Revenue shall cause to be prepared and distributed for the payment of the taxes prescribed in this Act suitable stamps denoting the tax on the document, article, or thing to which the same may be affixed, and he is authorized to prescribe such method for the cancellation of said stamps, as substitute for or in addition to the method provided in this Act, as he may deem expedient. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to procure any of the stamps provided for in this Act by contract whenever such stamps can not be speedily prepared by the Bureau of Engraving and Printing; but this authority shall expire on the first day of November, nineteen hundred and fifteen, except as to imprinted stamps furnished under contract, authorized by the Commissioner of Internal Revenue. That the adhesive stamps used in the payment of the tax levied in Schedules A and B of this Act shall be furnished for sale by the several collectors of internal revenue, who shall sell and deliver them at their face value to all persons applying for the same, except officers or employees of the Internal-Revenue Service: Provided, That such collectors may sell and deliver such stamps in quantities of not less than $100 of face value, with a discount of one per centum, except as otherwise provided in this Act.

"*Schedule A. Stamp Taxes*

"Bonds, debentures, or certificates of indebtedness issued on and after the first day of December, nineteen hundred and fourteen, by any association, company, or corporation, on each $100 of face value or fraction thereof, 5 cents, and on each original issue, whether on organization or reorganization, of certificates of stock by any such association, company, or corporation, on each $100 of face value or fraction thereof, 5 cents, and on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling

the holder in any manner to the benefit of such stock, or to secure the future payment of money or for the future transfer of any stock, on each $100 of face value or fraction thereof, 2 cents: Provided, That it is not intended by this Act to impose a tax upon an agreement evidencing a deposit of stock certificates as collateral security for money loaned thereon, which stock certificates are not actually sold, nor upon such stock certificates so deposited: Provided further, That in case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. And any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale, or who shall in pursuance of any such sale deliver any such stock, or evidence of the sale of any such stock or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both, at the discretion of the court.

"Upon each sale, agreement of sale, or agreement to sell, any products or merchandise at any exchange, or board of trade, or other similar place, either for present or future delivery, for each $100 in value of said sale or agreement of sale or agreement to sell, 1 cent, and for each additional $100 or fractional part thereof in excess of $100, 1 cent: Provided, That on every sale or agreement of sale or agreement to sell as aforesaid there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps in value equal to the amount of the tax on such sale. And every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale or agreement of sale, or agreement to sell, or who shall, in pursuance of any such sale, agreement of sale, or agreement to sell, deliver any such products or merchandise without a bill, memorandum, or other evidence thereof as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both, at the discretion of the court.

"That no bill, memorandum, agreement, or other evidence of such sale, or agreement of sale, or agreement to sell, in case of products or merchandise actually delivered at the time of sale or while in vessel, boat, or car, and actually in course of transportation, shall be subject to this tax, provided such bill, memorandum, agreement, or other evidence of such sale, or agreement of sale, or agreement to sell shall be accompanied by bills of lading or vouchers showing that the said products are actually in course of transportation as aforesaid.

"Promissory notes, except bank notes issued for circulation, and for each renewal of the same, for a sum not exceeding $100, 2 cents; and for each additional $100 or fractional part thereof in excess of $100, 2 cents.

"Express and freight: It shall be the duty of every railroad or steamboat company, carrier, express company, or corporation or person whose occupation is to act as such, to issue to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation where a charge exceeding 5 cents is made a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and such shipper, consignor, agent, or person shall duly attach and cancel, as is in this Act provided, to each of said bills of lading, manifests, or other memorandum, a stamp of the value of 1 cent: Provided, That a consignment of newspapers to any one point or to different points by the same train or conveyance when inclosed in one general bundle at the point of shipment shall be considered as one shipment, and, in lieu of a bill of lading therefor, the publisher of such newspaper shall file on or before the fifteenth day of each month with the collector of internal revenue for the district in which such newspaper is published a report under oath showing the number of such shipments during the preceding month to which report such publisher

shall affix and cancel stamps equal in value to 1 cent for each shipment so reported: Provided further, That the report herein required shall not include shipments of newspapers delivered to points within the county in which the same are published. Any failure to issue such bill of lading, manifest, or other memorandum, as herein provided, shall subject such railroad or steamboat company, carrier, express company, or corporation or person to a penalty of $50 for each offense.

"Telegraph and telephone messages: It shall be the duty of every person, firm, or corporation owning or operating any telegraph or telephone line or lines to make within thirty days after the expiration of each month a sworn statement to the collector of internal revenue in each of their respective districts, stating the number of dispatches, messages, or conversations originated at each of their respective exchanges, toll stations, or offices, and transmitted thence over their lines during the preceding month for which a charge of 15 cents or more was imposed, and for each of such messages or conversations the said person, firm, or corporation shall collect from the person paying for the message or conversation, a tax of 1 cent in addition to the regular charges for the message or conversation, which tax the said person, firm, or corporation shall in turn pay to the said collector of internal revenue of their respective districts: Provided, That only one payment of said tax shall be required, notwithstanding the lines of one or more persons, firms, or corporations shall be used for the transmission of each of said messages or conversations: Provided further, That the messages or dispatches of the officers and employees of any telegraph or telephone company concerning the affairs and service of the company, and like messages or dispatches of the officials and employees of railroad companies sent over the wires on their respective railroads shall be exempt from this requirement: And provided further, That messages of officers and employees of the Government on official business shall be exempt from the taxes herein imposed upon telegraphic and telephonic messages.

"Bond: For indemnifying any person or persons, firm, or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, 50 cents.

"Certificate of profits, or any certificate or memorandum showing an interest in the property or accumulations of any association, company, or corporation, and on all transfers thereof, on each $100 of face value or fraction thereof, 2 cents.

"Certificate: Any certificate of damage, or otherwise, and all other certificates or documents issued by any port warden, marine surveyor, or other person acting as such, 25 cents.

"Certificate of any description required by law not otherwise specified in this Act, 10 cents.

"Contract: Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description issued by brokers or persons acting as such, for each note or memorandum of sale, not otherwise provided for in this Act, 10 cents.

"Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance thereon, exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents: Provided, That nothing contained in this paragraph shall be so construed as to impose a tax upon any instrument or writing given to secure a debt.

"Entry of any goods, wares, or merchandise at any customhouse, either for consumption or warehousing, not exceeding $100 in value, 25 cents; exceeding $100 and not exceeding $500 in value, 50 cents; exceeding $500 in value, $1.

"Entry for the withdrawal of any goods or merchandise from customs bonded warehouse, 50 cents.

"Insurance: Each policy of insurance or other instrument, by whatever name the same shall be called, by which insurance shall be made or renewed upon property of any description (including rents or profits), whether against peril by sea or on inland waters, or by fire or lightning, or other peril, made by any person, association, or corporation, upon the amount of premium charged, one-half of 1 cent on each dollar or fractional part thereof: Provided, That purely cooperative or mutual fire insurance companies or associations carried on by the members thereof solely for the protection of their own property and not for profit shall be exempted from the tax herein provided: And provided further, That policies of reinsurance shall be exempt from the tax herein imposed by this paragraph.

"Each policy of insurance, or bond or obligation of the nature of indemnity

for loss, damage, or liability issued, or executed, or renewed by any person, association, company, or corporation, transacting the business of fidelity, employer's liability, plate glass, steam boiler, burglary, elevator, automatic sprinkler, or other branch of insurance (except life, personal accident, and health insurance, and insurance described and taxed or exempted in the preceding paragraph and excepting also workmen's compensation insurance carried on by the members thereof solely for their own protection and not for profit), and each bond undertaking or recognizance, conditioned for the performance of the duties of any office or position, or for the doing or not doing of anything therein specified, or other obligation of the nature of indemnity, and each contract or obligation guaranteeing the validity or legality of bonds or other obligations issued by any State, county, municipal, or other public body or organization, or guaranteeing titles to real estate or mercantile credits executed or guaranteed by any liability, fidelity, guarantee, or surety company upon the amount of premium charged, one-half of 1 cent on each dollar or fractional part thereof: Provided, That policies of reinsurance shall be exempt from the tax herein imposed by this paragraph.

"Passage ticket, for each passenger, sold in the United States for passage by any vessel to a foreign port or place, if costing not exceeding $30, $1; costing more than $30 and not exceeding $60, $3; costing more than $60, $5: Provided, That such passage tickets, costing $10 or less, shall be exempt from taxation.

"Power of attorney or proxy for voting at any election for officers of any incorporated company or association, except religious, charitable, or literary societies, or public cemeteries, 10 cents.

"Power of attorney to sell and convey real estate, or to rent or lease the same, to receive or collect rent, to sell or transfer any stock, bonds, scrip, or for the collection of any dividends or interest thereon, or to perform any and all other acts not hereinbefore specified, 25 cents: Provided, That no stamps shall be required upon any papers necessary to be used for the collection of claims from the United States for pensions, back pay, bounty, or for property lost in the military or naval service.

"Protest: Upon the protest of every note, bill of exchange, acceptance, check or draft, or any marine protest, whether protested by a notary public or by any other officer who may be authorized by the law of any State or States to make such protest, 25 cents.

"Every seat sold in a palace or parlor car and every berth sold in a sleeping car, 1 cent, to be paid by the company selling the same.

"*Schedule B*

"Perfumery and cosmetics and other similar articles: For and upon every packet, box, bottle, pot, phial, or other inclosure containing any essence, extract, toilet water, cosmetic, vaseline, petrolatum, hair oil, pomade, hair dressing, hair restorative, hair dye, tooth wash, dentifrice, tooth paste, aromatic cachous, or any similar substance or article, by whatsoever name the same heretofore have been, now are, or may hereafter be called, known, or distinguished, used, or applied as perfumes or as cosmetics, and sold or removed for consumption and sale in the United States, where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall not exceed at the retail price or value the sum of 5 cents, one-eighth of 1 cent.

"Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of 5 cents, and shall not exceed the retail price or value of 10 cents, two-eighths of 1 cent.

"Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of 10 cents and shall not exceed the retail price or value of 15 cents, three-eighths of 1 cent.

"Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of 15 cents and shall not exceed the retail price or value of 25 cents, five-eighths of 1 cent. And for each additional 25 cents of retail price or value or fractional part thereof in excess of 25 cents, five-eighths of 1 cent.

"Chewing gum or substitutes therefor: For and upon each box, carton, jar, or other package containing chewing gum of not more than $1 of actual retail value, 4 cents; if exceeding $1 of retail value, for each additional dollar or fractional part thereof, 4 cents; under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

"That all articles and preparations provided for in this schedule which are in the hands of manufacturers or of wholesale or retail dealers on and after December first, nineteen hundred and fourteen, shall be subject to the payment of the stamp taxes herein provided for, but it shall be deemed a compliance with this Act as to such articles on hand in the hands of wholesale or retail dealers as aforesaid who are not the manufacturers thereof to affix the proper

adhesive tax stamp at the time the packet, box, bottle, pot, or phial, or other inclosure with its contents is sold at retail.

"There shall be an allowance of drawback on articles mentioned in Schedule B of this Act on which any internal-revenue tax shall have been paid, equal in amount to the stamp tax paid thereon, and no more, when exported, to be paid by the warrant of the Secretary of the Treasury on the Treasurer of the United States, out of any money arising from internal taxes not otherwise appropriated: Provided, That no allowance of drawback shall be made for any such articles exported prior to the date this Act becomes effective. The evidence that any such tax has been paid as aforesaid shall be furnished to the satisfaction of the Commissioner of Internal Revenue by the person claiming the allowance of drawback, and the amount shall be ascertained under such regulations as shall be prescribed from time to time by said commissioner, with the approval of the Secretary of the Treasury.

"Sec. 23. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person, firm, company, corporation, or association liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe, and every such person, firm, company, corporation, or association who evades or attempts to evade any of the taxes imposed by this Act, or shall fail to truly account for and pay all taxes collected by them under this Act, or any regulations issued thereunder, shall be subject to a penalty of double the amount of the taxes evaded or attempted to be evaded or unlawfully withheld, to be assessed and collected as other penalties incurred under internal-revenue laws are assessed and collected; and for the expense connected with the assessment and collection of the taxes provided by this Act there is hereby appropriated $200,000, or so much thereof as may be required, out of any money in the Treasury not otherwise appropriated; $170,000 to be added to and made a part of the appropriations for 'salaries and expenses of collection of internal revenue, nineteen hundred and fifteen; and $30,000 to the appropriation for paper for internal-revenue stamps, nineteen hundred and fifteen.'

"Sec. 24. That the provisions of this Act shall take effect on the day next succeeding the date of its passage, except where otherwise expressly provided: Provided, That on the day after the thirty-first day of December, nineteen hundred and fifteen, the taxes levied under this Act shall no longer be levied and collected, but all taxes arising or accruing before said date shall continue to be collectible under the terms of this Act: Provided, however, That on and after the first day of January, nineteen hundred and sixteen, the provisions of section thirty-three hundred and thirty-nine of the Revised Statutes, as amended by an Act approved April twelfth, nineteen hundred and two, imposing a tax on fermented liquors shall not be affected by any limitation as to the levying or collecting of the additional tax imposed by this Act on such fermented liquors, but shall then be in full force and effect on and after the said first day of January, nineteen hundred and sixteen. All stamps provided for in this Act unused after the aforesaid date shall be redeemed from the holder thereof, under such rules as the Secretary of the Treasury may prescribe."

§ 6318bb. (Act April 5, 1918, c. 45, § 301.) Tax on bonds and other instruments; exemptions; notes secured by bonds of United States.

No stamp tax shall be required or imposed upon a promissory note secured by the pledge of bonds or obligations of the United States issued after April twenty-fourth, nineteen hundred and seventeen, or secured by the pledge of a promissory note which itself is secured by the pledge of such bonds or obligations: Provided, That in either case the par value of such bonds or obligations shall equal the amount of such note. (40 Stat. 514.)

This section was section 301 of the War Finance Corporation Act, cited above.

Other sections of the act are set forth, ante, §§ 3115⅝a–3115⅝qq.

§§ 6318c–6318h. (Act Oct. 3, 1917, c. 63, §§ 802–807.) [Repealed.]

See note under §§ 6318a, 6318b, ante.

§ 6318hh. (Act June 13, 1898, c. 448, § 13, as amended, Act March 2, 1901, c. 806, § 7.) Issue, register, or sale of unstamped instruments.

Any person or persons who shall register, issue, sell, or transfer, or who shall cause to be issued, registered, sold, or transferred, any instrument, document, or paper of any kind or description whatsoever mentioned in this Act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and canceled in the manner required by law, with intent to evade the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court; and such instrument, document, or paper, not being stamped according to law, shall be deemed invalid and of no effect: Provided, That hereafter, in all cases where the party has not affixed to any instrument the stamp required by law thereon at the time of issuing, selling, or transferring the said bonds, debentures, or certificates of stock or of indebtedness, or any instrument, document, or paper of any kind or description whatsoever mentioned in Schedule A of this Act, and he or they, or any party having an interest therein, shall be subsequently desirous of affixing such stamp to said instrument, or, if said instrument be lost, to a copy thereof, he or they shall appear before the collector of internal revenue of the proper district, who shall, upon the payment of the price of the proper stamp required by law, and of a penalty of ten dollars, and, where the whole amount of the tax denoted by the stamp required shall exceed the sum of fifty dollars, on payment also of interest, at the rate of six per centum, on said tax from the day on which such stamp ought to have been affixed, affix the proper stamp to such bond, debenture, certificate of stock or of indebtedness or copy, or instrument, document or paper of any kind or description whatsoever mentioned in Schedule A of this Act, and note upon the margin thereof the date of his so doing and the fact that such penalty has been paid; and the same shall thereupon be deemed and held to be as valid to all intents and purposes as if stamped when made or issued: And provided further, That where it shall appear to said collector, upon oath or otherwise, to his satisfaction, that any such instrument has not been duly stamped, at the time of making or issuing the same, by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States of the stamp, or to evade or delay the payment thereof, then and in such case, if such instrument, or, if the original be lost, a copy thereof, duly certified by the officer having charge of any records in which such original is required to be recorded, or otherwise duly proven to the satisfaction of the collector, shall, within twelve calendar months after the making or issuing thereof, be brought to the said collector of internal revenue to be stamped, and the stamp tax chargeable thereon shall be paid, it shall be lawful for the said collector to remit the penalty aforesaid and to cause such instrument to be duly stamped. And when the original instrument, or a certified or duly proven copy thereof, as aforesaid, duly stamped so as to entitle the same to be recorded, shall be presented to the clerk, register, recorder, or other officer having charge of the original record, it shall be lawful for such officer, upon the payment of the fee legally chargeable for the recording thereof, to make a new record thereof, or to note upon the original record the fact that the error or omission in the stamping of said original

instrument has been corrected pursuant to law; and the original instrument or such certified copy, or the record thereof, may be used in all courts and places in the same manner and with like effect as if the instrument had been originally stamped: And provided further, That in all cases where the party has not affixed the stamp required by law upon any such instrument issued, registered, sold, or transferred at a time when and at a place where no collection district was established, it shall be lawful for him or them, or any party having an interest therein, to affix the proper stamp thereto, or, if the original be lost, to a copy thereof. But no right acquired in good faith before the stamping of such instrument, or copy thereof, as herein provided, if such record be required by law, shall in any manner be affected by such stamping as aforesaid. (30 Stat. 454. 31 Stat. 941.)

This section, and the two sections next following, were sections 13–15 of Act June 13, 1898, c. 448, 30 Stat. 448, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," cited above. This act was the war revenue act of 1898. This section was amended by Act March 2, 1901, c. 806, § 7, also cited above, to read as set forth above.

Sections 1, 3, 34–48, of said act, are set forth in U. S. Comp. St. 1916 as sections 6144, 6174, 6824, 6479, 6258, 5980, 6259–6270, thereof, respectively.

Section 2 of said act was repealed by Act April 12, 1902, c. 500, § 2, 32 Stat. 96. Section 4 of said act was repealed by Act April 12, 1902, c. 500, § 5, 32 Stat. 97. Sections 6, 12, 18, 20–25, 27–29, and schedules A and B of said act, were repealed by Act April 12, 1902, c. 500, § 7, 32 Stat. 97. Section 5 of said act was repealed by Act April 12, 1902, c. 500, § 10, 32 Stat. 99.

The other sections of said act were not expressly repealed by said Act April 12, 1902. c. 500, or by any subsequent law; but, because of the repeal of the provisions of said act of 1898, as above noted, which enumerated the taxes imposed, said unrepealed sections, including §§ 13–15, set forth here, were deemed no longer operative, the taxes to which they referred (particularly the documentary taxes) having been repealed, and were accordingly omitted from U. S. Comp. St. 1916. Stamp taxes on certain documents were again imposed by Act Oct. 22, 1914, c. 331, §§ 5–24, 38 Stat. 753–764, and by Res. Dec. 17, 1915. c. 4, 39 Stat. 2; but these taxes were repealed by Act Sept. 8, 1916, c. 463, § 410, 39 Stat. 792. Stamp taxes of a similar nature were again imposed by Act Oct. 3, 1917, c. 63, §§ 800–807, 40 Stat. 318–321. Said Act Oct. 3, 1917, c. 63, §§ 800–807, however, contained no provisions like those of said §§ 13–15 of the act of 1898, but similar provisions appear in the act of Oct. 22, 1914, c. 331, the text of which is set forth in the notes under §§ 6318a, 6318b, ante; and the Commissioner of Internal Revenue has held that said §§ 13–15 of said act of 1898 are in force and operative as to the documentary taxes imposed by said act of 1913. Accordingly, said §§ 13–15 are set forth in this compilation as §§ 6318hh–6318hhhh.

The Revenue Act of 1917 was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. Stamp tax provisions substantially similar to those of the act of 1917 were contained in Revenue Act of 1918, §§ 1100–1107, post, §§ 6318i–6318p.

Notes of Decisions

Effect of failure to affix stamps.—A deed otherwise complete passes title, although revenue stamps are not affixed thereto. Kanner v. Startz (Tex. Civ. App.) 203 S. W. 603.

§ 6318hhh. (Act June 13, 1898, c. 448, § 14.) Unstamped instruments as evidence.

Hereafter no instrument, paper, or document required by law to be stamped, which has been signed or issued without being duly stamped, or with a deficient stamp, nor any copy thereof, shall be recorded or admitted, or used as evidence in any court until a legal stamp or stamps, denoting the amount of tax, shall have been affixed thereto, as prescribed by law: Provided, That any bond, debenture, certificate of stock, or certificate of indebtedness issued in any foreign country shall pay the same tax as is required by law on similar instruments when issued, sold, or transferred in the United States; and the party to whom the same is issued, or by

whom it is sold or transferred, shall, before selling or transferring the same, affix thereon the stamp or stamps indicating the tax required. (30 Stat. 455.)

See note to § 6318hh.

§ 6318hhhh. (Act June 13, 1898, c. 448, § 15.) Record of unstamped instruments.

It shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law; and the record, registry, or transfer of any such instruments upon which the proper stamp or stamps aforesaid shall not have been affixed and canceled as aforesaid shall not be used in evidence. (30 Stat. 455.)

See note to § 6318hh.

STAMP TAX PROVISIONS OF THE REVENUE ACT OF 1918

§ 6318i. (Act Feb. 24, 1919, c. 18, § 1100.) Tax on bonds and other instruments.

On and after April 1, 1919, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, by any person who makes, signs, issues, sells, removes, consigns, or ships the same, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule. The taxes imposed by this section shall, in the case of any article upon which a corresponding stamp tax is now imposed by law, be in lieu of such tax. (40 Stat. 1133.)

This section is § 1100 of the Revenue Act of 1918 (Title XI—Stamp Taxes), cited above.

Revenue Act of 1917, § 800, was identical with this section, except that it had the words "corporation, partnership or association" after the words "by any person," and did not contain the second sentence. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

Notes of Decisions

Decisions relating to stamp taxes under former laws.—See, also, U. S. Comp. St. 1916, notes on pp. 7307–7333.

—— **Person required to affix stamp.**—Grantee in referee's deed held person causing it to be issued and for whose benefit it is issued and required to have stamps affixed under Act Oct. 22, 1914, §§ 5, 6. Home Title Ins. Co. of New York v. Keith (D. C.) 230 F. 905.

—— **Time for affixing stamp.**—Under Act Oct. 22, 1914, §§ 5, 6, 11, relative to stamp tax, held, that stamp need not be affixed before signing or partial execution of instrument if affixed before paper is issued. Home Title Ins. Co. of New York v. Keith (D. C.) 230 F. 905.

§ 6318j. (Act Feb. 24, 1919, c. 18, § 1101.) Same; exemptions.

There shall not be taxed under this title any bond, note, or other instrument, issued by the United States, or by any foreign Government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power; or any bond of indemnity required to be filed by any person to secure payment of any pension, allowance, allotment, relief, or insurance by the United States; or stocks and bonds issued by cooperative building and loan associations which are organized and operated exclusively for the benefit of their members

and make loans only to their shareholders, or by mutual ditch or irrigating companies. (40 Stat. 1133.)

This section is § 1101 of the Revenue Act of 1918 (Title XI—Stamp Taxes), cited above.

Revenue Act of 1917, § 801, contained provisions similar to those of this section, except that it contained the clause "when issued in the exercise of a strictly governmental, taxing or municipal function" after the words "exercising the taxing power," and did not contain the clause relating to bond of indemnity to secure payment of pension, allowance, allotment, relief or insurance by the United States.

It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

Notes of Decisions

Decisions relating to stamp taxes under former laws.—See, also, U. S. Comp. St. 1916, notes pp. 7307–7333.

—— **Exemptions.**—A mutual fire insurance company, organized under the law of Ohio, without capital stock, and insuring only property of its members, is within the exemption of Act Oct. 22, 1914, and not subject to the stamp tax on its policies imposed thereby, although under the state statute it may and does charge a cash premium in advance, and maintains a reserve, on which it incidentally earns interest. Niles v. Central Manufacturers' Mut. Ins. Co. (C. C. A.) 252 F. 564.

§ 6318k. (Act Feb. 24, 1919, c. 18, § 1102.) Same; offenses.

Whoever—

(a) Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid;

(b) Consigns or ships, or causes to be consigned or shipped, by parcel post any parcel, package, or article without the full amount of tax being duly paid;

(c) Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, package, or other article without the full amount of tax being duly paid;

(d) Makes use of any adhesive stamp to denote any tax imposed by this title without canceling or obliterating such stamp as prescribed in section 1104;

Is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than $100 for each offense. (40 Stat. 1133.)

This section is § 1102 of the Revenue Act of 1918 (Title XI—Stamp Taxes), cited above.

Revenue Act of 1917, § 802, contained provisions identical with those of this section, except that in paragraph (d) it referred to section 804 of the act of 1917. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

§ 6318*l*. (Act Feb. 24, 1919, c. 18, § 1103.) Same; other offenses.

Whoever—

(a) Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title;

(b) Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, (1) any adhesive stamp or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or (2) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or (3) any forged or counterfeit stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article;

(c) Willfully removes, or alters the cancellation, or defacing

marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has been already used, or knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same;

(d) Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article;

Is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than $1,000, or by imprisonment for not more than five years, or both, and any such reused, canceled, or counterfeit stamp and the vellum, parchment, document, paper, package, or article upon which it is placed or impressed shall be forfeited to the United States. (40 Stat. 1133.)

This section is § 1103 of the Revenue Act of 1918 (Title XI—Stamp Taxes), cited above.

Revenue Act of 1918, § 803, contained provisions identical with those of this section except that in the last paragraph, after the words "or both," it contained the clause "in the discretion of the court."

It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

§ 6318m. (Act Feb. 24, 1919, c. 18, § 1104.) Same; cancellation of stamps.

Whenever an adhesive stamp is used for denoting any tax imposed by this title, except as hereinafter provided, the person using or affixing the same shall write or stamp or cause to be written or stamped thereupon the initials of his or its name and the date upon which the same is attached or used, so that the same may not again be used: Provided, That the Commissioner may prescribe such other method for the cancellation of such stamps as he may deem expedient. (40 Stat. 1134.)

This section is § 1104 of the Revenue Act of 1918 (Title XI—Stamp Taxes), cited above.

Revenue Act of 1917, § 804, contained provisions identical with those of this section, except that it contained the words "corporation, partnership, or association" after the word "person," and the words "of Internal Revenue," after the word "Commissioner." It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a.

§ 6318n. (Act Feb. 24, 1919, c. 18, § 1105.) (a) Same; stamps; preparation and distribution.

(a) The Commissioner shall cause to be prepared and distributed for the payment of the taxes prescribed in this title suitable stamps denoting the tax on the document, articles, or thing to which the same may be affixed, and shall prescribe such method for the affixing of said stamps in substitution for or in addition to the method provided in this title, as he may deem expedient.

(b) Same; stamps; printing.

(b) The Commissioner, with the approval of the Secretary, is authorized to procure any of the stamps provided for in this title by contract whenever such stamps can not be speedily prepared by the Bureau of Engraving and Printing; but this authority shall expire on January 1, 1920, except as to imprinted stamps furnished under contract, authorized by the Commissioner.

(c) Same; collection of omitted taxes.

(c) All internal-revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this title, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, pa-

per, writing, parcel, package, or article named herein. (40 Stat. 1134.)

This section is § 1105 of the Revenue Act of 1918 (Title XI—Stamp Taxes), cited above.

Revenue Act of 1917, § 805, contained provisions identical with those of this section, except that it contained the words "of Internal Revenue" after the word "Commissioner" wherever it occurred, and the words "of the Treasury" after the word "Secretary" in paragraph (b), and fixed January 1, 1918, instead of January 1, 1920, as the date of the expiration of authority to procure stamps by contract. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

§ 6318*o*. (Act Feb. 24, 1919, c. 18, § 1106.) Same; stamps for Postmaster General; distribution and sale.

The Commissioner shall furnish to the Postmaster General without prepayment a suitable quantity of adhesive stamps to be distributed to and kept on sale by the various postmasters in the United States. The Postmaster General may require each such postmaster to give additional or increased bond as postmaster for the value of the stamps so furnished, and each such postmaster shall deposit the receipts from the sale of such stamps to the credit of and render accounts to the Postmaster General at such times and in such form as he may by regulations prescribe. The Postmaster General shall at least once monthly transfer all collections from this source to the Treasury as internal-revenue collections. (40 Stat. 1134.)

This section is § 1106 of the Revenue Act of 1918 (Title XI—Stamp Taxes), cited above.

Revenue Act of 1917, § 806, contained provisions identical with those of this section, except that the words "of Internal Revenue," were inserted after the word "Commissioner." It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

§ 6318p. (Act Feb. 24, 1919, c. 18, § 1107.) Same; stamps for assistant treasurers or depositaries; bonds; schedule of taxes.

The collectors of the several districts shall furnish without prepayment to any assistant treasurer or designated depositary of the United States located in their respective collection districts a suitable quantity of adhesive stamps for sale. In such cases the collector may require a bond, with sufficient sureties, to an amount equal to the value of the adhesive stamps so furnished, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand. The Secretary may from time to time make such regulations as he may find necessary to insure the safekeeping or prevent the illegal use of all such adhesive stamps.

Revenue Act of 1917, § 807, contained provisions identical with those of this paragraph, except that the words "of the Treasury" were inserted after the word "Secretary." It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a.

SCHEDULE A—STAMP TAXES

(1) Bonds, debentures, certificates of indebtedness, or corporate securities.

Bonds of indebtedness: On all bonds, debentures, or certificates of indebtedness issued by any person, and all instruments, however termed, issued by any corporation with interest coupons or in registered form, known generally as corporate securities, on each $100 of face value or fraction thereof, 5 cents: Provided, That every renewal of the foregoing shall be taxed as a new issue: Provided further, That when a bond conditioned for the repayment or

payment of money is given in a penal sum greater than the debt secured, the tax shall be based upon the amount secured.

Revenue Act 1917, § 807(1), contained provisions similar to those of this subdivision. The portion preceding the provisos read as follows: "Bonds of indebtedness: Bonds, debentures, or certificates of indebtedness issued on and after the first day of December, nineteen hundred and seventeen, by any person, corporation, partnership, or association, on each $100 of face value or fraction thereof, 5 cents." The provisos were identical. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(2) Indemnity and surety bonds, and guaranty and fidelity insurance.

Bonds, indemnity and surety: On all bonds executed for indemnifying any person who shall have become bound or engaged as surety, and on all bonds executed for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, and on all policies of guaranty and fidelity insurance, including policies guaranteeing titles to real estate and mortgage guarantee policies, and on all other bonds of any description, made, issued, or executed, not otherwise provided for in this schedule, except such as may be required in legal proceedings, 50 cents: Provided, That where a premium is charged for the issuance, execution, renewal or continuance of such bond the tax shall be 1 cent on each dollar or fractional part thereof of the premium charged: Provided further, That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

Revenue Act of 1917, § 807(2), contained provisions substantially similar, except that the words "corporation, partnership, or corporation" were inserted after the word "person," and there was no provision requiring stamps on policies of guaranty and fidelity insurance. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(3) Issues of capital stock.

Capital stock, issued: On each original issue, whether on organization or reorganization, of certificates of stock, or of profits, or of interest in property or accumulations, by any corporation, on each $100 of face value or fraction thereof, 5 cents: Provided, That where a certificate is issued without face value, the tax shall be 5 cents per share, unless the actual value is in excess of $100 per share, in which case the tax shall be 5 cents on each $100 of actual value or fraction thereof.

The stamps representing the tax imposed by this subdivision shall be attached to the stock books and not to the certificates issued.

Revenue Act of 1917, § 807(3), contained provisions substantially similar to those of this subdivision, except that the words "association, company, or" preceded the word "corporation." It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(4) Sales or transfers of capital stock.

Capital stock, sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, interest, or rights, or not, on each $100 of face value or fraction thereof, 2 cents, and where such shares are without par or face value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share, unless the actual value thereof is in excess

of $100 per share, in which case the tax shall be 2 cents on each $100 of actual value or fraction thereof: Provided, That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited: Provided further, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: Provided further, That in case of sale where the evidence of transfer is shown only by the books of the corporation the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both.

Revenue Act of 1917, § 807(4), containing provisions corresponding to those of this subdivision, read as follows: "Capital stock, sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock or not, on each $100 of face value or fraction thereof, 2 cents, and where such shares of stock are without par value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share, unless the actual value thereof is in excess of $100 per share, in which case the tax shall be 2 cents on each $100 of actual value or fraction thereof: Provided, That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of stock certificates as collateral security for money loaned thereon, which stock certificates are not actually sold, nor upon such stock certificates so deposited: Provided further, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: Provided further, That in case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons who shall make any such sale, or who shall in pursuance of any such sale deliver any stock or evidence of the sale of any stock or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto with intent to evade the foregoing provisions shall be deemed

guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both, at the discretion of the court."

It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(5) Sales on exchange for future delivery.

Produce, sales of, on exchange: Upon each sale, agreement of sale, or agreement to sell (not including so-called transferred or scratch sales), any products or merchandise at, or under the rules or usages of, any exchange, or board of trade, or other similar place, for future delivery, for each $100 in value of the merchandise covered by said sale or agreement of sale or agreement to sell, 2 cents, and for each additional $100 or fractional part thereof in excess of $100, 2 cents: Provided, That on every sale or agreement of sale or agreement to sell as aforesaid there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps in value equal to the amount of the tax on such sale: Provided further, That sellers of commodities described herein, having paid the tax provided by this subdivision, may transfer such contracts to a clearing-house corporation or association, and such transfer shall not be deemed to be a sale, or agreement of sale, or an agreement to sell within the provisions of this Act, provided that such transfer shall not vest any beneficial interest in such clearing-house association but shall be made for the sole purpose of enabling such clearing-house association to adjust and balance the accounts of the members of such clearing-house association on their several contracts. Every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale or agreement of sale, or agreement to sell, or who, in pursuance of any such sale, agreement of sale, or agreement to sell, delivers any such products or merchandise without a bill, memorandum, or other evidence thereof as herein required, or who delivers such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000 or be imprisoned not more than six months, or both.

No bill, memorandum, agreement, or other evidence of such sale, or agreement of sale, or agreement to sell, in case of cash sales of products or merchandise for immediate or prompt delivery which in good faith are actually intended to be delivered shall be subject to this tax.

Revenue Act of 1917, § 807(5), contained provisions corresponding to those of this section. The portion thereof preceding the proviso read as follows: "Produce, sales of, on exchange: Upon each sale, agreement of sale, or agreement to sell, including so-called transferred or scratch sales, any products or merchandise at any exchange, or board of trade, or other similar place, for future delivery, for each $100 in value of the merchandise covered by said sale or agreement of sale or agreement to sell, 2 cents, and for each additional $100 or fractional part thereof in excess of $100, 2 cents."

The provisos and the later sentences were substantially similar to those of this subdivision, except that in the portion imposing the penalty the words "in the discretion of the court" were inserted after the word "both."

That section was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(6) Time drafts or checks, and promissory notes; exceptions.

Drafts or checks (payable otherwise than at sight or on demand) upon their acceptance or delivery within the United States whichever is prior, promissory notes, except bank notes issued for circulation, and for each renewal of the same, for a sum not exceeding $100, 2 cents; and for each additional $100, or fractional part thereof, 2 cents.

This subdivision shall not apply to a promissory note secured by the pledge of bonds or obligations of the United States issued after April 24, 1917, or secured by the pledge of a promissory note which itself is secured by the pledge of such bonds or obligations: Provided, That in either case the par value of such bonds or obligations shall be not less than the amount of such note.

For provision corresponding to the provision in the second paragraph of this subdivision in Act April 5, 1918, c. 45, § 301, see § 6318bb, ante.

Revenue Act of 1917, § 807(6), contained provisions similar to those of the first paragraph of this subdivision except that it did not contain the clause "upon their acceptance or delivery within the United States whichever is prior." It contained no provisions corresponding to the second paragraph of this subdivision. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(7) Conveyances of land.

Conveyances: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof, 50 cents. This subdivision shall not apply to any instrument or writing given to secure a debt.

Revenue Act of 1917, § 807(7), contained provisions identical with those of this subdivision. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

Notes of Decisions

Decisions relating to stamp taxes under former laws.—See, also, U. S. Comp. St. 1916, notes, pp. 7307–7333.

—— **Validity.**—Act Oct. 22, 1914, § 5, held not invalid, as applied to referee's deed in foreclosure action, as imposing a tax on the state's exercise of its governmental functions. Home Title Ins. Co. of New York v. Keith (D. C.) 230 F. 905.

—— **Master's deed.**—Deed executed by master in chancery or other court officer empowered by federal court to make sale and execute conveyances held to require revenue stamps under Revenue Act Oct. 22, 1914, § 22, Schedule A. Crawford v. New South Farm & Home Co. (D. C.) 231 F. 999.

(8) Entries at customhouses.

Entry of any goods, wares, or merchandise at any customhouse, either for consumption or warehousing, not exceeding $100 in value, 25 cents; exceeding $100 and not exceeding $500 in value, 50 cents; exceeding $500 in value, $1.

Revenue Act of 1917, § 807(8), contained provisions identical with those of this subdivision. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(9) Entries for withdrawal from customs bonded warehouses.

Entry for the withdrawal of any goods or merchandise from customs bonded warehouse, 50 cents.

Revenue Act of 1917, § 807(9), contained provisions identical with those of this subdivision. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(10) Passage tickets to port not in United States, Canada, or Mexico.

Passage ticket, one way or round trip, for each passenger, sold or issued in the United States for passage by any vessel to a port or place not in the United States, Canada, or Mexico, if costing not exceeding $30, $1; costing more than $30 and not exceeding $60, $3; costing more than $60, $5. This subdivision shall not apply to passage tickets costing $10 or less.

Revenue Act of 1917, § 807(10), contained provisions identical with those of this subdivision. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(11) Voting proxies.

Proxy for voting at any election for officers, or meeting for the transaction of business, of any corporation, except religious, educational, charitable, fraternal, or literary societies, or public cemeteries, 10 cents.

Revenue Act of 1917, § 807(11), contained provisions identical with those of this subdivision, except that the words "incorporated company or association" were used in place of the word "corporation." It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(12) Powers of attorney.

Power of attorney granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee, 25 cents. This subdivision shall not apply to any papers necessary to be used for the collection of claims from the United States or from any State for pensions, back pay, bounty, or for property lost in the military or naval service, or to powers of attorney required in bankruptcy cases.

Revenue Act of 1917, § 807(12), contained provisions similar to those of this subdivision, except that, instead of the second sentence as set forth here, there was a proviso that no stamps should be required upon any papers of the kinds described therein, the same words as set forth here. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a.

Notes of Decisions

Decisions relating to stamp taxes under former laws.—See, also, U. S. Comp. St. 1916, note pp. 7307–7333.

—— **Bankruptcy proceedings.**—Under Emergency Revenue Act Oct. 22, 1914, § 5, and Schedule A, warrant or power of attorney in bankruptcy proceedings held required to bear internal revenue stamp, even though executed and presented when not necessary. In re Capitol Trading Co. (D. C.) 229 F. 806.

(13) Playing cards.

Playing cards: Upon every pack of playing cards containing not more than fifty-four cards, manufactured or imported, and sold, or removed for consumption or sale, a tax of 8 cents per pack.

Revenue Act of 1917, § 807(13), containing provisions corresponding to those of this section, read as follows: "Playing cards: Upon every pack of playing cards containing not more than fifty-four cards, manufactured or imported, and sold, or removed for consumption or sale, after the passage of this Act, a tax of 5 cents per pack in addition to the tax imposed under existing law."

It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(14) Parcel-post packages.

Parcel-post packages: Upon every parcel or package transported from one point in the United States to another by parcel post on which the postage amounts to 25 cents or more, a tax of 1 cent for each 25 cents or fractional part thereof charged for such transportation, to be paid by the consignor.

No such parcel or package shall be transported until a stamp or stamps representing the tax due shall have been affixed thereto.

Revenue Act of 1917, § 807(14), contained provisions identical with those of this subdivision. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. See note to § 6318a, ante.

(15) Insurance policies.

On each policy of insurance, or certificate, binder, covering note, memorandum, cablegram, letter, or other instrument by whatever name called whereby insurance is made or renewed upon property within the United States (including rents and profits) against peril by sea or on inland waters or in transit on land (including transshipments and storage at termini or way points) or by fire, lightning, tornado, wind-storm, bombardment, invasion, insurrection or riot, issued to or for or in the name of a domestic corporation or partnership or an individual resident of the United States by any foreign corporation or partnership or any individual not a resident of the United States, when such policy or other instrument is not signed or countersigned by an officer or agent of the insurer in a State, Territory, or district of the United States within which such insurer is authorized to do business, a tax of 3 cents on each dollar, or fractional part thereof of the premium charged: Provided, That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

Any person to or for whom or in whose name any such policy or other instrument is issued, or any solicitor or broker acting for or on behalf of such person in the procurement of any such policy or other instrument, shall affix the proper stamps to such policy or other instrument, and for failure to affix such stamps with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of the tax. (40 Stat. 1135.)

This section is § 1107 of the Revenue Act of 1918 (Title XI—Stamp Taxes), cited above.

Revenue Act of 1917, § 807, contained no provision corresponding to that of this subdivision.

DECISIONS RELATING TO STAMP TAXES UNDER FORMER LAWS

4. Persons who may or must affix and cancel stamps.—See notes to § 6318i, post.

39. Use as evidence of record of unstamped instrument.—Certificates of clerk and judge of court of another state as to judgment of that court need not contain any revenue stamps to be admissible in evidence in a state court. Gustavus v. Dahlmer (Sup.) 163 N. Y. S. 132, 98 Misc. Rep. 462.

87. Constitutionality.—See notes to § 6318p(7), post.

111. Deeds on judicial sales—Master's deed.—See note to § 6318p(7), post.

120. Power of attorney in bankruptcy proceedings.—See note to § 6318p (12), post.

122. Compounded medicines.—War Revenue Act June 13, 1898, § 20, and Schedule B, taxed only noncompetitive medicinal articles intended for self-medication and accompanied by puffing inducements and unreliable statements. Medicine derived from juice of papaw, without adding anything effective, but simply taking something away, held not compounded, so as to be subject to tax imposed by War Revenue Act June 13, 1898, § 20. Rutan v. Johnson & Johnson, 231 F. 369, 145 C. C. A. 363.

CHAPTER NINE A—INCOMES

The provisions of this chapter, which included the Income Tax provisions of the Revenue Act of 1916, were, together with provisions on the same subject in the Revenue Act of 1917, repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6319. (Act Oct. 3, 1913, c. 16, § II, A, subd. 1.) [Repealed.]

This section and the sixteen sections following contained the income tax provisions of the Underwood Tariff Act of 1913 (Act Oct. 3, 1913, c. 16, § II, 38 Stat. 166). They were superseded and repealed by the Revenue Act of 1916, and were therefore omitted from U. S. Comp. St. 1916. But, owing to the fact that, for the calendar year 1913, the net income of corporations for the purpose of determining the War-Profits and Excess-Profits Tax is to be ascertained and returned in accordance with the provisions of said Act Oct. 3, 1913, c. 16, § II, by Act Feb. 24, 1919, c. 18, § 320, post, § 6336$^{7}/_{16}$g, said section is now inserted in full here. The text of this section was as follows:

"A. Subdivision 1. There shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere."

Notes of Decisions

Decisions relating to act in general.—See U. S. Comp. St. 1916, notes to §§ 6336a–6336x.

"Income."—Alimony paid to a divorced wife is not taxable income. Gould v. Gould, 38 S. Ct. 53, 62 L. Ed. 211.

A sum in excess of the par value of corporate stock received by a shareholder, on sale of the corporate assets and distribution of the proceeds as a final dividend in liquidation of the corporation after the law became effective, is not taxable as "income, gains or profits," where it represented an increase in the value of the stock resulting from a gradual advance of the corporate property during a series of years which reached its height before the act became effective. Lynch v. Turrish, 38 S. Ct. 537, 247 U. S. 221, 62 L. Ed. 1087, affirming judgment 236 Fed. 653, 149 C. C. A. 649.

Income Tax Act Oct. 3, 1913, § 2, par. A, subd. 1, and paragraph B, taxes commissions of general life insurance agent derived from renewal premiums on policies obtained by him and accepted in some earlier year. Woods v. Lewellyn (C. C. A.) 252 F. 106.

See, also, notes to § 6321, post.

Cited without definite application, Von Baumbach v. Sargent Land Co., 37 S. Ct. 201, 242 U. S. 503, 62 L. Ed. 460.

§ 6320. (Act Oct. 3, 1913, c. 16, § II, A, subd. 2.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"Subdivision 2. In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds $20,000 and does not exceed $50,000, and 2 per centum per annum upon the amount by which the total net income exceeds $50,000 and does not exceed $75,000, 3 per centum per annum upon the amount by which the total net income exceeds $75,000 and does not exceed $100,000, 4 per centum per annum upon the amount by which the total net income exceeds $100,000 and does not exceed $250,000, 5 per centum per annum upon the amount by which the total net income exceeds $250,000 and does not exceed $500,000, and 6 per centum per annum upon the amount by which the total net income exceeds $500,000. All the provisions of this section relating to individuals who are to be chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section. Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secre-

tary of the Treasury. For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company, or association, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed."

Notes of Decisions

Assessment of surtax.—Under the Income Tax Law of 1913, the assessment of additional taxes on an income over $20,000 must be made, without any deduction of the exemption of $3,000 or $4,000, which is allowed before income is taxable. Cohen v. Lowe (D. C.) 234 F. 474.

§ 6321. (Act Oct. 3, 1913, c. 16, § II, B.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"B. Subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: Provided, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income."

Notes of Decisions

"Income."—Alimony paid to a divorced wife is not income of the wife, taxable under Act Oct. 3, 1913, § 2a, subd. 1, and section 2b. Gould v. Gould, 38 S. Ct. 53, 245 U. S. 151, 62 L. Ed. 211, affirming judgment 152 N. Y. S. 1114, 168 App. Div. 900.

The enhancement in value of corporate property resulting from the gradual increase of its value during a series of years prior to the effective date of Income Tax Law Oct. 3, 1913, is an increase of capital, and, though divided or distributed among the stockholders on sale of the corporate assets subsequent to that date, is not taxable as "income, gains or profits." Lynch v. Turrish, 38 S. Ct. 537, 247 U. S. 221, 62 L. Ed. 1087, affirming judgment 236 F. 653, 149 C. C. A. 649.

The instruction of the Treasury Department requiring return to be made of fees or emoluments for services charged for, but not collected, if good and collectible, cannot change the requirement of the statute that the income tax shall be based on the income arising or accruing during the calendar year. Edwards v. Keith (C. C. A.) 231 F. 110.

The word "income" must be presumed to have been used in Income Tax Act Oct. 3, 1913, in the sense in which the Supreme Court had theretofore defined it, if a judicial definition had been clearly given. Towne v. Eisner (D. C.) 242 F. 702, judgment reversed 38 S. Ct. 158, 245 U. S. 418, 62 L. Ed. 372, L. R. A. 1918D, 254.

It is matter of common knowledge that under federal income tax act an income tax was levied on gains derived from purchases and sales of intangible personalty, such as corporate stock, by one not engaged in such dealings as business, and that right so to do was asserted by revenue officers of United States. Trefry v. Putnam, 116 N. E. 904, 227 Mass. 522, L. R. A. 1917F, 806.

—— **Corporate dividends.**—A stock dividend is "capital" for the purposes of the Income Tax Act of 1913 and is

not taxable as "income," as the interests of the stockholders are not thereby increased; the only change being in the evidence representing that interest. Towne v. Eisner, 38 S. Ct. 158, 245 U. S. 418, 62 L. Ed. 372, L. R. A. 1918D, 254, reversing judgment (D. C.) 242 F. 702.

A sum in excess of the par value of corporate stock received by a shareholder, subject to Income Tax Law Oct. 3, 1913, pars. A, B, on sale of the corporate assets and distribution of the proceeds as a final dividend in liquidation of the corporation, after the law had become effective, is not taxable as "income, gains or profits," where it represented an increase in value of the stock resulting from a gradual advance of the corporate property during a series of years, which reached its height before the act became effective. Lynch v. Turrish, 38 S. Ct. 537, 247 U. S. 221, 62 L. Ed. 1087, affirming judgment 236 F. 653, 149 C. C. A. 649.

All dividends declared and paid in the ordinary course of business by a corporation to its stockholders, after the taking effect of the act, whether from current earnings, or from the accumulated surplus made up of past earnings, or increase in value of corporate assets, notwithstanding it accrued to the corporation prior to the effective date of the act, are income, and taxable as such. Lynch v. Hornby, 38 S. Ct. 543, 247 U. S. 339, 62 L. Ed. 1149, reversing judgment 236 F. 661, 149 C. C. A. 657.

An extra dividend, declared by railroad company after Income Tax Act Oct. 3, 1913, became effective, though paid in property acquired and surplus accumulated prior to the effective date of the act, is as to ordinary shareholders a gain, profit, or income, taxable within the act. Peabody v. Eisner, 38 S. Ct. 546, 247 U. S. 347, 62 L. Ed. 1152.

—— **Income of insurance agent.**—Under Act Oct. 3, 1913, c. 16, § II, div. B, a life insurance agent, whose contract entitled him to commissions of a specified percentage of the first premium of each policy and of a different percentage on subsequent renewal premiums when the same should be paid, is liable to pay the income tax on commissions on renewals of policies issued before the act was adopted, which were not paid until thereafter. Edwards v. Keith (C. C. A.) 231 F. 110.

Income Tax Act Oct. 3, 1913, § 2, par. A, subd. 1, and paragraph B, taxes commissions of general life insurance agent derived from renewal premiums on policies obtained by him and accepted in some earlier year. Woods v. Lewellyn (C. C. A.) 252 F. 106.

Partnership income.—Under Income Tax Law 1913, § 2, subds. B, D, G, a member of a partnership need not include as part of his net income subject to tax that part derived from or through a partnership, which has been received by the firm as dividends on stocks owned by it in corporations taxable on their net income, for it is apparent that Congress disregarded a partnership; it having no legal entity as a corporation. U. S. v. Coulby (D. C.) 251 F. 982.

§ 6322. (Act Oct. 3, 1913, c. 16, § II, B.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"B. In computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses; second, all interest paid within the year by a taxable person on indebtedness; third, all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits; fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year; sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: Provided, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association, or insurance company which is taxable upon its net income as hereinafter provided; eighth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of $3,000, or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person.

"The net income from property owned and business carried on in the United

States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable.

"In computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government."

Notes of Decisions

Deductions.—The net income of a divorced husband, subject to taxation under Act Oct. 3, 1913, is not decreased by the payment of alimony under the order of the court. Gould v. Gould, 38 S. Ct. 53, 245 U. S. 151, 62 L. Ed. 211, affirming judgment 152 N. Y. S. 1114, 168 App. Div. 900.

In computing, for the assessment of income taxes, depreciation of property held for rental purposes, the depreciation is to be based solely on the wear and tear of buildings, which are assumed to be kept in good repair, and nothing can be allowed for changes in neighborhood, etc. Cohen v. Lowe (D. C.) 234 F. 474.

§ 6323. (Act Oct. 3, 1913, c. 16, § II, C.) [Repealed.]

See note to section 6319.

The text of this section was as follows:

"C. There shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife: Provided, That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together."

§ 6324. (Act Oct. 3, 1913, c. 16, § II, D.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"D. The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first: Provided, however, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for. On or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of $3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals: Provided, That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment

of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: Provided, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen: Provided further, That in either case above mentioned no return of income not exceeding $3,000 shall be required: Provided further, That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed: Provided further, That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $3,000 shall be made in the case of any such person. The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts."

Notes of Decisions

Constitutionality.—The retroactivity of Income Tax Act Oct. 3, 1913, from the date of its passage to a date not prior to the adoption of Const. Amend. 16, authorizing income tax without apportionment, was permissible. Lynch v. Hornby, 38 S. Ct. 543, 247 U. S. 339, 62 L. Ed. 1149, reversing judgment 236 F. 661, 149 C. C. A. 657.

The federal Income Tax Act, though passed October 3, 1913, could tax income from March 1st of that year. Woods v. Lewellyn (C. C. A.) 252 F. 106.

Income period.—Where fiscal year of firm of which plaintiff was a member began before Income Tax Law went into effect, but there was no showing that profits were earned prior to that time, income taxes may be assessed on the entire profits earned. Cohen v. Lowe (D. C.) 234 F. 474.

§ 6325. (Act Oct. 3, 1913, c. 16, § II, E.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"E. All assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

"All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting

in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax. In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption: Provided, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of $300; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him: Provided further, That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete: Provided further, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to $3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government; and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed $3,000, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons; but in each case the benefit of the exemption and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph.

"All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commis-

sioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

"Nothing in this section shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after this Act takes effect be valid in regard to any Federal income tax imposed upon a person liable to such payment.

"The tax herein imposed upon annual gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

"The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals."

Notes of Decisions

Time for assessment.—Under Income Tax Act Oct. 3, 1913, § 2, par. E, assessment of tax for 1913, in May, 1915, was in time if the taxpayer's return was "false," which evidently does not mean "fraudulent," but merely untrue or incorrect. Woods v. Lewellyn (C. C. A.) 252 F. 106.

§ 6326. (Act Oct. 3, 1913, c. 16, § II, F.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"F. If any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than $20 nor more than $1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution."

§ 6327. (Act Oct. 3, 1913, c. 16, § II, G.) (a) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"G. (a) The normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year: Provided, however, That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare: Provided further, That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: Provided, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Terri-

tory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract."

Notes of Decisions

Construction and application in general.—Income Tax Act Oct. 3, 1913, § 2, par. G (c), must be construed, as excluding from taxation any income that accrued prior to March 1, 1913, particularly as before the ratification of the Sixteenth Amendment, in February, 1913, Congress had no authority to tax income without apportioning the tax among the states according to population. Southern Pac. Co. v. Lowe, 38 S. Ct. 540, 247 U. S. 330, 62 L. Ed. 1142, reversing judgment (D. C.) 238 F. 847.

Income of corporation.—The term "income," as used in Income Tax Act Oct. 3, 1913, has the same meaning as when used in the Corporation Excise Tax Act of 1909; so accumulations that accrued to a corporation before the act went into effect should be considered as capital, and not taxable as income. Southern Pac. Co. v. Lowe, 38 S. Ct. 540, 247 U. S. 330, 62 L. Ed. 1142, reversing judgment (D. C.) 238 F. 847.

The enhanced value of property of a corporation arising from its gradual increase in value through a series of years prior to the enactment of an income tax law, although afterwards distributed, is not "income, gains, or profits" taxable under such a law. Lynch v. Turrish, 236 F. 653, 149 C. C. A. 649.

Where street railway corporation leased all its property under agreement that lessee should make payments to its stockholders, held, that amount paid was income of street railway corporation within Income Tax St. 1913, and subject to taxation as such. West End St. Ry. Co. v. Malley, 246 F. 625, 158 C. C. A. 581, certiorari denied 38 S. Ct. 423, 246 U. S. 671, 62 L. Ed. 931.

Under Income Tax Act Oct. 3, 1913, § 2, G(a), dividends paid by lessee direct to stockholders of railroad corporation, which leased all its property, must be deemed corporate income, and taxable as such. Rensselaer & S. R. Co. v. Irwin, 249 F. 726, 161 C. C. A. 636, affirming decree (D. C.) 239 F. 739, and certiorari denied 38 S. Ct. 424, 246 U. S. 671, 62 L. Ed. 931.

A railroad company, although it had leased all of its property and was not engaged in business, held subject to income tax on the rental paid by the lessee, under Act Oct. 3, 1913, § II G(a). Northern R. Co. of New Jersey v. Lowe (C. C. A.) 250 F. 856.

Under Revenue Act Oct 3, 1913, § 2, G(b), mutual life insurance company held entitled to exclude from gross income moneys repaid to policy holders, if previously received for premiums, whether received during the year or not, and though there had been some accretions by way of interest and profit. Penn Mut. Life Ins. Co. v. Lederer (D. C.) 247 F. 559.

Dividends of subsidiary corporation.—A transaction effected by entries on the respective companies' books, whereby plaintiff corporation, owning the stock, except directors' shares, of subsidiary corporations, took over their earnings and surplus, accumulated and used as capital before the taxing year, and their debts inter se, the corporations being related as one enterprise, held bookkeeping, rather than "dividends declared and paid in the ordinary course by a corporation," within Act Oct. 3, 1913, § 2, and so not subject to income tax. Gulf Oil Corporation v. Lewellyn, 39 S. Ct. 35, 63 L. Ed. ——.

Under Income Tax Act Oct. 3, 1913, § 2, par. G(a), dividends declared by a corporation out of a surplus that accrued prior to effective date of act are not income, for purposes of taxation, where paid to a second corporation, which owned all the stock of the corporation declaring the dividend, etc., for under circumstances rules applicable to ordinary stockholders do not apply, and declaration of dividends was mere paper transaction. Southern Pac. Co. v. Lowe, 38 S. Ct. 540, 247 U. S. 330, 62 L. Ed. 1142, reversing judgment (D. C.) 238 F. 847.

A corporation and a number of subsidiary corporations held not so far identical as to render a dividend received by the main corporation from the subsidiaries nontaxable under the Corporate Excise Act of 1909 and the Income Tax Act of October 3, 1913. Lewellyn v. Gulf Oil Corporation, 245 F. 1, 158 C. C. A. 1, reversing judgment Gulf Oil Corp. v. Lewellyn (D. C.) 242 F. 709. Certiorari granted Id., 38 S. Ct. 190, 62 L. Ed. 539.

A dividend received by a corporation on stock of another corporation is subject to the tax imposed by Income

Tax Act Oct. 3, 1913, § 2, G (a), for the calendar year in which it was declared and paid, though half the profits accrued prior to passage of act. Skinner v. Union Pac. Coal Co., 249 F. 152, 161 C. C. A. 204, certiorari granted Union Pac. Coal Co. v. Skinner, 38 S. Ct. 580, 247 U. S. 511, 62 L. Ed. 1242.

Associations.—The partnership of Hawaii corporations, organized under Sess. Laws Hawaii 1903, Act 51, § 1, held a partnership, and not a joint-stock association, within Income Tax Law Oct. 3, 1913. Haiku Sugar Co. v. Johnstone, 249 F. 103, 161 C. C. A. 155.

Under Income Tax Act 1913, § II, G (a), an association, though not created or organized under any statute, but existing under common law of a state, is subject to taxation; the Income Tax Act applying to individuals, and not having its basis in the exercise of corporate franchise, as the Corporation Excise Tax Act. Crocker v. Malley (C. C. A.) 250 F. 817.

Under Income Tax Act 1913, §§ II, A, subd. 1, II, B, and II, G (a), trustees of common-law trust may be treated as an association and as such taxed. Id.

Income of receiver.—Income taxes cannot be assessed on income of the receiver of an insolvent corporation. Scott v. Western Pac. R. Co., 246 F. 545, 158 C. C. A. 515.

§ 6328. (Act Oct. 3, 1913, c. 16, § II, G.) (b) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"G. (b) Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: Provided, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business: Provided further, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the Government of any foreign country: Provided, That in the case of a corporation, joint-stock company or association, or insurance com-

pany, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: Provided, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds."

§ 6329. (Act Oct. 3, 1913, c. 16, § II, G.) (c) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"G. (c) The tax herein imposed shall be computed upon its entire net income accrued within each preceding calendar year ending December thirty-first: Provided, however, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be imposed upon its entire net income accrued within that portion of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income for said calendar year: Provided further, That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed. All corporations, joint-stock companies or associations, and insurance companies subject to the tax herein imposed, computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, and all corpora-

tions, joint-stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided, shall render a like return within sixty days after the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter, or in the case of a corporation, joint-stock company or association, or insurance company, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, shall render a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, to the collector of internal revenue for the district in which it has its principal place of business, setting forth (first) the total amount of its paid-up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (second) the total amount of its bonded and other indebtedness at the close of the year; (third) the gross amount of its income, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States; (fourth) the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company within the year, stating separately all rentals or other payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (sixth) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount

of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of any foreign country; (eighth) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this subsection authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

"All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the thirtieth day of June: Provided, That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, or after one hundred and twenty days from the date on which the return of income is required to be made by the taxpayer, and after ten days notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid and interest at the rate of 1 per centum per month upon said tax from the time the same becomes due."

§ 6330. (Act Oct. 3, 1913, c. 16, § II, G.) (d) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"G. (d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: Provided, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: Provided further, That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint stock company, association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe.

"If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding $10,000."

§ 6331. (Act Oct. 3, 1913, c. 16, § II, H.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"H. That the word 'State' or 'United States' when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions."

§ 6332. (Act Oct. 3, 1913, c. 16, § II, J.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"J. It shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts: and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt."

§ 6333. (Act Oct. 3, 1913, c. 16, § II, K.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"K. Jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process."

§ 6334. (Act Oct. 3, 1913, c. 16, § II, L.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"L. All administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed."

Notes of Decisions

Recovery of taxes paid.—Where a collector of internal revenue, acting under Income Tax Law Oct. 3, 1913, illegally collected taxes from a partnership composed of corporations, the members of the firm are entitled to recover the exaction, with interest and costs. Haiku Sugar Co. v. Johnstone, 249 F. 103, 161 C. C. A. 155.

Where, in action to recover income taxes paid, facts were stated showing financial condition of plaintiff corporation and disposition of rents received under lease of its property, allegation that corporation had no income was a mere conclusion of law. Rensselaer & S. R. Co. v. Irwin (D. C.) 239 F. 739.

§ 6335. (Act Oct. 3, 1913, c. 16, § II, M.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"M. The provisions of this section shall extend to Porto Rico and the Philippine Islands: Provided, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general governments, thereof, respectively: And provided further, That the jurisdiction in this section conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands: And provided further, That nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico and the Philippine Islands or the political subdivisions thereof."

§ 6336. (Act Oct. 3, 1913, c. 16, § II, N.) [Repealed.]

See note to section 6319, ante.

The text of this section was as follows:

"N. For the purpose of carrying into effect the provisions of Section II of this Act, and to pay the expenses of assessing and collecting the income tax therein imposed, and to pay such sums as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may deem neces-

sary, for information, detection, and bringing to trial and punishment persons guilty of violating the provisions of this section, or conniving at the same, in cases where such expenses are not otherwise provided for by law, there is hereby appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year ending June thirtieth, nineteen hundred and fourteen, the sum of $800,000, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to appoint and pay from this appropriation all necessary officers, agents, inspectors, deputy collectors, clerks, messengers and janitors, and to rent such quarters, purchase such supplies, equipment, mechanical devices, and other articles as may be necessary for employment or use in the District of Columbia or any collection district in the United States, or any of the Territories thereof: Provided, That no agent paid from this appropriation shall receive compensation at a rate higher than that now received by traveling agents on accounts in the Internal Revenue Service, and no inspector shall receive a compensation higher than $5 a day and $3 additional in lieu of subsistence, and no deputy collector, clerk, messenger, or other employee shall be paid at a rate of compensation higher than the rate now being paid for the same or similar work in the Internal Revenue Service.

"* * For a period of two years from and after the passage of this Act the force of agents, deputy collectors, inspectors, and other employees not including the clerical force below the grade of chief of division employed in the Bureau of Internal Revenue in the city of Washington, District of Columbia, authorized by this section of this Act shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, under such rules and regulations as may be fixed by the Secretary of the Treasury to insure faithful and competent service, and with such compensation as the Commissioner of Internal Revenue may fix, with the approval of the Secretary of the Treasury, within the limitations herein prescribed: Provided further, That the force authorized to carry out the provisions of Section II of this Act, when not employed as herein provided, shall be employed on general internal-revenue work."

§ 6336a. (Act Sept. 8, 1916, c. 463, § 1.) [Repealed.]

This section and the 23 sections following, as set forth in U. S. Comp. St. 1916, contained the income tax provisions of Act Sept. 8, 1916, c. 463, cited above. Several of these sections were amended and additional sections were added by Revenue Act of 1917, Act Oct. 3, 1917, c. 63. Both of these acts were repealed by Revenue Act of 1918, § 1400, post, § 6371¾a. Inasmuch as the repealed sections were continued in force for the collection of accrued taxes and penalties, the changes and additions made by the act of 1917 are indicated or set forth here.

§ 6336aa. (Act Oct. 3, 1917, c. 63, § 1.) [Repealed.]

See note to section 6336a, ante.

The text of this section was as follows:

"In addition to the normal tax imposed by subdivision (a) of section one of the Act entitled 'An Act to increase the revenue, and for other purposes,' approved September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like normal tax of two per centum upon the income of every individual, a citizen or resident of the United States, received in the calendar year nineteen hundred and seventeen and every calendar year thereafter."

§ 6336aaa. (Act Oct. 3, 1917, c. 63, § 2.) [Repealed.]

See note to section 6336a, ante.

The text of this section was as follows:

"In addition to the additional tax imposed by subdivision (b) of section one of such Act of September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like additional tax upon the income of every individual received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, as follows:

"One per centum per annum upon the amount by which the total net income exceeds $5,000 and does not exceed $7,500;

"Two per centum per annum upon the amount by which the total net income exceeds $7,500 and does not exceed $10,000;

"Three per centum per annum upon the amount by which the total net income exceeds $10,000 and does not exceed $12,500;

"Four per centum per annum upon the amount by which the total net income exceeds $12,500 and does not exceed $15,000;

"Five per centum per annum upon the amount by which the total net income exceeds $15,000 and does not exceed $20,000;

"Seven per centum per annum upon the amount by which the total net income exceeds $20,000 and does not exceed $40,000;

"Ten per centum per annum upon the amount by which the total net income exceeds $40,000 and does not exceed $60,000;

"Fourteen per centum per annum upon the amount by which the total net income exceeds $60,000 and does not exceed $80,000;

"Eighteen per centum per annum upon the amount by which the total net income exceeds $80,000 and does not exceed $100,000;

"Twenty-two per centum per annum upon the amount by which the total net income exceeds $100,000 and does not exceed $150,000;

"Twenty-five per centum per annum upon the amount by which the total net income exceeds $150,000 and does not exceed $200,000;

"Thirty per centum per annum upon the amount by which the total net income exceeds $200,000 and does not exceed $250,000;

"Thirty-four per centum per annum upon the amount by which the total net income exceeds $250,000 and does not exceed $300,000;

"Thirty-seven per centum per annum upon the amount by which the total net income exceeds $300,000 and does not exceed $500,000;

"Forty per centum per annum upon the amount by which the total net income exceeds $500,000 and does not exceed $750,000;

"Forty-five per centum per annum upon the amount by which the total net income exceeds $750,000 and does not exceed $1,000,000;

"Fifty per centum per annum upon the amount by which the total net income exceeds $1,000,000."

§ 6336b. (Act Sept. 8, 1916, c. 463, § 2, as amended, Act Oct. 3, 1917, c. 63, § 1200.) [Repealed.]

See note to section 6336a, ante.

The amendment of this section by Act Oct. 3, 1917, c. 63, § 1200, consisted in striking out the proviso defining "dividends" from subd. a of the section as set forth in U. S. Comp. St. 1916, § 6336b.

§ 6336c. (Act Sept. 8, 1916, c. 463, § 3.) [Repealed.]

See note to § 6336a, ante.

Construction and application in general.—Income Tax Act Sept. 8, 1916, § 2, cannot be held to define the income taxable under Income Tax Act Oct. 3, 1913. Towne v. Eisner (D. C.) 242 F. 702, judgment reversed 38 S. Ct. 158, 245 U. S. 418, 62 L. Ed. 372, L. R. A. 1918D, 254.

Receiver of rents and profits.—In action to foreclose mortgage, receiver of rents and profits is not liable for any income tax under federal Income Tax Law upon moneys received or paid out, and is not bound to make any return to Treasury Department, as such rents and profits are in no sense "income." Lathers v. Hamlin (Sup.) 170 N. Y. S. 98, 102 Misc. Rep. 563.

§ 6336d. (Act Sept. 8, 1916, c. 463, § 4, as amended, Act Oct. 3, 1917, c. 63, § 1200.) [Repealed.]

See note to section 6336a, ante.

This section was amended by Act Oct. 3, 1917, c. 63, § 1200, cited above, by inserting, after the words "or upon the obligations of the United States," as set forth in U. S. Comp. St. 1916, § 6336c, the words in parentheses as follows: "but, in the case of obligations of the United States issued after September first, nineteen hundred and seventeen, only if and to the extent provided in the act authorizing the issue thereof."

§ 6336e. (Act Sept. 8, 1916, c. 463, § 5, as amended, Act Oct. 3, 1917, c. 63, § 1201.) [Repealed.]

See note to section 6336a, ante.

This section was amended by Act Oct. 3, 1917, c. 63, § 1201, cited above, by adding to the second paragraph of subdivision a, as set forth in U. S. Comp. St. 1916, § 6336e, after the words "on his indebtedness," the words "except on indebtedness incurred, for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title"; by inserting, in the third paragraph, after the words "by the authority of the United States," the words "except income and excess profits taxed," in parentheses; and by adding as the ninth paragraph the following:

"Ninth. Contributions or gifts actually made within the year to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gifts shall be

allowable as deductions only if verified under rules and regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury."

Notes of Decisions

Cited without definite application, Von Baumbach v. Sargent Land Co., 37 S. Ct. 201, 242 U. S. 503, 61 L. Ed. 460.

§ 6336f. (Act Sept. 8, 1916, c. 463, § 6, as amended, Act Oct. 3, 1917, c. 63, § 1202.) [Repealed.]

See note to section 6336a, ante.

This section was amended by Act Oct. 3, 1917, c. 63, § 1202, cited above, by inserting in paragraph two of subdivision a, as set forth in U. S. Comp. St. 1916, § 6336f, after the words "such person on his indebtedness," the words "except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title," in parentheses; by inserting in paragraph three, after the words "authority of the United States," the words "except income and excess profits taxes," in parentheses; and by the addition of subdivision c, as follows:

"(c) A nonresident alien individual shall receive the benefit of the deductions and credits provided for in this section only by filing or causing to be filed with the collector of internal revenue a true and accurate return of his total income, received from all sources, corporate or otherwise, in the United States, in the manner prescribed by this title: and in case of his failure to file such return the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax."

§ 6336g. (Act Sept. 8, 1916, c. 463, § 7, as amended, Act Oct. 3, 1917, c. 63, § 1203.) [Repealed.]

See note to section 6336a, ante.

The text of this section, as amended by Act Oct. 3, 1917, c. 63, § 1203, cited above, was as follows:

"For the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each citizen or resident of the United States, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making the return be a head of a family or a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife: Provided, That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together: Provided further, That if the person making the return is the head of a family there shall be an additional exemption of $200 for each child dependent upon such person, if under eighteen years of age, or if incapable of self-support because mentally or physically defective, but this provision shall operate only in the case of one parent in the same family: Provided further, That guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or cestui que trust: Provided further, That in no event shall a ward or cestui que trust be allowed a greater personal exemption than as provided in this section, from the amount of net income received from all sources. There shall also be allowed an exemption from the amount of the net income of estates of deceased citizens or residents of the United States during the period of administration or settlement, and of trust or other estates of citizens or residents of the United States the income of which is not distributed annually or regularly under the provisions of subdivision (b) of section two, the sum of $3,000, including such deductions as are allowed under section five."

§ 6336h. (Act Sept. 8, 1916, c. 463, § 8, as amended, Act Oct. 3, 1917, c. 63, § 1204.) [Repealed.]

See note to section 6336a, ante.

This section was amended by Act Oct. 3, 1917, c. 63, § 1204, cited above, by adding to subdivision c thereof a proviso, "That no return of income not exceeding $3,000 shall be required except as in this title otherwise provided;" by adding to subdivision e thereof, after the words "upon the obligations of the United States," the words "if and to the extent that it is provided in the act authorizing the issue of such obligations of the United States that they are exempt from taxation," in parentheses; by striking out, in said subdivision e, after the words "and its possessions," the words "and all taxes paid to the United States or to any possession thereof, or to any State, county, or taxing subdivision of a State"; and by adding to said subdivision e, at the end thereof, the following provision: "A partnership shall have the same privilege of

fixing and making returns upon the basis of its own fiscal year as is accorded to corporations under this title. If a fiscal year ends during nineteen hundred and sixteen or a subsequent calendar year for which there is a rate of tax different from the rate for the preceding calendar year, then (1) the rate for such preceding calendar year shall apply to an amount of each partner's share of such partnership profits equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and (2) the rate for the calendar year during which such fiscal year ends shall apply to the remainder."

The amending act repealed subdivision d of this section as set forth in U. S. Comp. St. 1916, § 6336h.

Notes of Decisions

Construction and application in general.—The provision of Income Tax Law 1916 that members of partnerships shall be allowed credit for their proportionate share of partnership gains and profits derived from corporations taxable on their net income held a mere declaration of the rule under Income Tax Law 1913, and not legislative recognition of a change. U. S. v. Coulby (D. C.) 251 F. 982.

§ 6336i. (Act Sept. 8, 1916, c. 463, § 9, as amended, Act Oct. 3, 1917, c. 63, § 1205.) [Repealed.]

See note to section 6336a, ante.

This section was amended by Act Oct. 3, 1917, c. 63, § 1205, cited above, by making various changes in subdivisions b, c, f, and g thereof. Said subdivisions, as amended, read as follows:

"(b) All persons, corporations, partnerships, associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of any nonresident alien individual, other than income derived from dividends on capital stock, or from the net earnings of a corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title, are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this title, and shall make return thereof on or before March first of each year and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax, and they are each hereby indemnified against every person, corporation, partnership, association, or insurance company, or demand whatsoever for all payments which they shall make in pursuance and by virtue of this title.

"(c) The amount of the normal tax hereinbefore imposed shall also be deducted and withheld from fixed or determinable annual or periodical gains, profits and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, (if such bonds, mortgages, or other obligations contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this title upon the obligee or to reimburse the obligee for any portion of the tax or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the United States) whether payable annually or at shorter or longer periods and whether such interest is payable to a non-resident alien individual or to an individual citizen or resident of the United States, subject to the provisions of the foregoing subdivision (b) of this section requiring the tax to be withheld at the source and deducted from annual income and returned and paid to the Government, unless the person entitled to receive such interest shall file with the withholding agent, on or before February first, a signed notice in writing claiming the benefit of an exemption under section seven of this Title."

"(f) All persons, corporations, partnerships, or associations, undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to obtain the information required under this title, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and whoever knowingly undertakes to collect such payments as aforesaid without having obtained a

license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

"(g) The tax herein imposed upon gains, profits, and incomes not falling under the foregoing and not returned and paid by virtue of the foregoing or as otherwise provided by law shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same. For the purpose of this title ownership or liability shall be determined as of the year for which a return is required to be rendered.

"The provisions of this section, except subdivision (c), relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon nonresident alien individuals."

Subdivisions d and e of this section were repealed by said Act Oct. 3, 1917, c. 63, § 1205.

§ 6336ii. (Act Oct. 3, 1917, c. 63, § 1212.) [Repealed.]

See note to section 6336a, ante.

This section read as follows:

"Any amount heretofore withheld by any withholding agent as required by Title I of such Act of September eighth, nineteen hundred and sixteen, on account of the tax imposed upon the income of any individual, a citizen or resident of the United States, for the calendar year nineteen hundred and seventeen, except in the cases covered by subdivision (c) of section nine of such Act, as amended by this Act, shall be released and paid over to such individual, and the entire tax upon the income of such individual for such year shall be assessed and collected in the manner prescribed by such Act as amended by this Act."

§ 6336iii. (Act Oct. 3, 1917, c. 63, § 3.) [Repealed.]

See note to section 6336a, ante.

This section read as follows:

"The taxes imposed by sections one and two of this Act shall be computed, levied, assessed, collected, and paid upon the same basis and in the same manner as the similar taxes imposed by section one of such Act of September eighth, nineteen hundred and sixteen, except that in the case of the tax imposed by section one of this Act (a) the exemptions of $3,000 and $4,000 provided in section seven of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, shall be, respectively, $1,000 and $2,000, and (b) the returns required under subdivisions (b) and (c) of section eight of such Act as amended by this Act shall be required in the case of net incomes of $1,000 or over, in the case of unmarried persons, and $2,000 or over in the case of married persons, instead of $3,000 or over, as therein provided, and (c) the provisions of subdivision (c) of section nine of such Act, as amended by this Act, requiring the normal tax of individuals on income derived from interest to be deducted and withheld at the source of the income shall not apply to the new two per centum normal tax prescribed in section one of this Act until on and after January first, nineteen hundred and eighteen, and thereafter only one two per centum normal tax shall be deducted and withheld at the source under the provisions of such subdivision (c), and any further normal tax for which the recipient of such income is liable under this Act or such Act of September eighth, nineteen hundred and sixteen, as amended by this Act shall be paid by such recipient."

§ 6336j. (Act Sept. 8, 1916, c. 463, § 10, as amended, Act Oct. 3, 1917, c. 63, § 1206.) [Repealed.]

See note to section 6336a, ante.

This section was amended by Act Oct. 3, 1917, c. 63, § 1206, cited above, by striking out from the first paragraph of subdivision a the proviso beginning as follows: "Provided, That the term 'dividends' as used in this title," etc. The section was further amended by said Act Oct. 3, 1917, c. 63, § 1206, by adding thereto subdivision b, which read as follows:

"(b) In addition to the income tax imposed by subdivision (a) of this section there shall be levied, assessed, collected, and paid annually an additional tax of ten per centum upon the amount, remaining undistributed six months after the end of each calendar or fiscal year, of the total net income of every corporation, joint-stock company or association, or insurance company, received during the year, as determined for the purposes of the tax imposed by such

subdivision (a), but not including the amount of any income taxes paid by it within the year imposed by the authority of the United States.

"The tax imposed by this subdivision shall not apply to that portion of such undistributed net income which is actually invested and employed in the business or is retained for employment in the reasonable requirements of the business or is invested in obligations of the United States issued after September first, nineteen hundred and seventeen: Provided, That if the Secretary of the Treasury ascertains and finds that any portion of such amount so retained at any time for employment in the business is not so employed or is not reasonably required in the business a tax of fifteen per centum shall be levied, assessed, collected, and paid thereon.

"The foregoing tax rates shall apply to the undistributed net income received by every taxable corporation, joint-stock company or association, or insurance company in the calendar year nineteen hundred and seventeen and in each year thereafter, except that if it has fixed its own fiscal year under the provisions of existing law, the foregoing rates shall apply to the proportion of the taxable undistributed net income returned for the fiscal year ending prior to December thirty-first, nineteen hundred and seventeen, which the period between January first, nineteen hundred and seventeen, and the end of such fiscal year bears to the whole of such fiscal year."

§ 6336jj. (Act Oct. 3, 1917, c. 63, § 4.) [Repealed.]

See note to section 6336a, ante.

This section read as follows:

"In addition to the tax imposed by subdivision (a) of section ten of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, there shall be levied, assessed, collected, and paid a like tax of four per centum upon the income received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, by every corporation, joint-stock company or association, or insurance company, subject to the tax imposed by that subdivision of that section, except that if it has fixed its own fiscal year, the tax imposed by this section for the fiscal year ending during the calendar year nineteen hundred and seventeen shall be levied, assessed, collected, and paid only on that proportion of its income for such fiscal year which the period between January first, nineteen hundred and seventeen, and the end of such fiscal year bears to the whole of such fiscal year.

"The tax imposed by this section shall be computed, levied, assessed, collected, and paid upon the same incomes and in the same manner as the tax imposed by subdivision (a) of section ten of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, except that for the purpose of the tax imposed by this section the income embraced in a return of a corporation, joint-stock company or association, or insurance company, shall be credited with the amount received as dividends upon the stock or from the net earnings of any other corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title."

§ 6336k. [Repealed.]

See note to section 6336a, ante.

§ 6336*l*. (Act Sept. 8, 1916, c. 463, § 12, as amended, Act Oct. 3, 1917, c. 63, § 1207.) [Repealed.]

See note to section 6336a, ante.

This section as set forth in U. S. Comp. St. 1916, § 6336*l*, was amended by Act Oct. 3, 1917, c. 63, § 1207, cited above, by inserting in the third paragraph of subdivision a, after the words "within the year on its indebtedness," the words "except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title" in parentheses; by inserting in said third paragraph, at the end thereof the words "shall be deducted"; by inserting in the fourth paragraph of subdivision a, after the words "the United States," the words "except income and excess profits taxes," in parentheses; by inserting in the third paragraph of subdivision b thereof, after the words "within the year on its indebtedness," the words "except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title," in parentheses; and by inserting in the fourth paragraph of subdivision b, after the words "authority of the United States," the words "except income and excess profits taxes."

§ 6336m. (Act Sept. 8, 1916, c. 463, § 13, as amended, Act Oct. 3, 1917, c. 63, § 1208.) [Repealed.]

See note to section 6336a, ante.

This section, as set forth in U. S. Comp. St. 1916, § 6336m, was amended by Act Oct. 3, 1917, c. 63, § 1208, cited above, by inserting in subdivision e,

after the words "shall be made applicable to," the words "the tax imposed by subdivision (a) of section ten upon." See, also, note to Chapter Eleven B of this Title, post.

Notes of Decisions

Construction and application in general.—See Maryland Casualty Co. v. U. S., 52 Ct. Cl. 201.

Under Income Tax Act Oct. 3, 1913, § 2, A to N, inclusive, and in view of Corporation Tax Act Aug. 5, 1909, § 38, and Income Tax Act Sept. 8, 1916, pt. 2, § 13, subd. "c," income taxes could not be assessed on income received by a receiver of an insolvent corporation. Scott v. Western Pac. R. Co., 246 F. 545, 158 C. C. A. 515, affirming order Equitable Trust Co. of New York v. Western Pac. Ry. Co. (D. C.) 236 F. 813.

§ 6336n. [Repealed.]

See note to section 6336a, ante.

§ 6336*o*. [Repealed.]

See note to section 6336a, ante.

§ 6336*oo*. (Act Oct. 3, 1917, c. 63, § 1009.) [Repealed.]

See note to section 6336a, ante.

The text of this section was as follows:

"The Secretary of the Treasury, under rules and regulations prescribed by him, shall permit taxpayers liable to income and excess profits taxes to make payments in advance in installments or in whole of an amount not in excess of the estimated taxes which will be due from them, and upon determination of the taxes actually due any amount paid in excess shall be refunded as taxes erroneously collected: Provided, That when payment is made in installments at least one-fourth of such estimated tax shall be paid before the expiration of thirty days after the close of the taxable year, at least an additional one-fourth within two months after the close of the taxable year, at least an additional one-fourth within four months after the close of the taxable year, and the remainder of the tax due on or before the time now fixed by law for such payment: Provided further, That the Secretary of the Treasury, under rules and regulations prescribed by him, may allow credit against such taxes so paid in advance of an amount not exceeding three per centum per annum calculated upon the amount so paid from the date of such payment to the date now fixed by law for such payment; but no such credit shall be allowed on payments in excess of taxes determined to be due, nor on payments made after the expiration of four and one-half months after the close of the taxable year. All penalties provided by existing law for failure to pay tax when due are hereby made applicable to any failure to pay the tax at the time or times required in this section."

This section was a part of an act entitled "An act to provide revenue to defray war expenses, and for other purposes," cited above. Said act was divided into thirteen titles. This section was a part of Title X thereof, entitled "Administrative Proceedings." See, also, note to Chapter Eleven B of this Title, post.

§ 6336p. [Repealed.]

See note to section 6336a, ante

§ 6336q. (Act Sept. 8, 1916, c. 463, § 18, as amended, Act Oct. 3, 1917, c. 63, § 1209.) [Repealed.]

See note to section 6336a, ante.

This section, as amended by Act Oct. 3, 1917, c. 63, § 1209, read as follows:

"Any person, corporation, partnership, association, or insurance company, liable to pay the tax, to make a return or to supply information required under this title, who refuses or neglects to pay such tax, to make such return or to supply such information at the time or times herein specified in each year, shall be liable, except as otherwise specially provided in this title, to a penalty of not less than $20 nor more than $1,000. Any individual or any officer of any corporation, partnership, association, or insurance company, required by law to make, render, sign, or verify any return or to supply any information, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this title to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, in the discretion of the court, with the costs of prosecution: Provided, That where any tax heretofore due and payable has been duly paid by the taxpayer, it shall not be re-collected from any withholding agent required to retain it at its source, nor shall any penalty be imposed or collected in such cases from the taxpayer, or such withholding agent whose duty it was to retain it, for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment."

§ 6336qq. (Act Oct. 3, 1917, c. 63, § 1010.) [Repealed.]

See note to section 6336a, ante.

The text of this section read as follows:

"Under rules and regulations prescribed by the Secretary of the Treasury, collectors of internal revenue may receive, at par and accrued interest, certificates of indebtedness issued under section six of the Act entitled 'An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes,' approved April twenty-fourth, nineteen hundred and seventeen, and any subsequent Act or Acts, and uncertified checks in payment of income and excess-profits taxes, during such time and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered."

§§ 6336r–6336v. [Repealed.]

See note to section 6336a, ante.

§ 6336vv. (Act Oct. 3, 1917, c. 63, § 5.) [Repealed.]

See note to section 6336a, ante.

The text of this section read as follows:

"The provisions of this title shall not extend to Porto Rico or the Philippine Islands, and the Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands respectively."

§§ 6336w, 6336x. [Repealed.]

See note to section 6336a, ante.

§ 6336xx. (Act Sept. 8, 1916, c. 463, § 26, as amended, Act March 3, 1917, c. 159, § 402, and Act Oct. 3, 1917, c. 63, § 1210.) [Repealed.]

See note to section 6336a, ante.

This section was added to act Sept. 8, 1916, c. 463, by Act March 3, 1917, c. 159, § 402, cited above. It was amended by Act Oct. 3, 1917, c. 63, § 1210, also cited above, by inserting, after the words "and the number of shares owned by each," the words "and the tax years and the applicable amounts in which such dividends were earned," so as to make the section read as follows:

See, also, note to Chapter Eleven B of this Title, post.

"Every corporation, joint-stock company or association, or insurance company subject to the tax herein imposed, when required by the Commissioner of Internal Revenue, shall render a correct return, duly verified under oath, of its payments of dividends, whether made in cash or its equivalent or in stock, including the names and addresses of stockholders and the number of shares owned by each, and the tax years and the applicable amounts in which such dividends were earned, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury."

§ 6336xxx. (Act Sept. 8, 1916, c. 463, § 27, as amended, Act Oct. 3, 1917, c. 63, § 1211.) [Repealed.]

See note to section 6336a, ante.

The text of this section was as follows:

"Every person, corporation, partnership, or association, doing business as a broker on any exchange or board of trade or other similar place of business shall, when required by the Commissioner of Internal Revenue, render a correct return duly verified under oath, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, showing the names of customers for whom such person, corporation, partnership, or association has transacted any business, with such details as to the profits, losses, or other information which the commissioner may require, as to each of such customers, as will enable the Commissioner of Internal Revenue to determine whether all income tax due on profits or gains of such customers has been paid."

§ 6336y. (Act Sept. 8, 1916, c. 463, § 28, as amended, Act Oct. 3, 1917, c. 63, § 1211.) [Repealed.]

See note to section 6336a, ante.

The text of the amendatory act was as follows:

"All persons, corporations, partnerships, associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, and employers, making payment to another person, corporation, partnership, association, or insurance company, of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in sections twenty-six and twenty-seven), of $800 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, are hereby authorized and required to render a true and accurate return to the Commissioner of Internal Revenue, under such rules and regulations and in such form and manner as may be prescribed by him, with the approval of the Secretary of the Treasury, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment: Provided, That such returns shall be required, regardless of amounts, in the case of payments of interest upon bonds and mortgages or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, and in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest from the bonds and dividends from the stock of foreign corporations by persons, corporations, partnerships, or associations, undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

"When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the person, corporation, partnership, association, or insurance company paying the income.

"The provisions of this section shall apply to the calendar year nineteen hundred and seventeen and each calendar year thereafter, but shall not apply to the payment of interest on obligations of the United States."

§ 6336yy. (Act Sept. 8, 1916, c. 463, § 29, as amended, Act Oct. 3, 1917, c. 63, § 1211.) [Repealed.]

See note to section 6336a, ante.

The text of this section was as follows:

"In assessing income tax the net income embraced in the return shall also be credited with the amount of any excess profits tax imposed by Act of Congress and assessed for the same calendar or fiscal year upon the taxpayer, and, in the case of a member of a partnership, with his proportionate share of such excess profits tax imposed upon the partnership."

§ 6336yyy. (Act Sept. 8, 1916, c. 463, § 30, as amended, Act Oct. 3, 1917, c. 63, § 1211.) [Repealed.]

See note to section 6336a, ante.

The text of this section was as follows:

"Nothing in section II of the Act approved October third, nineteen hundred and thirteen, entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' or in this title, shall be construed as taxing the income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to foreign governments."

§ 6336z. (Act Sept. 8, 1916, c. 463, § 31, as amended, Act Oct. 3, 1917, c. 63, § 1211.) [Repealed.]

See note to section 6336a, ante.

The text of this section was as follows:

"(a) The term 'dividends' as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of the earnings or profits so distributed.

"(b) Any distribution made to the shareholders or members of a corporation, joint-stock company, or association, or insurance company, in the year nine-

teen hundred and seventeen, or subsequent tax years, shall be deemed to have been made from the most recently accumulated undivided profits or surplus, and shall constitute a part of the annual income of the distributee for the year in which received, and shall be taxed to the distributee at the rates prescribed by law for the years in which such profits or surplus were accumulated by the corporation, joint-stock company, association, or insurance company, but nothing herein shall be construed as taxing any earnings or profits accrued prior to March first, nineteen hundred and thirteen, but such earnings or profits may be distributed in stock dividends or otherwise, exempt from the tax, after the distribution of earnings and profits accrued since March first, nineteen hundred and thirteen, has been made. This subdivision shall not apply to any distribution made prior to August sixth, nineteen hundred and seventeen, out of earnings or profits accrued prior to March first, nineteen hundred and thirteen."

Notes of Decisions

Construction and application in general.—Provisions in Income Tax Acts of September 8, 1916, and October 3, 1917, relating to dividends, cannot be deemed declaratory of the meaning of the term as used in Act Oct. 3, 1913, but should be treated as a concession to the equity of stockholders, in view of the attacks on the validity of the earlier act, which imposed taxes on dividends declared out of earnings or profits which accrued before it went into effect. Lynch v. Hornby, 38 S. Ct. 543, 247 U. S. 339, 62 L. Ed. 1149, reversing judgment 236 F. 661, 149 C. C. A. 657.

§ 6336zz. (Act Sept. 8, 1916, c. 463, § 32, as amended, Act Oct. 3, 1917, c. 63, § 1211.) [Repealed.]

See note to section 6336a, ante.

The text of this section was as follows:

"Premiums paid on life insurance policies covering the lives of officers, employees, or those financially interested in any trade or business conducted by an individual, partnership, corporation, joint-stock company or association, or insurance company, shall not be deducted in computing the net income of such individual, corporation, joint-stock company or association, or insurance company, or in computing the profits of such partnership for the purposes of subdivision (e) of section nine."

CHAPTER NINE AA—INCOME TAX

This chapter includes the income tax provisions of the Revenue Act of 1918. Such provisions appear in said Act under the heading "Title II—Income Tax." For historical notes and notes of decisions respecting the income tax acts of 1916 and 1917, see the next preceding chapter.

PART I—GENERAL PROVISIONS

Sec.

DEFINITIONS

6336⅛a. Definitions.

DIVIDENDS

6336⅛b. Dividends.

BASIS FOR DETERMINING GAIN OR LOSS

6336⅛bb. Gain derived or loss sustained from disposition of property.

INVENTORIES

6336⅛c. Inventories; form and contents.

NET LOSSES

6336⅛cc. Net losses, determination of.

FISCAL YEAR WITH DIFFERENT RATES

6336⅛d. Proportion of tax for fiscal year with different years.

PARTS OF INCOME SUBJECT TO RATE FOR DIFFERENT YEARS

6336⅛dd. Rates for different years.

PART II—INDIVIDUALS

Sec.

NORMAL TAX

6336⅛e. Normal tax; rates.

SURTAX

6336⅛ee. Surtax; rates.

NET INCOME DEFINED

6336⅛f. Net income; computation.

GROSS INCOME DEFINED

6336⅛ff. Gross income; what constitutes.

DEDUCTIONS ALLOWED

6336⅛g. Computation of net incomes; deductions allowed.

ITEMS NOT DEDUCTIBLE

6336⅛gg. Computation of net incomes; deductions not allowed.

CREDITS ALLOWED

6336⅛h. Credits allowed for purposes of normal tax.

NONRESIDENT ALIENS—ALLOWANCE OF DEDUCTIONS AND CREDITS

Sec.
6336⅛hh. Deductions and credits to nonresident alien.

PARTNERSHIPS AND PERSONAL SERVICE CORPORATIONS

6336⅛i. Tax on partnerships and personal service corporations; credits; net income.

ESTATES AND TRUSTS

6336⅛ii. Incomes of estates or property held in trust; returns; net income; deductions and credits.

PROFITS OF CORPORATIONS TAXABLE TO STOCKHOLDERS

6336⅛j. Taxation of accumulated profits of corporations; statements of gains and profits.

PAYMENT OF TAX AT SOURCE

6336⅛jj. Taxes to be deducted and withheld at source; returns.

CREDIT FOR TAXES

6336⅛k. Credits allowed.

INDIVIDUAL RETURNS

6336⅛kk. Returns; persons required to make.

PARTNERSHIP RETURNS

6336⅛*l*. Partnership returns; contents; verification.

FIDUCIARY RETURNS

6336⅛*ll*. Returns by fiduciaries; contents; verification.

RETURNS WHEN ACCOUNTING PERIOD CHANGED

6336⅛m. Returns on change from fiscal to calendar year; computation of net income.

TIME AND PLACE FOR FILING RETURNS

6336⅛mm. Returns; time for making; to whom made.

UNDERSTATEMENT IN RETURNS

6336⅛n. Understatements in returns; increase.

PART III—CORPORATIONS

TAX ON CORPORATIONS

6336⅛nn. Tax on net incomes; Federal controlled transportation systems.

CONDITIONAL AND OTHER EXEMPTIONS

6336⅛*o*. Organization exempted.

NET INCOME DEFINED

6336⅛*oo*. Net income; computation.

GROSS INCOME DEFINED

6336⅛p. Gross income; what constitutes.

DEDUCTIONS ALLOWED

6336⅛pp. Deductions; items allowed.

ITEMS NOT DEDUCTIBLE

Sec.
6336⅛q. Deductions; items not allowed.

CREDITS ALLOWED

6336⅛qq. Credits; items allowed.

PAYMENT OF TAX AT SOURCE

6336⅛r. Deduction and withholding of tax at source.

CREDIT FOR TAXES

6336⅛rr. Credit for other taxes.

CORPORATION RETURNS

6336⅛s. Returns, form and contents; verifications.

CONSOLIDATED RETURNS

6336⅛ss. Consolidated returns of affiliated corporations.

TIME AND PLACE FOR FILING RETURNS

6336⅛t. Returns; time for making; to whom made.

PART IV—ADMINISTRATIVE PROVISIONS

PAYMENT OF TAXES

6336⅛tt. (a) Payment of tax in installments; time for; payment in single payment.
(b) Examination of returns; recomputation of installments; credit or refund of excess payments; payment of difference where amount paid is insufficient; penalty for understatement.
(c) Payment upon notice and demand.
(d) Time for determination and assessment of tax; limitation of suits for taxes.
(e) Penalty on unpaid taxes; notice of time when tax becomes due.
(f) Distraint.
(g) Termination of taxable period; security for return and payment of taxes.

RECEIPTS FOR TAXES

6336⅛u. Receipts for taxes paid.

REFUNDS

6336⅛uu. Credit or refund of excess payments; time for filing claim for.

PENALTIES

6336⅛v. Failure to pay or collect tax, make return or supply information, or attempting to defeat or evade tax; penalties.

Sec.

RETURNS OF PAYMENTS OF DIVIDENDS

6336⅛vv. Returns or payments of dividends by corporations and personal service corporations.

RETURNS OF BROKERS

6336⅛w. Returns by brokers; contents.

INFORMATION AT SOURCE

6336⅛ww. Returns by persons making payments to others; contents.

RETURNS TO BE PUBLIC RECORDS

6336⅛x. Returns to be public records; inspection; lists of persons making returns.

Sec.

PUBLICATION OF STATISTICS

6336⅛xx. Statistics of operation of law; contents.

COLLECTION OF FOREIGN ITEMS

6336⅛y. Licenses to and regulation of persons collecting foreign payments of interest, or dividends.

CITIZENS OF UNITED STATES POSSESSIONS

6336⅛yy. Taxation of citizens of United States possessions.

PORTO RICO AND PHILIPPINE ISLANDS

6336⅛z. Income tax in Porto Rico and Philippine Islands; levy, assessment, collection, and payment; returns.

PART I—GENERAL PROVISIONS

DEFINITIONS

§ 6336⅛a. (Act Feb. 24, 1919, c. 18, § 200.) Definitions.

When used in this title—

The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section 212 or section 232. The term "fiscal year" means an accounting period of twelve months ending on the last day of any month other than December. The first taxable year, to be called the taxable year 1918, shall be the calendar year 1918 or any fiscal year ending during the calendar year 1918;

The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust or estate;

The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 221 or section 237;

The term "personal service corporation" means a corporation whose income is to be ascribed primarily to the activities of the principal owners or stockholders who are themselves regularly engaged in the active conduct of the affairs of the corporation and in which capital (whether invested or borrowed) is not a material income-producing factor; but does not include any foreign corporation, nor any corporation 50 per centum or more of whose gross income consists either (1) of gains, profits or income derived from trading as a principal, or (2) of gains, profits, commissions, or other income, derived from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive;

The term "paid," for the purposes of the deductions and credits under this title, means "paid or accrued" or "paid or incurred," and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212. (40 Stat. 1058.)

This section is § 200 of the Revenue Act of 1918, cited above.

Sections 212, 221 and 232 of this Act, referred to in this section, are set forth post, §§ 6336⅛f, 6336⅛jj, 6336⅛oo.

DIVIDENDS

§ 6336⅛b. (Act Feb. 24, 1919, c. 18, § 201.) Dividends.

(a) The term "dividend" when used in this title (except in paragraph (10) of subdivision (a) of section 234) means (1) any distribution made by a corporation, other than a personal service corporation, to its shareholders or members, whether in cash or in other property or in stock of the corporation, out of its earnings or profits accumulated since February 28, 1913, or (2) any such distribution made by a personal service corporation out of its earnings or profits accumulated since February 28, 1913, and prior to January 1, 1918.

(b) Any distribution shall be deemed to have been made from earnings or profits unless all earnings and profits have first been distributed. Any distribution made in the year 1918 or any year thereafter shall be deemed to have been made from earnings or profits accumulated since February 28, 1913, or, in the case of a personal service corporation, from the most recently accumulated earnings or profits; but any earnings or profits accumulated prior to March 1, 1913, may be distributed in stock dividends or otherwise, exempt from the tax, after the earnings and profits accumulated since February 28, 1913, have been distributed.

(c) A dividend paid in stock of the corporation shall be considered income to the amount of the earnings or profits distributed. Amounts distributed in the liquidation of a corporation shall be treated as payments in exchange for stock or shares, and any gain or profit realized thereby shall be taxed to the distributee as other gains or profits.

(d) If any stock dividend (1) is received by a taxpayer between January 1 and November 1, 1918, both dates inclusive, or (2) is during such period bona fide authorized or declared, and entered on the books of the corporation, and is received by a taxpayer after November 1, 1918, and before the expiration of thirty days after passage of this Act, then such dividend shall, in the manner provided in section 206, be taxed to the recipient at the rates prescribed by law for the years in which the corporation accumulated the earnings or profits from which such dividend was paid, but the dividend shall be deemed to have been paid from the most recently accumulated earnings or profits.

(e) Any distribution made during the first sixty days of any taxable year shall be deemed to have been made from earnings or profits accumulated during preceding taxable years; but any distribution made during the remainder of the taxable year shall be deemed to have been made from earnings or profits accumulated between the close of the preceding taxable year and the date of distribution, to the extent of such earnings or profits, and if the books of the corporation do not show the amount of such earnings or profits, the earnings or profits for the accounting period within which the distribution was made shall be deemed to have been accumulated ratably during such period. (40 Stat. 1059.)

This section is § 201 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 31 of the Revenue Act of 1916, as added by § 1211 of the Revenue Act of 1917, see note to § 6336z, ante.

Sections 206 and 234 of this act, referred to in this section, are set forth post, §§ 6336⅛dd. 6336⅛pp.

Notes of Decisions

Decisions under prior acts.—See notes to §§ 6321, 6327, 6336x, ante.

BASIS FOR DETERMINING GAIN OR LOSS

§ 6336⅛bb. (Act Feb. 24, 1919, c. 18, § 202.) Gain derived or loss sustained from disposition of property.

(a) For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal, or mixed, the basis shall be—

(1) In the case of property acquired before March 1, 1913, the fair market price or value of such property as of that date; and

(2) In the case of property acquired on or after that date, the cost thereof; or the inventory value, if the inventory is made in accordance with section 203.

(b) When property is exchanged for other property, the property received in exchange shall for the purpose of determining gain or loss be treated as the equivalent of cash to the amount of its fair market value, if any; but when in connection with the reorganization, merger, or consolidation of a corporation a person receives in place of stock or securities owned by him new stock or securities of no greater aggregate par or face value, no gain or loss shall be deemed to occur from the exchange, and the new stock or securities received shall be treated as taking the place of the stock, securities, or property exchanged.

When in the case of any such reorganization, merger or consolidation the aggregate par or face value of the new stock or securities received is in excess of the aggregate par or face value of the stock or securities exchanged, a like amount in par or face value of the new stock or securities received shall be treated as taking the place of the stock or securities exchanged, and the amount of the excess in par or face value shall be treated as a gain to the extent that the fair market value of the new stock or securities is greater than the cost (or if acquired prior to March 1, 1913, the fair market value as of that date) of the stock or securities exchanged. (40 Stat. 1060.)

This section is § 202 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 2 of the Revenue Act of 1916, as amended by § 1200 of the Revenue Act of 1917, see note to § 6336b[c], ante.

Section 203 of this act, referred to in this section, is set forth post, § 6336⅛c.

INVENTORIES

§ 6336⅛c. (Act Feb. 24, 1919, c. 18, § 203.) Inventories; form and contents.

Whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income. (40 Stat. 1060.)

This section is § 203 of the Revenue Act of 1918, cited above.

NET LOSSES

§ 6336⅛cc. (Act Feb. 24, 1919, c. 18, § 204.) Net losses; determination of.

(a) As used in this section the term "net loss" refers only to net losses resulting from either (1) the operation of any business regularly carried on by the taxpayer, or (2) the bona fide sale by the taxpayer of plant, buildings, machinery, equipment or other facilities, constructed, installed or acquired by the taxpayer on or

after April 6, 1917, for the production of articles contributing to the prosecution of the present war; and when so resulting means the excess of the deductions allowed by law (excluding in the case of corporations amounts allowed as a deduction under paragraph (6) of subdivision (a) of section 234) over the sum of the gross income plus any interest received free from taxation both under this title and under Title III.

(b) If for any taxable year beginning after October 31, 1918, and ending prior to January 1, 1920, it appears upon the production of evidence satisfactory to the Commissioner that any taxpayer has sustained a net loss, the amount of such net loss shall under regulations prescribed by the Commissioner with the approval of the Secretary be deducted from the net income of the taxpayer for the preceding taxable year; and the taxes imposed by this title and by Title III for such preceding taxable year shall be redetermined accordingly. Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252. If such net loss is in excess of the net income for such preceding taxable year, the amount of such excess shall under regulations prescribed by the Commissioner with the approval of the Secretary be allowed as a deduction in computing the net income for the succeeding taxable year.

(c) The benefit of this section shall be allowed to the members of a partnership and the beneficiaries of an estate or trust under regulations prescribed by the Commissioner with the approval of the Secretary. (40 Stat. 1060.)

This section is § 204 of the Revenue Act of 1918, cited above.

Sections 234 and 252 of this act, referred to in this section, are set forth post. §§ 6336⅛pp, 6336⅛uu.

FISCAL YEAR WITH DIFFERENT RATES

§ 6336⅛d. (Act Feb. 24, 1919, c. 18, § 205.) Proportion of tax for fiscal year with different rates.

(a) If a taxpayer makes return for a fiscal year beginning in 1917 and ending in 1918, his tax under this title for the first taxable year shall be the sum of: (1) the same proportion of a tax for the entire period computed under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 and under Title I of the Revenue Act of 1917, which the portion of such period falling within the calendar year 1917 is of the entire period, and (2) the same proportion of a tax for the entire period computed under this title at the rates for the calendar year 1918 which the portion of such period falling within the calendar year 1918 is of the entire period: Provided, That in the case of a personal service corporation the amount to be paid shall be only that specified in clause (1).

Any amount heretofore or hereafter paid on account of the tax imposed for such fiscal year by Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, and by Title I of the Revenue Act of 1917, shall be credited towards the payment of the tax imposed for such fiscal year by this act, and if the amount so paid exceeds the amount of such tax imposed by this act, or, in the case of a personal service corporation, the amount specified in clause (1), the excess shall be credited or refunded in accordance with the provisions of section 252.

(b) If a taxpayer makes a return for a fiscal year beginning in 1918 and ending in 1919, the tax under this title for such fiscal year shall be the sum of: (1) the same proportion of a tax for the entire period computed under this title at the rates specified for the cal-

endar year 1918 which the portion of such period falling within the calendar year 1918 is of the entire period, and (2) the same proportion of a tax for the entire period computed under this title at the rates specified for the calendar year 1919 which the portion of such period falling within the calendar year 1919 is of the entire period.

(c) If a fiscal year of a partnership begins in 1917 and ends in 1918 or begins in 1918 and ends in 1919, then notwithstanding the provisions of subdivision (b) of section 218, (1) the rates for the calendar year during which such fiscal year begins shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and (2) the rates for the calendar year during which such fiscal year ends shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such calendar year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year: Provided, That in the case of a personal service corporation with respect to a fiscal year beginning in 1917 and ending in 1918, the amount specified in clause (1) shall not be subject to normal tax. (40 Stat. 1061.)

This section is § 205 of the Revenue Act of 1918, cited above.

Section 252 of this act, referred to in this section, is set forth post, § 6336⅛uu.

PARTS OF INCOME SUBJECT TO RATES FOR DIFFERENT YEARS

§ 6336⅛dd. (Act Feb. 24, 1919, c. 18, § 206.) Rates for different years.

Whenever parts of a taxpayer's income are subject to rates for different calendar years, the part subject to the rates for the most recent calendar year shall be placed in the lower brackets of the rate schedule provided in this title, the part subject to the rates for the next preceding calendar year shall be placed in the next higher brackets of the rate schedule applicable to that year, and so on until the entire net income has been accounted for. In determining the income, any deductions, exemptions or credits of a kind not plainly and properly chargeable against the income taxable at rates for a preceding year shall first be applied against the income subject to rates for the most recent calendar year; but any balance thereof shall be applied against the income subject to the rates of the next preceding year or years until fully allowed. (40 Stat. 1062.)

This section is § 206 of the Revenue Act of 1918, cited above.

PART II.—INDIVIDUALS

NORMAL TAX

§ 6336⅛e. (Act Feb. 24, 1919, c. 18, § 210.) Normal tax; rates.

In lieu of the taxes imposed by subdivision (a) of section 1 of the Revenue Act of 1916 and by section 1 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax at the following rates:

(a) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in section 216: Provided, That in the case of a citizen or resident of the United

States the rate upon the first $4,000 of such excess amount shall be 6 per centum;

(b) For each calendar year thereafter, 8 per centum of the amount of the net income in excess of the credits provided in section 216: Provided, That in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 4 per centum. (40 Stat. 1062.)

This section is § 210 of the Revenue Act of 1918, cited above.

The taxes imposed by this section are in lieu of the tax imposed by § 1[a] of the Revenue Act of 1916 and § 1 of the Revenue Act of 1917 (see U. S. Comp. St. 1916, § 6336a[a], and note to § 6336aa, ante).

Section 216 of this act, referred to in this section, is set forth post, § 6336⅛h.

Notes of Decisions

Decisions under prior acts.—See notes to §§ 6319, 6321, 6336b, ante.

SURTAX

§ 6336⅛ee. (Act Feb. 24, 1919, c. 18, § 211.) Surtax; rates.

(a) In lieu of the taxes imposed by subdivision (b) of section 1 of the Revenue Act of 1916 and by section 2 of the Revenue Act of 1917, but in addition to the normal tax imposed by section 210 of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a surtax equal to the sum of the following:

1 per centum of the amount by which the net income exceeds $5,000 and does not exceed $6,000;

2 per centum of the amount by which the net income exceeds $6,000 and does not exceed $8,000;

3 per centum of the amount by which the net income exceeds $8,000 and does not exceed $10,000;

4 per centum of the amount by which the net income exceeds $10,000 and does not exceed $12,000;

5 per centum of the amount by which the net income exceeds $12,000 and does not exceed $14,000;

6 per centum of the amount by which the net income exceeds $14,000 and does not exceed $16,000;

7 per centum of the amount by which the net income exceeds $16,000 and does not exceed $18,000;

8 per centum of the amount by which the net income exceeds $18,000 and does not exceed $20,000;

9 per centum of the amount by which the net income exceeds $20,000 and does not exceed $22,000;

10 per centum of the amount by which the net income exceeds $22,000 and does not exceed $24,000;

11 per centum of the amount by which the net income exceeds $24,000 and does not exceed $26,000;

12 per centum of the amount by which the net income exceeds $26,000 and does not exceed $28,000;

13 per centum of the amount by which the net income exceeds $28,000 and does not exceed $30,000;

14 per centum of the amount by which the net income exceeds $30,000 and does not exceed $32,000;

15 per centum of the amount by which the net income exceeds $32,000 and does not exceed $34,000;

16 per centum of the amount by which the net income exceeds $34,000 and does not exceed $36,000;

17 per centum of the amount by which the net income exceeds $36,000 and does not exceed $38,000;

18 per centum of the amount by which the net income exceeds $38,000 and does not exceed $40,000;

19 per centum of the amount by which the net income exceeds $40,000 and does not exceed $42,000;

20 per centum of the amount by which the net income exceeds $42,000 and does not exceed $44,000;

21 per centum of the amount by which the net income exceeds $44,000 and does not exceed $46,000;

22 per centum of the amount by which the net income exceeds $46,000 and does not exceed $48,000;

23 per centum of the amount by which the net income exceeds $48,000 and does not exceed $50,000;

24 per centum of the amount by which the net income exceeds $50,000 and does not exceed $52,000;

25 per centum of the amount by which the net income exceeds $52,000 and does not exceed $54,000;

26 per centum of the amount by which the net income exceeds $54,000 and does not exceed $56,000;

27 per centum of the amount by which the net income exceeds $56,000 and does not exceed $58,000;

28 per centum of the amount by which the net income exceeds $58,000 and does not exceed $60,000;

29 per centum of the amount by which the net income exceeds $60,000 and does not exceed $62,000;

30 per centum of the amount by which the net income exceeds $62,000 and does not exceed $64,000;

31 per centum of the amount by which the net income exceeds $64,000 and does not exceed $66,000;

32 per centum of the amount by which the net income exceeds $66,000 and does not exceed $68,000;

33 per centum of the amount by which the net income exceeds $68,000 and does not exceed $70,000;

34 per centum of the amount by which the net income exceeds $70,000 and does not exceed $72,000;

35 per centum of the amount by which the net income exceeds $72,000 and does not exceed $74,000;

36 per centum of the amount by which the net income exceeds $74,000 and does not exceed $76,000;

37 per centum of the amount by which the net income exceeds $76,000 and does not exceed $78,000;

38 per centum of the amount by which the net income exceeds $78,000 and does not exceed $80,000;

39 per centum of the amount by which the net income exceeds $80,000 and does not exceed $82,000;

40 per centum of the amount by which the net income exceeds $82,000 and does not exceed $84,000;

41 per centum of the amount by which the net income exceeds $84,000 and does not exceed $86,000;

42 per centum of the amount by which the net income exceeds $86,000 and does not exceed $88,000;

43 per centum of the amount by which the net income exceeds $88,000 and does not exceed $90,000;

44 per centum of the amount by which the net income exceeds $90,000 and does not exceed $92,000;

45 per centum of the amount by which the net income exceeds $92,000 and does not exceed $94,000;

46 per centum of the amount by which the net income exceeds $94,000 and does not exceed $96,000;

47 per centum of the amount by which the net income exceeds $96,000 and does not exceed $98,000;

48 per centum of the amount by which the net income exceeds $98,000 and does not exceed $100,000;

52 per centum of the amount by which the net income exceeds $100,000 and does not exceed $150,000;

56 per centum of the amount by which the net income exceeds $150,000 and does not exceed $200,000;

60 per centum of the amount by which the net income exceeds $200,000 and does not exceed $300,000;

63 per centum of the amount by which the net income exceeds $300,000 and does not exceed $500,000;

64 per centum of the amount by which the net income exceeds $500,000 and does not exceed $1,000,000;

65 per centum of the amount by which the net income exceeds $1,000,000.

(b) In the case of a bona fide sale of mines, oil or gas wells, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration and discovery work done by the taxpayer, the portion of the tax imposed by this section attributable to such sale shall not exceed 20 per centum of the selling price of such property or interest. (40 Stat. 1062.)

This section is § 211 of the Revenue Act of 1918, cited above.

The taxes imposed by this section are in lieu of those imposed by § 1[b] of the Revenue Act of 1916 and § 2 of the Revenue Act of 1917 (see U. S. Comp. St. 1916, § 6336a[b], and note to § 6336aaa, ante).

Notes of Decisions

Decisions under prior acts.—See note to § 6320, ante.

NET INCOME DEFINED

§ 6336⅛f. (Act Feb. 24, 1919, c. 18, § 212.) Net income; computation.

(a) In the case of an individual the term "net income" means the gross income as defined in section 213, less the deductions allowed by section 214.

(b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 200 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Commissioner, be computed on the basis of such new accounting period, subject to the provisions of section 226. (40 Stat. 1064.)

This section is § 212 of the Revenue Act of 1918, cited above.

Sections 200, 213, 214, and 226 of this act, referred to in this section, are set forth ante, § 6336⅛a, and post, §§ 6336⅛ff, 6336⅛g, 6336⅛m.

GROSS INCOME DEFINED

§ 6336⅛ff. (Act Feb. 24, 1919, c. 18, § 213.) Gross income; what constitutes.

For the purposes of this title (except as otherwise provided in section 233) the term "gross income"—

(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section 212, any such amounts are to be properly accounted for as of a different period; but

(b) Does not include the following items, which shall be exempt from taxation under this title:

(1) The proceeds of life insurance policies paid upon the death of the insured to individual beneficiaries or to the estate of the insured;

(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract;

(3) The value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included in gross income);

(4) Interest upon (a) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (b) securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916; or (c) the obligations of the United States or its possessions; or (d) bonds issued by the War Finance Corporation: Provided, That every person owning any of the obligations, securities or bonds enumerated in clauses (a), (b), (c) and (d) shall, in the return required by this title, submit a statement showing the number and amount of such obligations, securities and bonds owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917, and in the case of bonds issued by the War Finance Corporation, the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt from taxation to the taxpayer both under this title and under Title III;

(5) The income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to such

foreign governments, or from any other source within the United States;

(6) Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;

(7) Income derived from any public utility or the exercise of any essential governmental function and accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, or income accruing to the government of any possession of the United States, or any political subdivision thereof.

Whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, prior to September 8, 1916, entered in good faith into a contract with any person, the object and purpose of which is to acquire, construct, operate, or maintain a public utility, no tax shall be levied under the provisions of this title upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, District of Columbia, or political subdivision; but this provision is not intended to confer upon such person any financial gain or exemption or to relieve such person from the payment of a tax as provided for in this title upon the part or portion of such income to which such person is entitled under such contract;

(8) So much of the amount received during the present war by a person in the military or naval forces of the United States as salary or compensation in any form from the United States for active services in such forces, as does not exceed $3,500.

(c) In the case of nonresident alien individuals, gross income includes only the gross income from sources within the United States, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, and including all amounts received (although paid under a contract for the sale of goods or otherwise) representing profits on the manufacture and disposition of goods within the United States. (40 Stat. 1065.)

This section is § 213 of the Revenue Act of 1918, cited above.

Sections 212 and 233 of this act, referred to in this section, are set forth ante, § 6336⅛f, and post, § 6336⅛p.

Notes of Decisions

Decisions under prior acts.—See notes to §§ 6321, 6336b, ante.

Construction and application in general.—In view of the several federal income tax acts, Okl. Laws 1915, c. 164, § 1, imposing a tax on the income of nonresidents from property owned or business carried on in the state, is not invalid as to a nonresident who received an income from Oklahoma oil wells, operated under a lease, on the ground that the income is made up from two inseparable elements, the property and the owner's management or intelligence. Shaffer v. Howard (D. C.) 250 F. 873.

DEDUCTIONS ALLOWED

§ 6336⅛g. (Act Feb. 24, 1919, c. 18, § 214.) Computation of net incomes; deductions allowed.

(a) In computing net income there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or

other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity;

(2) All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917), the interest upon which is wholly exempt from taxation under this title as income to the taxpayer, or, in the case of a nonresident alien individual, the proportion of such interest which the amount of his gross income from sources within the United States bears to the amount of his gross income from all sources within and without the United States;

(3) Taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war-profits and excess-profits taxes; or (b) by the authority of any of its possessions, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 222; or (c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed; or (d) in the case of a citizen or resident of the United States, by the authority of any foreign country, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 222; or (e) in the case of a nonresident alien individual, by the authority of any foreign country (except income, war-profits and excess-profits taxes, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed), upon property or business;

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or business;

(5) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with the trade or business; but in the case of a nonresident alien individual only as to such transactions within the United States;

(6) Losses sustained during the taxable year of property not connected with the trade or business (but in the case of a nonresident alien individual only property within the United States) if arising from fires, storms, shipwreck, or other casualty, or from theft, and if not compensated for by insurance or otherwise;

(7) Debts ascertained to be worthless and charged off within the taxable year;

(8) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence;

(9) In the case of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired, on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war, and in the case of vessels constructed or acquired on or after such date for the transportation of articles or men contributing to the prosecution of the present war, there shall be allowed a reasonable deduction for the amortization of such part of the cost of such facilities or vessels as has been borne by the taxpayer, but not again including any amount otherwise allowed under this title or previous Acts of Congress as a deduction

in computing net income. At any time within three years after the termination of the present war, the Commissioner may, and at the request of the taxpayer shall, reexamine the return, and if he then finds as a result of an appraisal or from other evidence that the deduction originally allowed was incorrect, the taxes imposed by this title and by Title III for the year or years affected shall be redetermined; and the amount of tax due upon such redetermination, if any, shall be paid upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252;

(10) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost including cost of development not otherwise deducted: Provided, That in the case of such properties acquired prior to March 1, 1913, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date: Provided further, That in the case of mines, oil and gas wells, discovered by the taxpayer, on or after March 1, 1913, and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or within thirty days thereafter; such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary. In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee;

(11) Contributions or gifts made within the taxable year to corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to the special fund for vocational rehabilitation authorized by section 7 of the Vocational Rehabilitation Act, to an amount not in excess of 15 per centum of the taxpayer's net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary. In the case of a nonresident alien individual this deduction shall be allowed only as to contributions or gifts made to domestic corporations, or to such vocational rehabilitation fund;

(12) (a) At the time of filing return for the taxable year 1918 a taxpayer may file a claim in abatement based on the fact that he has sustained a substantial loss (whether or not actually realized by sale or other disposition) resulting from any material reduction (not due to temporary fluctuation) of the value of the inventory for such taxable year, or from the actual payment after the close of such taxable year of rebates in pursuance of contracts entered into during such year upon sales made during such year. In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest. If any part of such claim is disallowed then the remainder of the tax due shall on notice and demand by the collector be paid by the taxpayer with interest at the rate of 1 per

centum per month from the time the tax would have been due had no such claim been filed. If it is shown to the satisfaction of the Commissioner that such substantial loss has been sustained, then in computing the tax imposed by this title the amount of such loss shall be deducted from the net income. (b) If no such claim is filed, but it is shown to the satisfaction of the Commissioner that during the taxable year 1919 the taxpayer has sustained a substantial loss of the character above described then the amount of such loss shall be deducted from the net income for the taxable year 1918 and the tax imposed by this title for such year shall be redetermined accordingly. Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.

(b) In the case of a nonresident alien individual the deductions allowed in paragraphs (1), (4), (7), (8), (9), (10), and (12), and clause (e) of paragraph (3), of subdivision (a) shall be allowed only if and to the extent that they are connected with income arising from a source within the United States; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary. (40 Stat. 1066.)

This section is § 214 of the Revenue Act of 1918, cited above.

For corresponding provisions in §§ 5 and 6 of the Revenue Act of 1916, as amended by §§ 1201 and 1202 of the Revenue Act of 1917, see note to §§ 6336e, 6336f, ante.

Sections 222 and 252 of this act, referred to in this section, are set forth post, §§ 6336⅛k, 6336⅛nn.

Notes of Decisions

Decisions under prior acts.—See notes to § 6321, ante.

ITEMS NOT DEDUCTIBLE

§ 6336⅛gg. (Act Feb. 24, 1919, c. 18, § 215.) Computation of net incomes; deductions not allowed.

In computing net income no deduction shall in any case be allowed in respect of—

(a) Personal, living, or family expenses;

(b) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(c) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or

(d) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy. (40 Stat. 1069.)

This section is § 215 of the Revenue Act of 1918, cited above.

CREDITS ALLOWED

§ 6336⅛h. (Act Feb. 24, 1919, c. 18, § 216.) Credits allowed for purposes of normal tax.

For the purpose of the normal tax only there shall be allowed the following credits:

(a) The amount received as dividends from a corporation which

is taxable under this title upon its net income, and amounts received as dividends from a personal service corporation out of earnings or profits upon which income tax has been imposed by Act of Congress;

(b) The amount received as interest upon obligations of the United States and bonds issued by the War Finance Corporation, which is included in gross income under section 213;

(c) In the case of a single person, a personal exemption of $1,000, or in the case of the head of a family or a married person living with husband or wife, a personal exemption of $2,000. A husband and wife living together shall receive but one personal exemption of $2,000 against their aggregate net income; and in case they make separate returns, the personal exemption of $2,000 may be taken by either or divided between them;

(d) $200 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer, if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(e) In the case of a nonresident alien individual who is a citizen or subject of a country which imposes an income tax, the credits allowed in subdivisions (c) and (d) shall be allowed only if such country allows a similar credit to citizens of the United States not residing in such country. (40 Stat. 1069.)

This section is § 216 of the Revenue Act of 1918, cited above.

For corresponding provisions in §§ 5–7 of the Revenue Act of 1916, as amended by §§ 1201–1203 of the Revenue Act of 1917, see note to §§ 6336e–6336g, ante.

Section 213 of this act, referred to in this section, is set forth ante, § 6336⅛ff.

NONRESIDENT ALIENS—ALLOWANCE OF DEDUCTIONS AND CREDITS

§ 6336⅛hh. (Act Feb. 24, 1919, c. 18, § 217.) Deductions and credits to nonresident alien.

A nonresident alien individual shall receive the benefit of the deductions and credits allowed in this title only by filing or causing to be filed with the collector a true and accurate return of his total income received from all sources corporate or otherwise in the United States, in the manner prescribed by this title, including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits: Provided, That the benefit of the credits allowed in subdivisions (c) and (d) of section 216 may, in the discretion of the Commissioner, and except as otherwise provided in subdivision (e) of that section, be received by filing a claim therefor with the withholding agent. In case of failure to file a return, the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax. (40 Stat. 1069.)

This section is § 217 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 6 of the Revenue Act of 1916, as amended by § 1202 of the Revenue Act of 1917, see note to § 6336f[c], ante.

Section 216 of this Act, referred to in this section, is set forth ante, § 6336⅛h.

PARTNERSHIPS AND PERSONAL SERVICE CORPORATIONS

§ 6336⅛i. (Act Feb. 24, 1919, c. 18, § 218.) Tax on partnerships and personal service corporations; credits; net income.

(a) Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. There shall be included in computing the net income of each partner his dis-

tributive share, whether distributed or not, of the net income of the partnership for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed.

The partner shall, for the purpose of the normal tax, be allowed as credits, in addition to the credits allowed to him under section 216, his proportionate share of such amounts specified in subdivisions (a) and (b) of section 216 as are received by the partnership.

(b) If a fiscal year of a partnership ends during a calendar year for which the rates of tax differ from those for the preceding calendar year, then (1) the rates for such preceding calendar year shall apply to an amount of each partner's share of such partnership net income equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and (2) the rates for the calendar year during which such fiscal year ends shall apply to the remainder.

(c) In the case of an individual member of a partnership which makes return for a fiscal year beginning in 1917 and ending in 1918, his proportionate share of any excess-profits tax imposed upon the partnership under the Revenue Act of 1917 with respect to that part of such fiscal year falling in 1917, shall, for the purpose of determining the tax imposed by this title, be credited against that portion of the net income embraced in his personal return for the taxable year 1918 to which the rates for 1917 apply.

(d) The net income of the partnership shall be computed in the same manner and on the same basis as provided in section 212 except that the deduction provided in paragraph (11) of subdivision (a) of section 214 shall not be allowed.

(e) Personal service corporations shall not be subject to taxation under this title, but the individual stockholders thereof shall be taxed in the same manner as the members of partnerships. All the provisions of this title relating to partnerships and the members thereof shall so far as practicable apply to personal service corporations and the stockholders thereof: Provided, That for the purpose of this subdivision amounts distributed by a personal service corporation during its taxable year shall be accounted for by the distributees; and any portion of the net income remaining undistributed at the close of its taxable year shall be accounted for by the stockholders of such corporation at the close of its taxable year in proportion to their respective shares. (40 Stat. 1070.)

This section is § 218 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 8 of the Revenue Act of 1916, as amended by § 1204 of the Revenue Act of 1917, see note to § 6336h, ante.

Sections 214 and 216 of this act, referred to in this section, are set forth ante, §§ 6336⅛g, 6336⅛h.

ESTATES AND TRUSTS

§ 6336⅛ii. (Act Feb. 24, 1919, c. 18, § 219.) Incomes of estates or property held in trust; returns; net income; deductions and credits.

(a) The tax imposed by sections 210 and 211 shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(2) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(3) Income held for future distribution under the terms of the will or trust; and

(4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct.

(b) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that there shall also be allowed as a deduction (in lieu of the deduction authorized by paragraph (11) of subdivision (a) of section 214) any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is during the taxable year paid to or permanently set aside for the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, or any corporation organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual; and in cases under paragraph (4) of subdivision (a) of this section the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(c) In cases under paragraph (1), (2), or (3) of subdivision (a) the tax shall be imposed upon the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary. In such cases the estate or trust shall, for the purpose of the normal tax, be allowed the same credits as are allowed to single persons under section 216.

(d) In cases under paragraph (4) of subdivision (a), and in the case of any income of an estate during the period of administration or settlement permitted by subdivision (c) to be deducted from the net income upon which tax is to be paid by the fiduciary, the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share, whether distributed or not, of the net income of the estate or trust for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year upon the basis of which such beneficiary's net income is computed. In such cases the beneficiary shall, for the purpose of the normal tax, be allowed as credits in addition to the credits allowed to him under section 216, his proportionate share of such amounts specified in subdivisions (a) and (b) of section 216 as are received by the estate or trust. (40 Stat. 1071.)

This section is § 219 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 2 of the Revenue Act of 1916, as amended by § 1200 of the Revenue Act of 1917, see note to § 6336b[b], ante.

Sections 210–212, 214, and 216 of this Act, referred to in this section, are set forth ante, §§ 6336⅛e–6336⅛f, 6336⅛g, 6336⅛h.

PROFITS OF CORPORATIONS TAXABLE TO STOCKHOLDERS

§ 6336⅛j. (Act Feb. 24, 1919, c. 18, § 220.) Taxation of accumulated profits of corporations; statements of gains and profits.

If any corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its stockholders or members through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, such corporation shall not be subject to the tax imposed by section 230, but the stockholders or members thereof shall be subject to taxation under this title in the same manner as provided in subdivision (e) of section 218 in the case of stockholders of a personal service corporation, except that the tax imposed by Title III shall be deducted from the net income of the corporation before the computation of the proportionate share of each stockholder or member. The fact that any corporation is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a purpose to escape the surtax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the tax in such case unless the Commissioner certifies that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner, or any collector, every corporation shall forward to him a correct statement of such gains and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed, and of the amounts that would be payable to each. (40 Stat. 1072.)

This section is § 220 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 3 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336c.

Sections 218 and 230 of this Act, referred to in this section, are set forth ante, § 6336⅛i, and post, § 6336⅛nn.

PAYMENT OF TAX AT SOURCE

§ 6336⅛jj. (Act Feb. 24, 1919, c. 625, § 221.) Taxes to be deducted and withheld at source; returns.

(a) All individuals, corporations and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, of any nonresident alien individual (other than income received as dividends from a corporation which is taxable under this title upon its net income) shall (except in the cases provided for in subdivision (b) and except as otherwise provided in regulations prescribed by the Commissioner under section 217) deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 8 per centum thereof: Provided, That the Commissioner may authorize such tax to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(b) In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation contain a contract or provision by which the obligor agrees to pay any portion of the tax

imposed by this title upon the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods and whether payable to a nonresident alien individual or to an individual citizen or resident of the United States or to a partnership: Provided, That the Commissioner may authorize such tax to be deducted and withheld in the case of interest upon any such bonds, mortgages, deeds of trust or other obligations, the owners of which are not known to the withholding agent. Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1, a signed notice in writing claiming the benefit of the credits provided in subdivisions (c) and (d) of section 216; nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under section 217.

(c) Every individual, corporation, or partnership required to deduct and withhold any tax under this section shall make return thereof on or before March first of each year and shall on or before June fifteenth pay the tax to the official of the United States Government authorized to receive it. Every such individual, corporation, or partnership is hereby made liable for such tax and is hereby indemnified against the claims and demands of any individual, corporation, or partnership for the amount of any payments made in accordance with the provisions of this section.

(d) Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

(e) If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be recollected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment. (40 Stat. 1072.)

This section is § 221 of the Revenue Act of 1918, cited above.

For corresponding provisions in §§ 5 and 9 of the Revenue Act of 1916, as amended by §§ 1201 and 1205 of the Revenue Act of 1917, see note to §§ 6336e, 6336i, ante.

Sections 216 and 217 of this act, referred to in this section, are set forth ante, §§ 6336⅛h, 6336⅛hh.

CREDIT FOR TAXES

§ 6336⅛k. (Act Feb. 24, 1919, c. 18, § 222.) Credits allowed.

(a) The tax computed under Part II of this title shall be credited with:

(1) In the case of a citizen of the United States, the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States; and

(2) In the case of a resident of the United States, the amount of any such taxes paid during the taxable year to any possession of the United States; and

(3) In the case of an alien resident of the United States who is a citizen or subject of a foreign country, the amount of any such taxes paid during the taxable year to such country, upon income derived from sources therein, if such country, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and

(4) In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid during the taxable year to a foreign country or to any possession of the United States, as the case may be.

(b) If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner who shall redetermine the amount of the tax due under Part II of this title for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such penal sum as the Commissioner may require, conditioned for the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

(c) These credits shall be allowed only if the taxpayer furnishes evidence satisfactory to the Commissioner showing the amount of income derived from sources within such foreign country or such possession of the United States, and all other information necessary for the computation of such credits. (40 Stat. 1073.)

This section is § 222 of the Revenue Act of 1918, cited above.

Section 252 of this Act, referred to in this Act, is set forth post, § 6336⅛uu.

INDIVIDUAL RETURNS

§ 6336⅛kk. (Act Feb. 24, 1919, c. 18, § 223.) Returns; persons required to make.

Every individual having a net income for the taxable year of $1,000 or over if single or if married and not living with husband or wife, or of $2,000 or over if married and living with husband or wife, shall make under oath a return stating specifically the items of his gross income and the deductions and credits allowed by this title. If a husband and wife living together have an aggregate net income of $2,000 or over, each shall make such a return unless the income of each is included in a single joint return.

If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer. (40 Stat. 1074.)

This section is § 223 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 8 of the Revenue Act of 1916, as amended by § 1204 of the Revenue Act of 1917, see note to § 6336h[b], ante.

PARTNERSHIP RETURNS

§ 6336⅛*l*. (Act Feb. 24, 1919, c. 18, § 224.) Partnership returns; contents; verification.

Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deduc-

tions allowed by this title, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners. (40 Stat. 1074.)

This section is § 224 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 8 of the Revenue Act of 1916, as amended by § 1204 of the Revenue Act of 1917, see note to § 6336h[e], ante.

FIDUCIARY RETURNS

§ 6336⅛*ll*. (Act Feb. 24, 1919, c. 18, § 225.) Returns by fiduciaries; contents; verification.

Every fiduciary (except receivers appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for the individual, estate or trust for which he acts (1) if the net income of such individual is $1,000 or over if single or if married and not living with husband or wife, or $2,000 or over if married and living with husband or wife, or (2) if the net income of such estate or trust is $1,000 or over or if any beneficiary of such estate or trust is a nonresident alien, stating specifically the items of the gross income and the deductions and credits allowed by this title. Under such regulations as the Commissioner with the approval of the Secretary may prescribe, a return made by one of two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be a sufficient compliance with the above requirement. The fiduciary shall make oath that he has sufficient knowledge of the affairs of such individual, estate or trust to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct.

Fiduciaries required to make returns under this Act shall be subject to all the provisions of this Act which apply to individuals. (40 Stat. 1074.)

This section is § 225 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 8 of the Revenue Act of 1916, as amended by § 1204 of the Revenue Act of 1917, see note to § 6336h[c], ante.

RETURNS WHEN ACCOUNTING PERIOD CHANGED

§ 6336⅛m. (Act Feb. 24, 1919, c. 18, § 226.) Returns on change from fiscal to calendar year; computation of net income.

If a taxpayer, with the approval of the Commissioner, changes the basis of computing net income from fiscal year to calendar year a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December thirty-first. If the change is from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year. If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. If a taxpayer making his first return for income tax keeps his accounts on the basis of a fiscal year he shall make a separate return for the period between the beginning of the calendar year in which such fiscal year ends and the end of such fiscal year.

In all of the above cases the net income shall be computed on the basis of such period for which separate return is made, and the tax shall be paid thereon at the rate for the calendar year in which such period is included; and the credits provided in subdivisions

(c) and (d) of section 216 shall be reduced respectively to amounts which bear the same ratio to the full credits provided in such subdivisions as the number of months in such period bears to twelve months. (40 Stat. 1075.)

This section is § 226 of the Revenue Act of 1918, cited above.

Section 216 of this act, referred to in this section, is set forth ante, § 6336⅛h.

TIME AND PLACE FOR FILING RETURNS

§ 6336⅛mm. (Act Feb. 24, 1919, c. 18, § 227.) Returns; time for making; to whom made.

(a) Returns shall be made on or before the fifteenth day of the third month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of March. The Commissioner may grant a reasonable extension of time for filing returns whenever in his judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(b) Returns shall be made to the collector for the district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in the United States, then to the collector at Baltimore, Maryland. (40 Stat. 1075.)

This section is § 227 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 8 of the Revenue Act of 1916, as amended by § 1204 of the Revenue Act of 1917, see note to § 6336h[b], ante.

UNDERSTATEMENT IN RETURNS

§ 6336⅛n. (Act Feb. 24, 1919, c. 18, § 228.) Understatements in returns; increase.

If the collector or deputy collector has reason to believe that the amount of any income returned is understated, he shall give due notice to the taxpayer making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated, may increase the same accordingly. Such taxpayer may furnish sworn testimony to prove any relevant facts and if dissatisfied with the decision of the collector may appeal to the Commissioner for his decision, under such rules of procedure as may be prescribed by the Commissioner with the approval of the Secretary. (40 Stat. 1075.)

This section is § 228 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 19 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336r.

PART III.—CORPORATIONS

TAX ON CORPORATIONS

§ 6336⅛nn. (Act Feb. 24, 1919, c. 18, § 230.) Tax on net incomes; Federal controlled transportation systems.

(a) In lieu of the taxes imposed by section 10 of the Revenue Act of 1916, as amended by the Revenue Act of 1917, and by section 4 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation a tax at the following rates:

(1) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in section 236; and

(2) For each calendar year thereafter, 10 per centum of such excess amount.

(b) For the purposes of the Act approved March 21, 1918, entitled "An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes," five-sixths of the tax imposed by paragraph (1) of subdivision (a) and four-fifths of the tax imposed by paragraph (2) of subdivision (a) shall be treated as levied by an Act in amendment of Title I of the Revenue Act of 1917. (40 Stat. 1075.)

This section is § 230 of the Revenue Act of 1918, cited above.

The taxes imposed by this section are in lieu of those imposed by § 10 of the Revenue Act of 1916, as amended by § 1206 of the Revenue Act of 1917 and § 4 of the Revenue Act of 1917 (see note to §§ 6336j, 6336jj, ante).

Notes of Decisions

Decisions under prior acts.—See notes to § 6327, ante.

CONDITIONAL AND OTHER EXEMPTIONS

§ 6336⅛o. (Act Feb. 24, 1919, c. 18, § 231.) Organizations exempted.

The following organizations shall be exempt from taxation under this title—

(1) Labor, agricultural, or horticultural organizations;

(2) Mutual savings banks not having a capital stock represented by shares;

(3) Fraternal beneficiary societies, orders, or associations, (a) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (b) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(4) Domestic building and loan associations and cooperative banks without capital stock organized and operated for mutual purposes and without profit;

(5) Cemetery companies owned and operated exclusively for the benefit of their members;

(6) Corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual;

(7) Business leagues, chambers of commerce, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private stockholder or individual;

(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;

(9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member;

(10) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses;

(11) Farmers', fruit growers', or like associations, organized and operated as sales agents for the purpose of marketing the products

of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

(12) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(13) Federal land banks and national farm-loan associations as provided in section 26 of the act approved July 17, 1916, entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes";

(14) Personal service corporations. (40 Stat. 1076.)

This section is § 231 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 11 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336k[a].

NET INCOME DEFINED

§ 6336⅛oo. (Act Feb. 24, 1919, c. 18, § 232.) Net income; computation.

In the case of a corporation subject to the tax imposed by section 230 the term "net income" means the gross income as defined in section 233 less the deductions allowed by section 234, and the net income shall be computed on the same basis as is provided in subdivision (b) of section 212 or in section 226. (40 Stat. 1077.)

This section is § 232 of the Revenue Act of 1918, cited above.

Sections 212, 226, 230, 233, and 234 of this act, referred to in this section, are set forth ante, §§ 6336⅛f, 6336⅛m, 6336⅛nn, and post, §§ 6336⅛p, 6336⅛pp.

GROSS INCOME DEFINED

§ 6336⅛p. (Act Feb. 24, 1919, c. 18, § 233.) Gross income; what constitutes.

(a) In the case of a corporation subject to the tax imposed by section 230 the term "gross income" means the gross income as defined in section 213, except that:

(1) In the case of life insurance companies there shall not be included in gross income such portion of any actual premium received from any individual policyholder as is paid back or credited to or treated as an abatement of premium of such policyholder within the taxable year.

(2) Mutual marine insurance companies shall include in gross income the gross premiums collected and received by them less amounts paid for reinsurance.

(b) In the case of a foreign corporation gross income includes only the gross income from sources within the United States, including the interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, and including all amounts received (although paid under a contract for the sale of goods or otherwise) representing profits on the manufacture and disposition of goods within the United States. (40 Stat. 1077.)

This section is § 233 of the Revenue Act of 1918, cited above.

Sections 213 and 230 of this act, referred to in this section, are set forth ante, §§ 6336⅛ff, 6336⅛nn.

DEDUCTIONS ALLOWED

§ 6336⅛pp. (Act Feb. 24, 1919, c. 18, § 234.) Deductions; items allowed.

(a) In computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity;

(2) All interest paid or accrued within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917) the interest upon which is wholly exempt from taxation under this title as income to the taxpayer, or, in the case of a foreign corporation, the proportion of such interest which the amount of its gross income from sources within the United States bears to the amount of its gross income from all sources within and without the United States;

(3) Taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war-profits and excess-profits taxes; or (b) by the authority of any of its possessions, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 238; or (c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed; or (d) in the case of a domestic corporation, by the authority of any foreign country, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 238; or (e) in the case of a foreign corporation, by the authority of any foreign country (except income, war-profits and excess-profits taxes, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed), upon the property or business: Provided, That in the case of obligors specified in subdivision (b) of section 221 no deduction for the payment of the tax imposed by this title or any other tax paid pursuant to the contract or provision referred to in that subdivision, shall be allowed;

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise;

(5) Debts ascertained to be worthless and charged off within the taxable year;

(6) Amounts received as dividends from a corporation which is taxable under this title upon its net income, and amounts received as dividends from a personal service corporation out of earnings or profits upon which income tax has been imposed by Act of Congress;

(7) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence;

(8) In the case of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired, on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war, and in the case of vessels construct-

ed or acquired on or after such date for the transportation of articles or men contributing to the prosecution of the present war, there shall be allowed a reasonable deduction for the amortization of such part of the cost of such facilities or vessels as has been borne by the taxpayer, but not again including any amount otherwise allowed under this title or previous Acts of Congress as a deduction in computing net income. At any time within three years after the termination of the present war the Commissioner may, and at the request of the taxpayer shall, reexamine the return, and if he then finds as a result of an appraisal or from other evidence that the deduction originally allowed was incorrect, the taxes imposed by this title and by Title III for the year or years affected shall be redetermined and the amount of tax due upon such redetermination, if any, shall be paid upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252;

(9) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost including cost of development not otherwise deducted: Provided, That in the case of such properties acquired prior to March 1, 1913, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date: Provided further, That in the case of mines, oil and gas wells, discovered by the taxpayer, on or after March 1, 1913, and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or within thirty days thereafter; such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary. In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee;

(10) In the case of insurance companies, in addition to the above: (a) The net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee or reserve funds); and (b) the sums other than dividends paid within the taxable year on policy and annuity contracts;

(11) In the case of corporations issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan continuing for life and not subject to cancellation, in addition to the above, such portion of the net addition (not required by law) made within the taxable year to reserve funds as the Commissioner finds to be required for the protection of the holders of such policies only;

(12) In the case of mutual marine insurance companies, there shall be allowed, in addition to the deductions allowed in paragraphs (1) to (10), inclusive, amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment and the payment thereof:

(13) In the case of mutual insurance companies (other than mutual life or mutual marine insurance companies) requiring their members to make premium deposits to provide for losses and expenses, there shall be allowed, in addition to the deductions allowed

in paragraphs (1) to (10), inclusive, (unless otherwise allowed under such paragraphs) the amount of premium deposits returned to their policyholders and the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves;

(14) (a) At the time of filing return for the taxable year 1918 a taxpayer may file a claim in abatement based on the fact that he has sustained a substantial loss (whether or not actually realized by sale or other disposition) resulting from any material reduction (not due to temporary fluctuation) of the value of the inventory for such taxable year, or from the actual payment after the close of such taxable year of rebates in pursuance of contracts entered into during such year upon sales made during such year. In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest. If any part of such claim is disallowed then the remainder of the tax due shall on notice and demand by the collector be paid by the taxpayer with interest at the rate of 1 per centum per month from the time the tax would have been due had no such claim been filed. If it is shown to the satisfaction of the Commissioner that such substantial loss has been sustained, then in computing the taxes imposed by this title and by Title III the amount of such loss shall be deducted from the net income. (b) If no such claim is filed, but it is shown to the satisfaction of the Commissioner that during the taxable year 1919 the taxpayer has sustained a substantial loss of the character above described then the amount of such loss shall be deducted from the net income for the taxable year 1918 and the taxes imposed by this title and by Title III for such year shall be redetermined accordingly. Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.

(b) In the case of a foreign corporation the deductions allowed in subdivision (a), except those allowed in paragraph (2) and in clauses (a), (b), and (c) of paragraph (3), shall be allowed only if and to the extent that they are connected with income arising from a source within the United States; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary. (40 Stat. 1077.)

This section is § 234 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 12 of the Revenue Act of 1916, as amended by § 1207 of the Revenue Act of 1917, see note to § 6336*l*, ante.

Sections 221, 230, 238, and 252 of this act, referred to in this section, are set forth ante, §§ 6336⅛jj, 6336⅛nn, and post, §§ 6336⅛rr, 6336⅛uu.

ITEMS NOT DEDUCTIBLE

§ 6336⅛q. (Act Feb. 24, 1919, c. 18, § 235.) Deductions; items not allowed.

In computing net income no deduction shall in any case be allowed in respect of any of the items specified in section 215. (40 Stat. 1080.)

This section is § 235 of the Revenue Act of 1918, cited above.

Section 215 of this act, referred to in this section, is set forth ante, § 6336⅛gg.

CREDITS ALLOWED

§ 6336⅛qq. (Act Feb. 24, 1919, c. 18, § 236.) Credits; items allowed.

For the purpose only of the tax imposed by section 230 there shall be allowed the following credits:

(a) The amount received as interest upon obligations of the United States and bonds issued by the War Finance Corporation, which is included in gross income under section 233;

(b) The amount of any taxes imposed by Title III for the same taxable year: Provided, That in the case of a corporation which makes return for a fiscal year beginning in 1917 and ending in 1918, in computing the tax as provided in subdivision (a) of section 205, the tax computed for the entire period under Title II of the Revenue Act of 1917 shall be credited against the net income computed for the entire period under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 and under Title I of the Revenue Act of 1917, and the tax computed for the entire period under Title III of this Act at the rates prescribed for the calendar year 1918 shall be credited against the net income computed for the entire period under this title; and

(c) In the case of a domestic corporation, $2,000. (40 Stat. 1080.)

This section is § 236 of the Revenue Act of 1918, cited above.

Sections 230 and 233 of this act, referred to in this section, are set forth ante, §§ 6336⅛nn, 6336⅛p.

PAYMENT OF TAX AT SOURCE

§ 6336⅛r. (Act Feb. 24, 1919, c. 18, § 237.) Deduction and withholding of tax at source.

In the case of foreign corporations subject to taxation under this title not engaged in trade or business within the United States and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in section 221 a tax equal to 10 per centum thereof, and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: Provided, That in the case of interest described in subdivision (b) of that section the deduction and withholding shall be at the rate of 2 per centum. (40 Stat. 1080.)

This section is § 237 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 13 of the Revenue Act of 1916, as amended by § 1208 of the Revenue Act of 1917, see note to § 6336m[f], ante.

CREDIT FOR TAXES

§ 6336⅛rr. (Act Feb. 24, 1919, c. 18, § 238.) Credit for other taxes.

(a) In the case of a domestic corporation the total taxes imposed for the taxable year by this title and by Title III shall be credited with the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States.

If accrued taxes when paid differ from the amounts claimed as credits by the corporation, or if any tax paid is refunded in whole or in part, the corporation shall at once notify the Commissioner who shall redetermine the amount of the taxes due under this title and under Title III for the year or years affected, and the amount of taxes due upon such redetermination, if any, shall be paid by the

corporation upon notice and demand by the collector, or the amount of taxes overpaid, if any, shall be credited or refunded to the corporation in accordance with the provisions of section 252. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the corporation to give a bond with sureties satisfactory to and to be approved by him in such penal sum as he may require, conditioned for the payment by the taxpayer of any amount of taxes found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

(b) This credit shall be allowed only if the taxpayer furnishes evidence satisfactory to the Commissioner showing the amount of income derived from sources within such foreign country or such possession of the United States, as the case may be, and all other information necessary for the computation of such credit.

(c) If a domestic corporation makes a return for a fiscal year beginning in 1917 and ending in 1918, only that proportion of this credit shall be allowed which the part of such period within the calendar year 1918 bears to the entire period. (40 Stat. 1080.)

This section is § 238 of the Revenue Act of 1918, cited above.

Section 252 of this act, referred to in this section, is set forth post, § 6336⅛uu.

CORPORATION RETURNS

§ 6336⅛s. (Act Feb. 24, 1919, c. 18, § 239.) Returns, form and contents; verifications.

Every corporation subject to taxation under this title and every personal service corporation shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer or assistant treasurer. If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return shall be made by the agent. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

Returns made under this section shall be subject to the provisions of sections 226 and 228. When return is made under section 226 the credit provided in subdivision (c) of section 236 shall be reduced to an amount which bears the same ratio to the full credit therein provided as the number of months in the period for which such return is made bears to twelve months. (40 Stat. 1081.)

This section is § 239 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 13 of the Revenue Act of 1916, as amended by § 1208 of the Revenue Act of 1917, see note to § 6336m[b], ante.

Sections 226, 228, and 236 of this act, referred to in this section, are set forth ante, §§ 6336⅛m, 6336⅛n, 6336⅛qq.

CONSOLIDATED RETURNS

§ 6336⅛ss. (Act Feb. 24, 1919, c. 18, § 240.) Consolidated returns of affiliated corporations.

(a) Corporations which are affiliated within the meaning of this section shall, under regulations to be prescribed by the Commis-

sioner with the approval of the Secretary, make a consolidated return of net income and invested capital for the purposes of this title and Title III, and the taxes thereunder shall be computed and determined upon the basis of such return: Provided, That there shall be taken out of such consolidated net income and invested capital, the net income and invested capital of any such affiliated corporation organized after August 1, 1914, and not successor to a then existing business, 50 per centum or more of whose gross income consists of gains, profits, commissions, or other income, derived from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive. In such case the corporation so taken out shall be separately assessed on the basis of its own invested capital and net income and the remainder of such affiliated group shall be assessed on the basis of the remaining consolidated invested capital and net income.

In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or, in the absence of any such agreement, then on the basis of the net income properly assignable to each. There shall be allowed in computing the income tax only one specific credit of $2,000 (as provided in section 236); in computing the war-profits credit (as provided in section 311) only one specific exemption of $3,000; and in computing the excess-profits credit (as provided in section 312) only one specific exemption of $3,000.

(b) For the purpose of this section two or more domestic corporations shall be deemed to be affiliated (1) if one corporation owns directly or controls through closely affiliated interests or by a nominee or nominees substantially all the stock of the other or others, or (2) if substantially all the stock of two or more corporations is owned or controlled by the same interests.

(c) For the purposes of section 238 a domestic corporation which owns a majority of the voting stock of a foreign corporation shall be deemed to have paid the same proportion of any income, war-profits and excess-profits taxes paid (but not including taxes accrued) by such foreign corporation during the taxable year to any foreign country or to any possession of the United States upon income derived from sources without the United States, which the amount of any dividends (not deductible under section 234) received by such domestic corporation from such foreign corporation during the taxable year bears to the total taxable income of such foreign corporation upon or with respect to which such taxes were paid: Provided, That in no such case shall the amount of the credit for such taxes exceed the amount of such dividends (not deductible under section 234) received by such domestic corporation during the taxable year. (40 Stat. 1081.)

This section is § 240 of the Revenue Act of 1918, cited above.

TIME AND PLACE FOR FILING RETURNS

§ 6336⅛t. (Act Feb. 24, 1919, c. 18, § 241.) Returns; time for making; to whom made.

(a) Returns of corporations shall be made at the same time as is provided in subdivision (a) of section 227.

(b) Returns shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of busi-

ness or principal office or agency in the United States, then to the collector at Baltimore, Maryland. (40 Stat. 1082.)

This section is § 241 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 13 of the Revenue Act of 1916, as amended by § 1208 of the Revenue Act of 1917, see note to § 6336m[b], ante.

PART IV.—ADMINISTRATIVE PROVISIONS

PAYMENT OF TAXES

§ 6336⅛tt. (Act Feb. 24, 1919, c. 18, § 250.) (a) Payment of tax in installments; time for; payment in single payment.

Except as otherwise provided in this section and sections 221 and 237 the tax shall be paid in four installments, each consisting of one-fourth of the total amount of the tax. The first installment shall be paid at the time fixed by law for filing the return, and the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the sixth month, and the fourth installment on the fifteenth day of the ninth month, after the time fixed by law for filing the return. Where an extension of time for filing a return is granted the time for payment of the first installment shall be postponed until the date of the expiration of the period of the extension, but the time for payment of the other installments shall not be postponed unless the Commissioner so provides in granting the extension. In any case in which the time for the payment of any installment is at the request of the taxpayer thus postponed, there shall be added as part of such installment interest thereon at the rate of ½ of 1 per centum per month from the time it would have been due if no extension had been granted until paid. If any installment is not paid when due, the whole amount of the tax unpaid shall become due and payable upon notice and demand by the collector.

The tax may at the option of the taxpayer be paid in a single payment instead of in installments, in which case the total amount shall be paid on or before the time fixed by law for filing the return, or, where an extension of time for filing the return has been granted, on or before the expiration of the period of such extension.

For corresponding provisions in § 1009 of the Revenue Act of 1917, see note to § 6336oo, ante.

Sections 221 and 237 of this act referred to in this paragraph, are set forth ante, §§ 6336⅛jj, 6336⅛r.

(b) Examination of returns; recomputation of installments; credit or refund of excess payments; payment of difference where amount paid is insufficient; penalty for understatement.

As soon as practicable after the return is filed, the Commissioner shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the installments shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the installments as recomputed, the excess so paid shall be credited against the subsequent installments; and if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.

If the amount already paid is less than that which should have been paid, the difference shall, to the extent not covered by any credits then due to the taxpayer under section 252, be paid upon notice and demand by the collector. In such case if the return is made in good faith and the understatement of the amount in the return is not due to any fault of the taxpayer, there shall be no penalty because of such understatement. If the understatement is due

to negligence on the part of the taxpayer, but without intent to defraud, there shall be added as part of the tax 5 per centum of the total amount of the deficiency, plus interest at the rate of 1 per centum per month on the amount of the deficiency of each installment from the time the installment was due.

If the understatement is false or fraudulent with intent to evade the tax, then, in lieu of the penalty provided by section 3176 of the Revised Statutes, as amended, for false or fraudulent returns willfully made, but in addition to other penalties provided by law for false or fraudulent returns, there shall be added as part of the tax 50 per centum of the amount of the deficiency.

Section 252 of this act, referred to in this paragraph is set forth post, § 6336⅛uu.

For R. S. § 3176, also referred to in this paragraph, see U. S. Comp. St. 1916, § 5899.

(c) Payment upon notice and demand.

If the return is made pursuant to section 3176 of the Revised Statutes as amended, the amount of tax determined to be due under such return shall be paid upon notice and demand by the collector.

See note to preceding paragraph.

(d) Time for determination and assessment of tax; limitation of suits for taxes.

Except in the case of false or fraudulent returns with intent to evade the tax, the amount of tax due under any return shall be determined and assessed by the Commissioner within five years after the return was due or was made, and no suit or proceeding for the collection of any tax shall be begun after the expiration of five years after the date when the return was due or was made. In the case of such false or fraudulent returns, the amount of tax due may be determined at any time after the return is filed, and the tax may be collected at any time after it becomes due.

(e) Penalty on unpaid taxes; notice of time when tax becomes due.

If any tax remains unpaid after the date when it is due, and for ten days after notice and demand by the collector, then, except in the case of estates of insane, deceased, or insolvent persons, there shall be added as part of the tax the sum of 5 per centum on the amount due but unpaid, plus interest at the rate of 1 per centum per month upon such amount from the time it became due: Provided, That as to any such amount which is the subject of a bona fide claim for abatement such sum of 5 per centum shall not be added and the interest from the time the amount was due until the claim is decided shall be at the rate of ½ of 1 per centum per month.

In the case of the first installment provided for in subdivision (a) the instructions printed on the return shall be deemed sufficient notice of the date when the tax is due and sufficient demand, and the taxpayer's computation of the tax on the return shall be deemed sufficient notice of the amount due.

(f) Distraint.

In any case in which in order to enforce payment of a tax it is necessary for a collector to cause a warrant of distraint to be served, there shall also be added as part of the tax the sum of $5.

(g) Termination of taxable period; security for return and payment of taxes.

If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual pro-

ceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer terminated at the end of the calendar month then last past and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of said tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any action or suit brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design. A taxpayer who is not in default in making any return or paying income, war-profits, or excess-profits tax under any Act of Congress may furnish to the United States, under regulations to be prescribed by the Commissioner with the approval of the Secretary, security approved by the Commissioner that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The Commissioner may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this subdivision, provided the taxpayer has paid in full all other income, war-profits, or excess-profits taxes due from him under any Act of Congress. If security is approved and accepted pursuant to the provisions of this subdivision and such further or other security with respect to the tax or taxes covered thereby is given as the Commissioner shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this subdivision prior to the expiration of the time otherwise allowed for paying such respective taxes. (40 Stat. 1082.)

This section is § 250 of the Revenue Act of 1918, cited above.

RECEIPTS FOR TAXES

§ 6336⅛u. (Act Feb. 24, 1919, c. 18, § 251.) Receipts for taxes paid.

Every collector to whom any payment of any tax is made under the provisions of this title shall upon request give to the person making such payment a full written or printed receipt, stating the amount paid and the particular account for which such payment was made; and whenever any debtor pays taxes on account of payments made or to be made by him to separate creditors the collector shall, if requested by such debtor, give a separate receipt for the tax paid on account of each creditor in such form that the debtor can conveniently produce such receipts separately to his several creditors in satisfaction of their respective demands up to the amounts stated in the receipts; and such receipt shall be sufficient evidence in favor of such debtor to justify him in withholding from his next payment to his creditor the amount therein stated; but the creditor may, upon giving to his debtor a full written receipt acknowledging the payment to him of any sum actually paid and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt. (40 Stat. 1084.)

This section is § 251 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 17 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336p.

REFUNDS

§ 6336⅛uu. (Act Feb. 24, 1919, c. 18, § 252.) Credit or refund of excess payments; time for filing claim for.

If, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," the Act of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," the Revenue Act of 1916, as amended, or the Revenue Act of 1917, it appears that an amount of income, war-profits or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: Provided, That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer. (40 Stat. 1085.)

This section is § 252 of the Revenue Act of 1918, cited above.

For R. S. § 3228, referred to in this section, see U. S. Comp. St. 1916, § 5951.

Notes of Decisions

Decisions under prior acts.—See notes to § 6334, ante.

PENALTIES

§ 6336⅛v. (Act Feb. 24, 1919, c. 18, § 253.) Failure to pay or collect tax, make return or supply information, or attempting to defeat or evade tax; penalties.

Any individual, corporation, or partnership required under this title to pay or collect any tax, to make a return or to supply information, who fails to pay or collect such tax, to make such return, or to supply such information at the time or times required under this title, shall be liable to a penalty of not more than $1,000. Any individual, corporation, or partnership, or any officer or employee of any corporation or member or employee of a partnership, who willfully refuses to pay or collect such tax, to make such return, or to supply such information at the time or times required under this title, or who willfully attempts in any manner to defeat or evade the tax imposed by this title, shall be guilty of a misdemeanor and shall be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution. (40 Stat. 1085.)

This section is § 253 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 14 of the Revenue Act of 1916, and § 18 of the Revenue Act of 1916, as amended by § 1209 of the Revenue Act of 1917, see U. S. Comp. St. 1916, § 6336n[c], and note to § 6336q, ante.

RETURNS OF PAYMENTS OF DIVIDENDS

§ 6336⅛vv. (Act Feb. 24, 1919, c. 18, § 254.) Returns of payments of dividends by corporations and personal service corporations.

Every corporation subject to the tax imposed by this title and every personal service corporation shall, when required by the Commissioner, render a correct return duly verified under oath, of its payments of dividends, stating the name and address of each

stockholder, the number of shares owned by him, and the amount of dividends paid to him. (40 Stat. 1085.)

This section is § 254 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 26 of the Revenue Act of 1916, as added by § 1210 of the Revenue Act of 1917, see note to § 6336xx, ante.

RETURNS OF BROKERS

§ 6336⅛w. (Act Feb. 24, 1919, c. 18, § 255.) Returns by brokers; contents.

Every individual, corporation, or partnership doing business as a broker shall, when required by the Commissioner, render a correct return duly verified under oath, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, showing the names of customers for whom such individual, corporation, or partnership has transacted any business, with such details as to the profits, losses, or other information which the Commissioner may require, as to each of such customers, as will enable the Commissioner to determine whether all income tax due on profits or gains of such customers has been paid. (40 Stat. 1085.)

This section is § 255 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 27 of the Revenue Act of 1916, as added by § 1211 of the Revenue Act of 1917, see note to § 6336xxx, ante.

INFORMATION AT SOURCE

§ 6336⅛ww. (Act Feb. 24, 1919, c. 18, § 256.) Returns by persons making payments to others; contents.

All individuals, corporations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another individual, corporation, or partnership, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in sections 254 and 255), of $1,000 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

Such returns may be required, regardless of amounts, (1) in the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations, and (2) in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by individuals, corporations, or partnerships, undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the individual, corporation, or partnership paying the income.

The provisions of this section shall apply to the calendar year 1918 and each calendar year thereafter, but shall not apply to the

payment of interest on obligations of the United States. (40 Stat. 1086.)

This section is § 256 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 28 of the Revenue Act of 1916, as added by § 1211 of the Revenue Act of 1917, see note to § 6336y, ante.

Sections 254 and 255 of this act, referred to in this section, are set forth ante, §§ 6336⅛vv, 6336⅛w.

RETURNS TO BE PUBLIC RECORDS

§ 6336⅛x. (Act Feb. 24, 1919, c. 18, § 257.) Returns to be public records; inspection; lists of persons making returns.

Returns upon which the tax has been determined by the Commissioner shall constitute public records; but they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President: Provided, That the proper officers of any State imposing an income tax may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe: Provided further, That all bona fide stockholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries. Any stockholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal-revenue district and in such other places as he may determine, lists containing the names and the post-office addresses of all individuals making income-tax returns in such district. (40 Stat. 1086.)

This section is § 257 of the Revenue Act of 1918, cited above.

For corresponding provisions (relating only to corporations) in § 14 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336n[b].

PUBLICATION OF STATISTICS

§ 6336⅛xx. (Act Feb. 24, 1919, c. 18, § 258.) Statistics of operation of law; contents.

The Commissioner, with the approval of the Secretary, shall prepare and publish annually statistics reasonably available with respect to the operation of the income, war-profits and excess-profits-tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable. (40 Stat. 1087.)

This section is § 258 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 21 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336t.

COLLECTION OF FOREIGN ITEMS

§ 6336⅞y. (Act Feb. 24, 1919, c. 18, § 259.) Licenses to and regulation of persons collecting foreign payments of interest, or dividends.

All individuals, corporations, or partnerships undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner and shall be subject to such regulations enabling the Government to obtain the information required under this title as the Commissioner, with the approval of the Secretary, shall prescribe; and whoever knowingly undertakes to collect such payments without having obtained a license therefor, or without complying with such regulations, shall be guilty of a misdemeanor and shall be fined not more than $5,000, or imprisoned for not more than one year, or both. (40 Stat. 1087.)

This section is § 259 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 9 of the Revenue Act of 1916, as amended by § 1205 of the Revenue Act of 1917, see note to § 6336i[f], ante.

CITIZENS OF UNITED STATES POSSESSIONS

§ 6336⅞yy. (Act Feb. 24, 1919, c. 18, § 260.) Taxation of citizens of United States possessions.

Any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this title only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources. (40 Stat. 1087.)

This section is § 260 of the Revenue Act of 1918, cited above.

PORTO RICO AND PHILIPPINE ISLANDS

§ 6336⅛z. (Act Feb. 24, 1919, c. 18, § 261.) Income tax in Porto Rico and Philippine Islands; levy, assessment, collection, and payment; returns.

In Porto Rico and the Philippine Islands the income tax shall be levied, assessed, collected, and paid in accordance with the provisions of the Revenue Act of 1916 as amended.

Returns shall be made and taxes shall be paid under Title I of such Act in Porto Rico or the Philippine Islands, as the case may be, by (1) every individual who is a citizen or resident of Porto Rico or the Philippine Islands or derives income from sources therein, and (2) every corporation created or organized in Porto Rico or the Philippine Islands or deriving income from sources therein. An individual who is neither a citizen nor a resident of Porto Rico or the Philippine Islands but derives income from sources therein, shall be taxed in Porto Rico or the Philippine Islands as a nonresident alien individual, and a corporation created or organized outside Porto Rico or the Philippine Islands and deriving income from sources therein shall be taxed in Porto Rico or the Philippine Islands as a foreign corporation. For the purposes of section 216 and of paragraph (6) of subdivision (a) of section 234 a tax imposed in Porto Rico or the Philippine Islands upon the net income of a corporation shall not be deemed to be a tax under this title.

The Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively. (40 Stat. 1087.)

This section is § 261 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 23 of the Revenue Act of 1916, and § 5 of the Revenue Act of 1917, see U. S. Comp. St. 1916, § 6336v, and note to § 6336vv, ante.

Sections 216 and 234 of this act, referred to in this section, are set forth ante, §§ 6336⅛h, 6336⅛pp.

CHAPTER NINE B—MUNITION MANUFACTURERS' TAX

The provisions of this chapter, which included §§ 300–312 of the Revenue Act of 1916, were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

Before the repeal, § 301, subd. 1, of the Act of 1916, was amended by the Revenue Act of 1917, Act Oct. 3, 1917, c. 63, § 214 (40 Stat. 308), which read as follows:

"Subdivision (1) of section three hundred and one of such Act of September eighth, nineteen hundred and sixteen, is hereby amended so that the rate of tax for the taxable year nineteen hundred and seventeen shall be ten per centum instead of twelve and one-half per centum, as therein provided.

"(2) This section shall cease to be of effect on and after January first, nineteen hundred and eighteen."

§§ 6336¼a–6336¼m. [Repealed.]

CHAPTER NINE C—EXCESS-PROFITS TAX

§§ 6336⅜a–6336⅜o. (Act Oct. 3, 1917, c. 63, §§ 200–214.) [Repealed.]

These provisions inserted here as additional to the original chapters of Title XXXV of the Revised Statutes, included §§ 200–213, and part of § 214 of an act entitled "An act to provide revenue to defray war expenses, and for other purposes," approved October 3, 1917. Said act was divided into thirteen titles. The sections included in this Chapter constituted a part of Title II thereof, entitled "War Excess Profits Tax." Section 214, set forth in this Chapter, repeals Act March 3, 1917, c. 159, §§ 200–207, which related to the same subject-matter. See, also, note to Chapter Eleven B of this Title, post.

Said Act March 3, 1917, c. 159, §§ 200–207, read as follows:

"200. When used in this title—

"The term 'corporation' includes joint-stock companies or associations, and insurance companies;

"The term 'United States' means only the States, the Territories of Alaska and Hawaii, and the District of Columbia; and

"The term 'taxable year' means the twelve months ending December thirty-first, except in the case of a corporation or partnership allowed to fix its own fiscal year, in which case it means such fiscal year. The first taxable year shall be the year ending December thirty-first, nineteen hundred and seventeen.

"201. In addition to the taxes under existing laws there shall be levied, assessed, collected, and paid for each taxable year upon the net income of every corporation and partnership organized, authorized, or existing under the laws of the United States, or of any State, Territory, or District thereof, no matter how created or organized, excepting income derived from the business of life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, a tax of eight per centum of the amount by which such net income exceeds the sum of (a) $5,000 and (b) eight per centum of the actual capital invested.

"Every foreign corporation and partnership, including corporations and partnerships of the Philippine Islands and Porto Rico, shall pay for each taxable year a like tax upon the amount by which its net income received from all sources within the United States exceeds the sum of (a) eight per centum of the actual capital invested and used or employed in the business

in the United States, and (b) that proportion of $5,000 which the entire actual capital invested and used or employed in the business in the United States bears to the entire actual capital invested; and in case no such capital is used or employed in the business in the United States the tax shall be imposed upon that portion of such net income which is in excess of the sum of (a) eight per centum of that proportion of the entire actual capital invested and used or employed in the business which the net income from sources within the United States bears to the entire net income, and (b) that proportion of $5,000 which the net income from sources within the United States bears to the entire net income.

"202. For the purpose of this title, actual capital invested means (1) actual cash paid in, (2) the actual cash value, at the time of payment, of assets other than cash paid in, and (3) paid in or earned surplus and undivided profits used or employed in the business; but does not include money or other property borrowed by the corporation or partnership.

"203. The tax herein imposed upon corporations and partnerships shall be computed upon the basis of the net income shown by their income tax returns under Title I of the Act entitled 'An Act to increase the revenue, and for other purposes,' approved September eighth, nineteen hundred and sixteen, or under this title, and shall be assessed and collected at the same time and in the same manner as the income tax due under Title I of such Act of September eighth, nineteen hundred and sixteen: Provided, That for the purpose of this title a partnership shall have the same privilege with reference to fixing its fiscal year as is accorded corporations under section thirteen (a) of Title I of such Act of September eighth, nineteen hundred and sixteen: And provided further, That where a corporation or partnership makes return prior to March first nineteen hundred and eighteen, covering its own fiscal year and includes therein any income received during the calendar year ending December thirty-first, nineteen hundred and sixteen, the tax herein imposed shall be that proportion of the tax based upon such full fiscal year which the time from January first, nineteen hundred and seventeen, to the end of such fiscal year bears to the full fiscal year.

"204. Corporations exempt from tax under the provisions of section eleven of Title I of the Act approved September eighth, nineteen hundred and sixteen, and partnerships carrying on or doing the same business shall be exempt from the provisions of this title, and the tax imposed by this title shall not attach to incomes of partnerships derived from agriculture or from personal services.

"205. Every corporation having a net income of $5,000 or more for the taxable year making a return under Title I of such Act of September eighth, nineteen hundred and sixteen, shall for the purposes of this title include in such return a detailed statement of the actual capital invested.

"Every partnership having a net income of $5,000 or more for the taxable year shall render a correct return of the income of the partnership for the taxable year, setting forth specifically the actual capital invested and the gross income for such year and the deductions hereinafter allowed. Such returns shall be rendered at the same time and in the same manner and form as is prescribed for income-tax returns under Title I of such Act of September eighth, nineteen hundred and sixteen. In computing net income of a partnership for the purposes of this title there shall be allowed like deductions as are allowed to individuals in sections five (a) and six (a) of such Act of September eighth, nineteen hundred and sixteen.

"206. All administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this title are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed, and all provisions of Title I of such Act of September eighth, nineteen hundred and sixteen, relating to returns and payment of the tax therein imposed, including penalties, are hereby made applicable to the tax required by this title.

"207. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any corporation or partnership subject to the provisions of this title to furnish him with such facts, data, and information as in his judgment are necessary to collect the tax provided for in this title."

Act Oct. 3, 1917, c. 63, §§ 200–214, which repealed the act above set forth, was in turn repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a. The corresponding provisions of the latter act are set forth post, as §§ 6336 7/16a–6336 7/16p.

Inasmuch as the provisions of the Act of Oct. 3, 1917, c. 63, §§ 200–214, were continued in force for the collection of accrued taxes and penalties, they are set forth here:

"Sec. 200. When used in this title—

"The term 'corporation' includes joint-stock companies or associations and insurance companies;

"The term 'domestic' means created under the law of the United States, or of any State, Territory, or District thereof, and the term 'foreign' means created under the law of any other possession of the United States or of any foreign country or government;

"The term 'United States' means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

"The term 'taxable year' means the twelve months ending December thirty-first, excepting in the case of a corporation or partnership which has fixed its own fiscal year, in which case it means such fiscal year. The first taxable year shall be the year ending December thirty-first, nineteen hundred and seventeen, except that in the case of a corporation or partnership which has fixed its own fiscal year, it shall be the fiscal year ending during the calendar year nineteen hundred and seventeen. If a corporation or partnership, prior to March first, nineteen hundred and eighteen, makes a return covering its own fiscal year, and includes therein the income received during that part of the fiscal year falling within the calendar year nineteen hundred and sixteen, the tax for such taxable year shall be that proportion of the tax computed upon the net income during such full fiscal year which the time from January first, nineteen hundred and seventeen, to the end of such fiscal year bears to the full fiscal year; and

"The term 'prewar period' means the calendar years nineteen hundred and eleven, nineteen hundred and twelve, and nineteen hundred and thirteen, or if a corporation or partnership was not in existence or an individual was not engaged in a trade or business during the whole of such period, then as many of such years during the whole of which the corporation or partnership was in existence or the individual was engaged in the trade or business.

"The terms 'trade' and 'business' include professions and occupations.

"The term 'net income' means in the case of a foreign corporation or partnership or a nonresident alien individual, the net income received from sources within the United States.

"Sec. 201. In addition to the taxes under existing law and under this act there shall be levied, assessed, collected, and paid for each taxable year upon the income of every corporation, partnership, or individual, a tax (hereinafter in this title referred to as the tax) equal to the following percentages of the net income:

"Twenty per centum of the amount of the net income in excess of the deduction (determined as hereinafter provided) and not in excess of fifteen per centum of the invested capital for the taxable year;

"Twenty-five per centum of the amount of the net income in excess of fifteen per centum and not in excess of twenty per centum of such capital;

"Thirty-five per centum of the amount of the net income in excess of twenty per centum and not in excess of twenty-five per centum of such capital;

"Forty-five per centum of the amount of the net income in excess of twenty-five per centum and not in excess of thirty-three per centum of such capital; and

"Sixty per centum of the amount of the net income in excess of thirty-three per centum of such capital.

"For the purpose of this title every corporation or partnership not exempt under the provisions of this section shall be deemed to be engaged in business, and all the trades and businesses in which it is engaged shall be treated as a single trade or business, and all its income from whatever source derived shall be deemed to be received from such trade or business.

"This title shall apply to all trades or businesses of whatever description, whether continuously carried on or not, except—

"(a) In the case of officers and employees under the United States, or any State, Territory, or the District of Columbia, or any local subdivision thereof, the compensation or fees received by them as such officers or employees;

"(b) Corporations exempt from tax under the provisions of section eleven of Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, and partnerships and individuals carrying on or doing the same business, or coming within the same description; and

"(c) Incomes derived from the business of life, health, and accident insurance combined in one policy issued on the weekly premium payment plan.

"Sec. 202. The tax shall not be imposed in the case of the trade or business of a foreign corporation or partnership or a nonresident alien individual, the net income of which trade or business during the taxable year is less than $3,000.

"Sec. 203. For the purposes of this title the deduction shall be as follows, except as otherwise in this title provided—

"(a) In the case of a domestic corporation, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the

average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) $3,000;

"(b) In the case of a domestic partnership or of a citizen or resident of the United States, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) $6,000;

"(c) In the case of a foreign corporation or partnership or of a nonresident alien individual, an amount ascertained in the same manner as provided in subdivisions (a) and (b) without any exemption of $3,000 or $6,000.

"(d) If the Secretary of the Treasury is unable satisfactorily to determine the average amount of the annual net income of the trade or business during the prewar period, the deduction shall be determined in the same manner as provided in section two hundred and five.

"Sec. 204. If a corporation or partnership was not in existence, or an individual was not engaged in the trade or business, during the whole of any one calendar year during the prewar period, the deduction shall be an amount equal to eight per centum of the invested capital for the taxable year, plus in the case of a domestic corporation $3,000, and in the case of a domestic partnership or a citizen or resident of the United States $6,000.

"A trade or business carried on by a corporation, partnership, or individual, although formally organized or reorganized on or after January second, nineteen hundred and thirteen, which is substantially a continuation of a trade or business carried on prior to that date, shall, for the purposes of this title, be deemed to have been in existence prior to that date, and the net income and invested capital of its predecessor prior to that date shall be deemed to have been its net income and invested capital.

"Sec. 205. (a) If the Secretary of the Treasury, upon complaint finds either (1) that during the prewar period a domestic corporation or partnership, or a citizen or resident of the United States, had no net income from the trade or business, or (2) that during the prewar period the percentage, which the net income was of the invested capital, was low as compared with the percentage, which the net income during such period of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, was of their invested capital, then the deduction shall be the sum of (1) an amount equal to the same percentage of its invested capital for the taxable year which the average deduction (determined in the same manner as provided in section two hundred and three, without including the $3,000 or $6,000 therein referred to) for such year of representative corporations, partnerships, or individuals, engaged in a like or similar trade or business, is of their average invested capital for such year plus (2) in the case of a domestic corporation $3,000, and in the case of a domestic partnership or a citizen or resident of the United States $6,000.

"The percentage which the net income was of the invested capital in each trade or business shall be determined by the Commissioner of Internal Revenue, in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership which has fixed its own fiscal year, the percentage determined by the calendar year ending during such fiscal year shall be used.

"(b) The tax shall be assessed upon the basis of the deduction determined as provided in section two hundred and three, but the taxpayer claiming the benefit of this section may at the time of making the return file a claim for abatement of the amount by which the tax so assessed exceeds a tax computed upon the basis of the deduction determined as provided in this section. In such event, collection of the part of the tax covered by such claim for abatement shall not be made until the claim is decided, but if in the judgment of the Commissioner of Internal Revenue, the interests of the United States would be jeopardized thereby he may require the claimant to give a bond in such amount and with such sureties as the commissioner may think wise to safeguard such interests, conditioned for the payment of any tax found to be due, with the interest thereon, and if such bond, satisfactory to the commissioner, is not given within such time as he prescribes, the full amount of tax assessed shall be collected and the amount overpaid, if any, shall upon final decision of the application be refunded as a tax erroneously or illegally collected.

"Sec. 206. For the purposes of this title the net income of a corporation shall be ascertained and returned (a) for the calendar years nineteen hundred and eleven and nineteen hundred and twelve upon the same basis and in the same manner as provided in section thirty-eight of the Act entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' approved August fifth, nineteen hundred and

nine, except that income taxes paid by it within the year imposed by the authority of the United States shall be included; (b) for the calendar year nineteen hundred and thirteen upon the same basis and in the same manner as provided in section II of the Act entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' approved October third, nineteen hundred and thirteen, except that income taxes paid by it within the year imposed by the authority of the United States shall be included, and except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by section II of such Act of October third, nineteen hundred and thirteen, shall be deducted; and (c) for the taxable year upon the same basis and in the same manner as provided in Title I of the Act entitled 'An Act to increase the revenue, and for other purposes,' approved September eighth, nineteen hundred and sixteen, as amended by this Act, except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by Title I of such Act of September eighth, nineteen hundred and sixteen, shall be deducted.

"The net income of a partnership or individual shall be ascertained and returned for the calendar years nineteen hundred and eleven, nineteen hundred and twelve, and nineteen hundred and thirteen, and for the taxable year, upon the same basis and in the same manner as provided in Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, except that the credit allowed by subdivision (b) of section five of such Act shall be deducted. There shall be allowed (a) in the case of a domestic partnership the same deductions as allowed to individuals in subdivision (a) of section five of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act; and (b) in the case of a foreign partnership the same deductions as allowed to individuals in subdivision (a) of section six of such Act as amended by this Act.

"Sec. 207. As used in this title, the term 'invested capital' for any year means the average invested capital for the year, as defined and limited in this title, averaged monthly.

"As used in this title 'invested capital' does not include stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to the tax imposed by this title nor money or other property borrowed, and means, subject to the above limitations:

"(a) In the case of a corporation or partnership: (1) Actual cash paid in, (2) the actual cash value of tangible property paid in other than cash, for stock or shares in such corporation or partnership, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen, but in no case to exceed the par value of the original stock or shares specifically issued therefor), and (3) paid in or earned surplus and undivided profits used or employed in the business, exclusive of undivided profits earned during the taxable year: Provided, That (a) the actual cash value of patents and copyrights paid in for stock or shares in such corporation or partnership, at the time of such payment, shall be included as invested capital, but not to exceed the par value of such stock or shares at the time of such payment, and (b) the good will, trade-marks, trade brands, the franchise of a corporation or partnership, or other intangible property, shall be included as invested capital if the corporation or partnership made payment bona fide therefor specifically as such in cash or tangible property, the value of such good will, trade-mark, trade brand, franchise, or intangible property, not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment; but good will, trade-marks, trade brands, franchise of a corporation or partnership, or other intangible property, bona fide purchased, prior to March third, nineteen hundred and seventeen, for and with interests or shares in a partnership or for and with shares in the capital stock of a corporation (issued prior to March third, nineteen hundred and seventeen), in an amount not to exceed, on March third, nineteen hundred and seventeen, twenty per centum of the total interests or shares in the partnership or of the total shares of the capital stock of the corporation, shall be included in invested capital at a value not to exceed the actual cash value at the time of such purchase, and in case of issue of stock therefor not to exceed the par value of such stock;

"(b) In the case of an individual, (1) actual cash paid into the trade or business, and (2) the actual cash value of tangible property paid into the trade or business, other than cash, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen), and (3) the actual cash value of patents, copyrights, good will, trade-marks, trade brands, franchises, or other intangible property, paid into

the trade or business, at the time of such payment, if payment was made therefor specifically as such in cash or tangible property, not to exceed the actual cash or actual cash value of the tangible property bona fide paid therefor at the time of such payment.

"In the case of a foreign corporation or partnership or of a nonresident alien individual the term 'invested capital' means that proportion of the entire invested capital, as defined and limited in this title, which the net income from sources within the United States bears to the entire net income.

"Sec. 208. In case of the reorganization, consolidation or change of ownership of a trade or business after March third, nineteen hundred and seventeen, if an interest or control in such trade or business of fifty per centum or more remains in control of the same persons, corporations, associations, partnerships, or any of them, then in ascertaining the invested capital of the trade or business no asset transferred or received from the prior trade or business shall be allowed a greater value than would have been allowed under this title in computing the invested capital of such prior trade or business if such asset had not been so transferred or received, unless such asset was paid for specifically as such, in cash or tangible property, and then not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment.

"Sec. 209. In the case of a trade or business having no invested capital or not more than a nominal capital there shall be levied, assessed, collected and paid, in addition to the taxes under existing law and under this Act, in lieu of the tax imposed by section two hundred and one, a tax equivalent to eight per centum of the net income of such trade or business in excess of the following deductions: In the case of a domestic corporation $3,000, and in the case of a domestic partnership or a citizen or resident of the United States $6,000; in the case of all other trades or business, no deduction.

"Sec. 210. If the Secretary of the Treasury is unable in any case satisfactorily to determine the invested capital, the amount of the deduction shall be the sum of (1) an amount equal to the same proportion of the net income of the trade or business received during the taxable year as the proportion which the average deduction (determined in the same manner as provided in section two hundred and three, without including the $3,000 or $6,000 therein referred to) for the same calendar year of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, bears to the total net income of the trade or business received by such corporations, partnerships, and individuals, plus (2) in the case of a domestic corporation $3,000, and in the case of a domestic partnership or a citizen or resident of the United States $6,000.

"For the purpose of this section the proportion between the deduction and the net income in each trade or business shall be determined by the Commissioner of Internal Revenue in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership which has fixed its own fiscal year, the proportion determined for the calendar year ending during such fiscal year shall be used.

"Sec. 211. Every foreign partnership having a net income of $3,000 or more for the taxable year, and every domestic partnership having a net income of $6,000 or more for the taxable year, shall render a correct return of the income of the trade or business for the taxable year, setting forth specifically the gross income for such year, and the deductions allowed in this title. Such returns shall be rendered at the same time and in the same manner as is prescribed for income-tax returns under Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act.

"Sec. 212. All administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed, and not inconsistent with the provisions of this title are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed, and all provisions of Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, relating to returns and payment of the tax therein imposed, including penalties, are hereby made applicable to the tax imposed by this title.

"Sec. 213. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any corporation, partnership, or individual, subject to the provisions of this title, to furnish him with such facts, data, and information as in his judgment are necessary to collect the tax imposed by this title.

"Sec. 214. Title II (sections two hundred to two hundred and seven, inclusive) of the Act entitled 'An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy, and the extensions of fortifications, and for other purposes,' approved March third, nineteen hundred and seventeen, is hereby repealed.

"Any amount heretofore or hereafter paid on account of the tax imposed by such Title II, shall be credited toward the payment of the tax imposed by this title, and if the amount so paid exceeds the amount of such tax the excess shall be refunded as a tax erroneously or illegally collected."

CHAPTER NINE CC—WAR-PROFITS AND EXCESS-PROFITS TAX

These provisions constitute Title III of the Revenue Act of 1918. Said title is entitled "War-Profits and Excess-Profits Tax." The corresponding provisions of the Revenue Acts of 1916 and 1917, which are repealed, are set forth in notes under the preceding chapter.

PART I.—GENERAL DEFINITIONS

Sec.
6336⁷/₁₆a. Definitions.

PART II.—IMPOSITION OF TAX

6336⁷/₁₆aa. (a) Tax on net income of corporations; for year 1918.
(b) Same; for year 1919 and subsequent years.
(c) Same; corporations deriving incomes from Government contracts.
(d) Same; deductions.
(e) Same; Federal controlled transportation systems.
6336⁷/₁₆b. Same; limitations on amount of tax.
6336⁷/₁₆bb. Same; part of income derived from business of personal service corporation.
6336⁷/₁₆c. Same; exemptions.
6336⁷/₁₆cc. Same; proportionate reduction of specific exemption.

PART III.—CREDITS

Sec.
6336⁷/₁₆d. Prewar period.
6336⁷/₁₆e. War-profits credits.
6336⁷/₁₆f. Excess-profits credits.

PART IV.—NET INCOME

6336⁷/₁₆g. Net income.

PART V.—INVESTED CAPITAL

6336⁷/₁₆h. Definitions.
6336⁷/₁₆i. Invested capital.
6336⁷/₁₆j. Computation of tax.
6336⁷/₁₆k. Same.

PART VI.—REORGANIZATIONS

6336⁷/₁₆l. Reorganization, consolidation, or change of ownership.
6336⁷/₁₆m. Same.

PART VII.—MISCELLANEOUS

6336⁷/₁₆n. Tax on corporations making returns for fiscal year covering parts of current years.
6336⁷/₁₆o. Returns.
6336⁷/₁₆p. Mines, oils, or gas wells.

PART I.—GENERAL DEFINITIONS

§ 6336⁷/₁₆a. (Act Feb. 24, 1919, c. 18, § 300.) Definitions.

When used in this title the terms "taxable year," "fiscal year," "personal service corporation," "paid or accrued," and "dividends" shall have the same meaning as provided for the purposes of income tax in sections 200 and 201. The first taxable year for the purposes of this title shall be the same as the first taxable year for the purposes of the income tax under Title II. (40 Stat. 1088.)

This section is § 300 of the Revenue Act of 1918, cited above.

Sections 200 and 201 of this act, referred to in this section, are set forth ante, §§ 6336⅛a, 6336⅛b.

PART II.—IMPOSITION OF TAX

§ 6336⁷/₁₆aa. (Act Feb. 24, 1919, c. 18, § 301.) (a) Tax on net income of corporations; for year 1918.

In lieu of the tax imposed by Title II of the Revenue Act of 1917, but in addition to the other taxes imposed by this Act, there shall be levied, collected, and paid for the taxable year 1918 upon the net income of every corporation a tax equal to the sum of the following:

FIRST BRACKET

30 per centum of the amount of the net income in excess of the excess-profits credit (determined under section 312) and not in excess of 20 per centum of the invested capital;

SECOND BRACKET

65 per centum of the amount of the net income in excess of 20 per centum of the invested capital;

THIRD BRACKET

The sum, if any, by which 80 per centum of the amount of the net income in excess of the war-profits credit (determined under section 311) exceeds the amount of the tax computed under the first and second brackets.

Section 311 of this act, referred to in this paragraph, is set forth post, § 6336 7/16e.

(b) Same; for year 1919 and subsequent years.

For the taxable year 1919 and each taxable year thereafter there shall be levied, collected, and paid upon the net income of every corporation (except corporations taxable under subdivision (c) of this section) a tax equal to the sum of the following:

FIRST BRACKET

20 per centum of the amount of the net income in excess of the excess-profits credit (determined under section 312) and not in excess of 20 per centum of the invested capital;

Section 312 of this act, referred to in this paragraph, is set forth post, § 6336 7/16f.

SECOND BRACKET

40 per centum of the amount of the net income in excess of 20 per centum of the invested capital.

(c) Same; corporations deriving incomes from Government contracts.

For the taxable year 1919 and each taxable year thereafter there shall be levied, collected, and paid upon the net income of every corporation which derives in such a year a net income of more than $10,000 from any Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive, a tax equal to the sum of the following:

(1) Such a portion of a tax computed at the rates specified in subdivision (a) as the part of the net income attributable to such Government contract or contracts bears to the entire net income. In computing such tax the excess-profits credit and the war-profits credit applicable to the taxable year shall be used;

(2) Such a portion of a tax computed at the rates specified in subdivision (b) as the part of the net income not attributable to such Government contract or contracts bears to the entire net income.

For the purpose of determining the part of the net income attributable to such Government contract or contracts, the proper apportionment and allocation of the deductions with respect to gross income derived from such Government contract or contracts and from other sources, respectively, shall be determined under rules

and regulations prescribed by the Commissioner with the approval of the Secretary.

See § 6371¾cc, post, for requirements as to filing of copies of contracts with United States.

(d) Same; deductions.

In any case where the full amount of the excess-profits credit is not allowed under the first bracket of subdivision (a) or (b), by reason of the fact that such credit is in excess of 20 per centum of the invested capital, the part not so allowed shall be deducted from the amount in the second bracket.

(e) Same; Federal controlled transportation systems.

For the purposes of the Act approved March 21, 1918, entitled "An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes," the tax imposed by this title shall be treated as levied by an Act in amendment of Title II of the Revenue Act of 1917. (40 Stat. 1088.)

This section is § 301 of the Revenue Act of 1918, cited above.

The taxes imposed by this section are in lieu of those imposed by § 201 of the Revenue Act of 1917 (see notes under the next preceding chapter).

§ 6336⁷/₁₆b. (Act Feb. 24, 1919, c. 18, § 302.) Same; limitations on amount of tax.

The tax imposed by subdivision (a) of section 301 shall in no case be more than 30 per centum of the amount of the net income in excess of $3,000 and not in excess of $20,000, plus 80 per centum of the amount of the net income in excess of $20,000; the tax imposed by subdivision (b) of section 301 shall in no case be more than 20 per centum of the amount of the net income in excess of $3,000 and not in excess of $20,000, plus 40 per centum of the amount of the net income in excess of $20,000; and the above limitations shall apply to the taxes computed under subdivisions (a) and (b) of section 301, respectively, when used in subdivision (c) of that section. Nothing in this section shall be construed in such manner as to increase the tax imposed by section 301. (40 Stat. 1089.)

This section is § 302 of the Revenue Act of 1918, cited above.

Section 301 of this act, referred to in this section, is set forth ante, § 6336⁷/₁₆aa.

§ 6336⁷/₁₆bb. (Act Feb. 24, 1919, c. 18, § 303.) Same; part of income derived from business of personal service corporation.

If part of the net income of a corporation is derived (1) from a trade or business (or a branch of a trade or business) in which the employment of capital is necessary, and (2) a part (constituting not less than 30 per centum of its total net income) is derived from a separate trade or business (or a distinctly separate branch of the trade or business) which if constituting the sole trade or business would bring it within the class of "personal service corporations," then (under regulations prescribed by the Commissioner with the approval of the Secretary) the tax upon the first part of such net income shall be separately computed (allowing in such computation only the same proportionate part of the credits authorized in sections 311 and 312), and the tax upon the second part shall be the same percentage thereof as the tax so computed upon the first part is of such first part: Provided, That the tax upon such second part shall in no case be less than 20 per centum thereof, unless the tax upon the entire net income, if computed without benefit of this section, would constitute less than 20 per centum of such entire net income, in which event the tax shall be determined upon the entire net income, without reference to this section, as other taxes are de-

termined under this title. The total tax computed under this section shall be subject to the limitations provided in section 302. (40 Stat. 1089.)

This section is § 303 of the Revenue Act of 1918, cited above.

Sections 302, 311, and 312 of this act, referred to in this section, are set forth ante, § 6336⁷/₁₆b, and post, §§ 6336⁷/₁₆e, 6336⁷/₁₆f.

§ 6336⁷/₁₆c. (Act Feb. 24, 1919, c. 18, § 304.) Same; exemptions.

(a) The corporations enumerated in section 231 shall, to the extent that they are exempt from income tax under Title II, be exempt from taxation under this title.

(b) Any corporation whose net income for the taxable year is less than $3,000 shall be exempt from taxation under this title.

(c) In the case of any corporation engaged in the mining of gold, the portion of the net income derived from the mining of gold shall be exempt from the tax imposed by this title, and the tax on the remaining portion of the net income shall be the proportion of a tax computed without the benefit of this subdivision which such remaining portion of the net income bears to the entire net income. (40 Stat. 1090.)

This section is § 304 of the Revenue Act of 1918, cited above.

For corresponding provision relating to exemptions in § 202 of the Revenue Act of 1917, see notes to next preceding chapter.

Section 231 of this act, referred to in this section, is set forth ante, § 6336½o.

§ 6336⁷/₁₆cc. (Act Feb. 24, 1919, c. 18, § 305.) Same; proportionate reduction of specific exemption.

If a tax is computed under this title for a period of less than twelve months, the specific exemption of $3,000, wherever referred to in this title, shall be reduced to an amount which is the same proportion of $3,000 as the number of months in the period is of twelve months. (40 Stat. 1090.)

This section is § 305 of the Revenue Act of 1918, cited above.

PART III.—CREDITS

§ 6336⁷/₁₆d. (Act Feb. 24, 1919, c. 18, § 310.) Prewar period.

As used in this title the term "prewar period" means the calendar years 1911, 1912, and 1913, or, if a corporation was not in existence during the whole of such period, then as many of such years during the whole of which the corporation was in existence. (40 Stat. 1090.)

This section is § 310 of the Revenue Act of 1918, cited above.

For corresponding provision in § 200 of the Revenue Act of 1917, see notes to next preceding chapter.

§ 6336⁷/₁₆e. (Act Feb. 24, 1919, c. 18, § 311.) War-profits credits.

(a) The war-profits credit shall consist of the sum of:

(1) A specific exemption of $3,000; and

(2) An amount equal to the average net income of the corporation for the prewar period, plus or minus, as the case may be, 10 per centum of the difference between the average invested capital for the prewar period and the invested capital for the taxable year. If the tax is computed for a period of less than twelve months such amount shall be reduced to the same proportion thereof as the number of months in the period is of twelve months.

(b) If the corporation had no net income for the prewar period, or if the amount computed under paragraph (2) of subdivision (a) is less than 10 per centum of its invested capital for the taxable year, then the war-profits credit shall be the sum of:

(1) A specific exemption of $3,000; and

(2) An amount equal to 10 per centum of the invested capital for the taxable year.

(c) If the corporation was not in existence during the whole of at least one calendar year during the prewar period, then, except as provided in subdivision (d), the war-profits credit shall be the sum of:

(1) A specific exemption of $3,000; and

(2) An amount equal to the same percentage of the invested capital of the taxpayer for the taxable year as the average percentage of net income to invested capital, for the prewar period, of corporations engaged in a trade or business of the same general class as that conducted by the taxpayer; but such amount shall in no case be less than 10 per centum of the invested capital of the taxpayer for the taxable year. Such average percentage shall be determined by the Commissioner on the basis of data contained in returns made under Title II of the Revenue Act of 1917, and the average known as the median shall be used. If such average percentage has not been determined and published at least 30 days prior to the time when the return of the taxpayer is due, then for purposes of such return 10 per centum shall be used in lieu thereof; but such average percentage when determined shall be used for the purposes of section 250 in determining the correct amount of the tax.

(d) The war-profits credit shall be determined in the manner provided in subdivision (b) instead of in the manner provided in subdivision (c), in the case of any corporation which was not in existence during the whole of at least one calendar year during the prewar period, if (1) a majority of its stock at any time during the taxable year is owned or controlled, directly or indirectly, by a corporation which was in existence during the whole of at least one calendar year during the prewar period, or if (2) 50 per centum or more of its gross income (as computed under section 233 for income tax purposes) consists of gains, profits, commissions, or other income, derived from a governmental contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive.

(e) A foreign corporation shall not be entitled to a specific exemption of $3,000. (40 Stat. 1090.)

This section is § 311 of the Revenue Act of 1918, cited above.

For corresponding provisions in §§ 203–205 of the Revenue Act of 1917, see notes to next preceding chapter.

Section 233 of this act, referred to in this section, is set forth ante, § 6336½p.

§ 6336⁷/₁₆f. (Act Feb. 24, 1919, c. 18, § 312.) Excess-profits credits.

The excess-profits credit shall consist of a specific exemption of $3,000 plus an amount equal to 8 per centum of the invested capital for the taxable year.

A foreign corporation shall not be entitled to the specific exemption of $3,000. (40 Stat. 1091.)

This section is § 312 of the Revenue Act of 1918, cited above.

PART IV.—NET INCOME

§ 6336⁷/₁₆g. (Act Feb. 24, 1919, c. 18, § 320.) Net income.

(a) For the purpose of this title the net income of a corporation shall be ascertained and returned—

(1) For the calendar years 1911 and 1912 upon the same basis and in the same manner as provided in section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, except that taxes imposed by such section and paid by the corporation within the year shall be included;

(2) For the calendar year 1913 upon the same basis and in the same manner as provided in Section II of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, except that taxes imposed by section 38 of such Act of August 5, 1909, and paid by the corporation within the year shall be included, and except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations subject to the tax imposed by Section II of such Act of October 3, 1913, shall be deducted; and

(3) For the taxable year upon the same basis and in the same manner as provided for income tax purposes in Title II of this Act.

(b) The average net income for the prewar period shall be determined by dividing the number of years within that period during the whole of which the corporation was in existence into the sum of the net income for such years, even though there may have been no net income for one or more of such years. (40 Stat. 1091.)

This section is § 320 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 206 of the Revenue Act of 1917, see notes to next preceding chapter.

For the provisions of Act Aug. 5, 1909, c. 6, § 38, and Act Oct. 3, 1913, c. 16, § II, referred to in this section, see notes to §§ 6300–6309, 6319–6336, ante.

PART V.—INVESTED CAPITAL

§ 6336 7/16 h. (Act Feb. 24, 1919, c. 18, § 325.) Definitions.

(a) As used in this title—

The term "intangible property" means patents, copyrights, secret processes and formulæ, good will, trade-marks, trade-brands, franchises, and other like property;

The term "tangible property" means stocks, bonds, notes, and other evidences of indebtedness, bills and accounts receivable, leaseholds, and other property other than intangible property;

The term "borrowed capital" means money or other property borrowed, whether represented by bonds, notes, open accounts, or otherwise;

The term "inadmissible assets" means stocks, bonds, and other obligations (other than obligations of the United States), the dividends or interest from which is not included in computing net income, but where the income derived from such assets consists in part of gain or profit derived from the sale or other disposition thereof, or where all or part of the interest derived from such assets is in effect included in the net income because of the limitation on the deduction of interest under paragraph (2) of subdivision (a) of section 234, a corresponding part of the capital invested in such assets shall not be deemed to be inadmissible assets;

The term "admissible assets" means all assets other than inadmissible assets, valued in accordance with the provisions of subdivision (a) of section 326, section 330, and section 331.

(b) For the purposes of this title, the par value of stock or shares shall, in the case of stock or shares issued at a nominal value or having no par value, be deemed to be the fair market value as of the date or dates of issue of such stock or shares. (40 Stat. 1091.)

This section is § 325 of the Revenue Act of 1918, cited above.

Sections 234, 326, 330, and 331 of this act, referred to in this section, are set forth, ante, § 6336⅛pp, and post, §§ 6336 7/16 i, 6336 7/16 l, 6336 7/16 m.

§ 6336 7/16 i. (Act Feb. 24, 1919, c. 18, § 326.) Invested capital.

(a) As used in this title the term "invested capital" for any year means (except as provided in subdivisions (b) and (c) of this section);

(1) Actual cash bona fide paid in for stock or shares;

(2) Actual cash value of tangible property, other than cash bona fide paid in for stock or shares, at the time of such payment, but in no case to exceed the par value of the original stock or shares specifically issued therefor, unless the actual cash value of such tangible property at the time paid in is shown to the satisfaction of the Commissioner to have been clearly and substantially in excess of such par value, in which case such excess shall be treated as paid-in surplus: Provided, That the Commissioner shall keep a record of all cases in which tangible property is included in invested capital at a value in excess of the stock or shares issued therefor, containing the name and address of each taxpayer, the business in which engaged, the amount of invested capital and net income shown by the return, the value of the tangible property at the time paid in, the par value of the stock or shares specifically issued therefor, and the amount included under this paragraph as paid-in surplus. The Commissioner shall furnish a copy of such record and other detailed information with respect to such cases when required by resolution of either House of Congress, without regard to the restrictions contained in section 257;

(3) Paid-in or earned surplus and undivided profits; not including surplus and undivided profits earned during the year;

(4) Intangible property bona fide paid in for stock or shares prior to March 3, 1917, in an amount not exceeding (a) the actual cash value of such property at the time paid in, (b) the par value of the stock or shares issued therefor, or (c) in the aggregate 25 per centum of the par value of the total stock or shares of the corporation outstanding on March 3, 1917, whichever is lowest;

(5) Intangible property bona fide paid in for stock or shares on or after March 3, 1917, in an amount not exceeding (a) the actual cash value of such property at the time paid in, (b) the par value of the stock or shares issued therefor, or (c) in the aggregate 25 per centum of the par value of the total stock or shares of the corporation outstanding at the beginning of the taxable year, whichever is lowest: Provided, That in no case shall the total amount included under paragraphs (4) and (5) exceed in the aggregate 25 per centum of the par value of the total stock or shares of the corporation outstanding at the beginning of the taxable year; but

(b) As used in this title the term "invested capital" does not include borrowed capital.

(c) There shall be deducted from invested capital as above defined a percentage thereof equal to the percentage which the amount of inadmissible assets is of the amount of admissible and inadmissible assets held during the taxable year.

(d) The invested capital for any period shall be the average invested capital for such period, but in the case of a corporation making a return for a fractional part of a year, it shall (except for the purpose of paragraph (2) of subdivision (a) of section 311) be the same fractional part of such average invested capital.

The average invested capital for the prewar period shall be determined by dividing the number of years within that period during the whole of which the corporation was in existence into the sum of the average invested capital for such years. (40 Stat. 1092.)

This section is § 326 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 207 of the Revenue Act of 1917, see notes to next preceding chapter.

Section 257 of this act, referred to in this section, is set forth ante, § 6336⅛x.

§ 6336⁷/₁₆j. (Act Feb. 24, 1919, c. 18, § 327.) Computation of tax.

In the following cases the tax shall be determined as provided in section 328:

(a) Where the commissioner is unable to determine the invested capital as provided in section 326;

(b) In the case of a foreign corporation;

(c) Where a mixed aggregate of tangible property and intangible property has been paid in for stock or for stock and bonds and the Commissioner is unable satisfactorily to determine the respective values of the several classes of property at the time of payment, or to distinguish the classes of property paid in for stock and for bonds, respectively;

(d) Where upon application by the corporation the Commissioner finds and so declares of record that the tax if determined without benefit of this section would, owing to abnormal conditions affecting the capital or income of the corporation, work upon the corporation an exceptional hardship evidenced by gross disproportion between the tax computed without benefit of this section and the tax computed by reference to the representative corporations specified in section 328. This subdivision shall not apply to any case (1) in which the tax (computed without benefit of this section) is high merely because the corporation earned within the taxable year a high rate of profit upon a normal invested capital, nor (2) in which 50 per centum or more of the gross income of the corporation for the taxable year (computed under section 233 of Title II) consists of gains, profits, commissions, or other income, derived on a cost-plus basis from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive. (40 Stat. 1093.)

This section is § 327 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 210 of the Revenue Act of 1917, see notes to next preceding chapter.

Sections 233, 326, and 328 of this Act, referred to in this section, are set forth ante, §§ 6336⅛p, 6336⁷/₁₆i, and post, § 6336⁷/₁₆k.

§ 6336⁷/₁₆k. (Act Feb. 24, 1919, c. 18, § 328.) Same.

(a) In the cases specified in section 327 the tax shall be the amount which bears the same ratio to the net income of the taxpayer (in excess of the specific exemption of $3,000) for the taxable year, as the average tax of representative corporations engaged in a like or similar trade or business, bears to their average net income (in excess of the specific exemption of $3,000) for such year. In the case of a foreign corporation the tax shall be computed without deducting the specific exemption of $3,000 either for the taxpayer or the representative corporations.

In computing the tax under this section the Commissioner shall compare the taxpayer only with representative corporations whose invested capital can be satisfactorily determined under section 326 and which are, as nearly as may be, similarly circumstanced with respect to gross income, net income, profits per unit of business transacted and capital employed, the amount and rate of war profits or excess profits, and all other relevant facts and circumstances.

(b) For the purposes of subdivision (a) the ratios between the average tax and the average net income of representative corporations shall be determined by the Commissioner in accordance with regulations prescribed by him with the approval of the Secretary.

In cases in which the tax is to be computed under this section, if the tax as computed without the benefit of this section is less than 50 per centum of the net income of the taxpayer, the installments shall in the first instance be computed upon the basis of such tax;

but if the tax so computed is 50 per centum or more of the net income, the installments shall in the first instance be computed upon the basis of a tax equal to 50 per centum of the net income. In any case, the actual ratio when ascertained shall be used in determining the correct amount of the tax. If the correct amount of the tax when determined exceeds 50 per centum of the net income, any excess of the correct installments over the amounts actually paid shall on notice and demand be paid together with interest at the rate of ½ of 1 per centum per month on such excess from the time the installment was due.

(c) The Commissioner shall keep a record of all cases in which the tax is determined in the manner prescribed in subdivision (a), containing the name and address of each taxpayer, the business in which engaged, the amount of invested capital and net income shown by the return, and the amount of invested capital as determined under such subdivision. The Commissioner shall furnish a copy of such record and other detailed information with respect to such cases when required by resolution of either House of Congress, without regard to the restrictions contained in section 257. (40 Stat. 1093.)

This section is § 328 of the Revenue Act of 1918, cited above.

Sections 257, 326, and 327 of this act, referred to in this section, are set forth ante, §§ 6336⅛x, 6336 7/16i, 6336 7/16j.

PART VI.—REORGANIZATIONS

§ 6336 7/16l. (Act Feb. 24, 1919, c. 18, § 330.) Reorganization, consolidation, or change of ownership.

In the case of the reorganization, consolidation, or change of ownership after January 1, 1911, of a trade or business now carried on by a corporation, the corporation shall for the purposes of this title be deemed to have been in existence prior to that date, and the net income and invested capital of such predecessor trade or business for all or any part of the prewar period prior to the organization of the corporation now carrying on such trade or business shall be deemed to have been the net income and invested capital of such corporation.

If such predecessor trade or business was carried on by a partnership or individual the net income for the prewar period shall, under regulations prescribed by the Commissioner with the approval of the Secretary, be ascertained and returned as nearly as may be upon the same basis and in the same manner as provided for corporations in Title II, including a reasonable deduction for salary or compensation to each partner or the individual for personal services actually rendered.

In the case of the organization as a corporation before July 1, 1919, of any trade or business in which capital is a material income-producing factor and which was previously owned by a partnership or individual, the net income of such trade or business from January 1, 1918, to the date of such reorganization may at the option of the individual or partnership be taxed as the net income of a corporation is taxed under Titles II and III; in which event the net income and invested capital of such trade or business shall be computed as if such corporation had been in existence on and after January 1, 1918, and the undistributed profits or earnings of such trade or business shall not be subject to the surtax imposed in section 211, but amounts distributed on or after January 1, 1918, from the earnings of such trade or business shall be taxed to the recipients as dividends, and all the provisions of Titles II and III relat-

ing to corporations shall so far as practicable apply to such trade or business: Provided, That this paragraph shall not apply to any trade or business the net income of which for the taxable year 1918 was less than 20 per centum of its invested capital for such year: Provided further, That any taxpayer who takes advantage of this paragraph shall pay the tax imposed by section 1000 of this Act and by the first subdivision of section 407 of the Revenue Act of 1916, as if such taxpayer had been a corporation on and after January 1, 1918, with a capital stock having no par value.

If any asset of the trade or business in existence both during the taxable year and any prewar year is included in the invested capital for the taxable year but is not included in the invested capital for such prewar year, or is valued on a different basis in computing the invested capital for the taxable year and such prewar year, respectively, then under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary such readjustments shall be made as are necessary to place the computation of the invested capital for such prewar year on the basis employed in determining the invested capital for the taxable year. (40 Stat. 1094.)

This section is § 330 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 208 of the Revenue Act of 1917, see notes to next preceding chapter.

Sections 211 and 1000 of this Act, referred to in this section, are set forth ante, §§ 5980n, 6336⅛ee.

§ 6336⁷/₁₀m. (Act Feb. 24, 1919, c. 18, § 331.) Same.

In the case of the reorganization, consolidation, or change of ownership of a trade or business, or change of ownership of property, after March 3, 1917, if an interest or control in such trade or business or property of 50 per centum or more remains in the same persons, or any of them, then no asset transferred or received from the previous owner shall, for the purpose of determining invested capital, be allowed a greater value than would have been allowed under this title in computing the invested capital of such previous owner if such asset had not been so transferred or received: Provided, That if such previous owner was not a corporation, then the value of any asset so transferred or received shall be taken at its cost of acquisition (at the date when acquired by such previous owner) with proper allowance for depreciation, impairment, betterment or development, but no addition to the original cost shall be made for any charge or expenditure deducted as expense or otherwise on or after March 1, 1913, in computing the net income of such previous owner for purposes of taxation. (40 Stat. 1095.)

This section is § 331 of the Revenue Act of 1918, cited above.

PART VII.—MISCELLANEOUS

§ 6336⁷/₁₀n. (Act Feb. 24, 1919, c. 18, § 335.) Tax on corporations making returns for fiscal year covering parts of current years.

(a) If a corporation (other than a personal service corporation) makes return for a fiscal year beginning in 1917 and ending in 1918, the tax for the first taxable year under this title shall be the sum of: (1) the same proportion of a tax for the entire period computed under Title II of the Revenue Act of 1917 which the portion of such period falling within the calendar year 1917 is of the entire period, and (2) the same proportion of a tax for the entire period computed under this title at the rates specified in subdivision (a) of section 301 which the portion of such period falling within the calendar year 1918 is of the entire period. Any amount heretofore

or hereafter paid on account of the tax imposed for such fiscal year by Title II of the Revenue Act of 1917 shall be credited toward the payment of the tax imposed for such fiscal year by this title, and if the amount so paid exceeds the amount of the tax imposed by this title, the excess shall be credited or refunded to the corporation in accordance with the provisions of section 252.

(b) If a corporation makes return for a fiscal year beginning in 1918 and ending in 1919, the tax for such fiscal year under this title shall be the sum of: (1) the same proportion of a tax for the entire period computed under subdivision (a) of section 301 which the portion of such period falling within the calendar year 1918 is of the entire period, and (2) the same proportion of a tax for the entire period computed under subdivision (b) or (c) of section 301 which the portion of such period falling within the calendar year 1919 is of the entire period.

(c) If a partnership or a personal service corporation makes return for a fiscal year beginning in 1917 and ending in 1918, it shall pay the same proportion of a tax for the entire period computed under Title II of the Revenue Act of 1917 which the portion of such period falling within the calendar year 1917 is of the entire period.

Any tax paid by a partnership or personal service corporation for any period beginning on or after January 1, 1918, shall be immediately refunded to the partnership or corporation as a tax erroneously or illegally collected. (40 Stat. 1095.)

This section is § 335 of the Revenue Act of 1918, cited above.

Sections 252 and 301 of this act, referred to in this section, are set forth ante, §§ 6336⅛uu, 6336 7/16aa.

§ 6336 7/16o. (Act Feb. 24, 1919, c. 18, § 336.) Returns.

Every corporation, not exempt under section 304, shall make a return for the purposes of this title. Such returns shall be made, and the taxes imposed by this title shall be paid, at the same times and places, in the same manner, and subject to the same conditions, as is provided in the case of returns and payment of income tax by corporations for the purposes of Title II, and all the provisions of that title not inapplicable, including penalties, are hereby made applicable to the taxes imposed by this title. (40 Stat. 1096.)

This section is § 336 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 211 of the Revenue Act of 1917, see notes to next preceding chapter.

§ 6336 7/16p. (Act Feb. 24, 1919, c. 18, § 337.) Mines, oils, or gas wells.

In the case of a bona fide sale of mines, oil or gas wells, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration and discovery work done by the taxpayer, the portion of the tax imposed by this title attributable to such sale shall not exceed 20 per centum of the selling price of such property or interest. (40 Stat. 1096.)

This section is § 337 of the Revenue Act of 1918, cited above.

CHAPTER TEN A—ESTATE TAX

This chapter, as set forth in U. S. Comp. St. 1916, §§ 6336½a–6336½m, included the estate tax provisions of the Revenue Act of 1916. Amendments and additions to these provisions were made by Act March 3, 1917, c. 159, §§ 300, 301, 39 Stat. 1002, and by the Revenue Act of 1917. All were repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

The amendments made and sections added by Revenue Act of 1917 are indicated or set forth under the appropriate sections, post.

The provisions of Revenue Act of 1918, Title IV, §§ 400–410, imposing an estate tax, are set forth in this chapter, post, §§ 6336¾a–6336¾k.

Sec.
6336½a–6336½i. [Repealed.]
6336½k–6336½m. [Repealed.]
6336¾a. Definitions.
6336¾b. Percentages of tax.
6336¾c. Value of gross estate.
6336¾d. Value of net estate.
6336¾e. Notice of appointment of and returns by executor; mode of assessment of tax.
6336¾f. Returns by collector or deputy collector.
6336¾g. Time for payment of tax; interest on non-payment.
6336¾h. Payment of tax by executor; refundment; receipts.
6336¾i. Sale of property for nonpayment of tax; reimbursement of persons paying tax; liability of beneficiaries of life policies.
6336¾j. Lien of tax; liability of transferee or trustee of decedent; bona fide purchasers.
6336¾k. False statements; failure to disclose information.

§ 6336½a. [Repealed.]

See note at the beginning of this chapter.

§ 6336½b. (Act Sept. 8, 1916, c. 463, § 201, as amended, Act March 3, 1917, c. 159, § 300.) [Repealed.]

See note at the beginning of this chapter.

This section was amended by Act March 3, 1917, c. 159, § 300, cited above, by increasing the rate per cent of taxation as follows: From one to one and one-half; from two to three; from three to four and one-half; from four to six; from five to seven and one-half; from six to nine; from seven to ten and one-half; from eight to twelve; from nine to thirteen and one-half; and from ten to fifteen.

Notes of Decisions

Validity.—Federal Estate Tax Act levies a duty of the same character as the old English probate duty, and is not open to attack as levying a direct tax, nor on the theory that there cannot be such a thing as an exercise of a right to transmit, which is subject to federal tax. People v. Pasfield (Ill.) 120 N. E. 286.

If federal estate tax, imposed by Act Cong. Sept. 8, 1916, tit. 2, is direct tax, it is void, as violative of Const. U. S. art. 1, § 9, subd. 4, providing no direct tax shall be levied, unless in proportion to census. In re Sherman's Estate, 166 N. Y. S. 19, 179 App. Div. 497, order affirmed (N. Y.) 118 N. E. 1078.

Nature of tax.—Tax imposed by Act Cong. Sept. 8, 1916, tit. 2, entitled "Estate Tax," in view of sections 201, 203, held to be upon transfer of net estate, and not upon separate successions to property of each legatee or distributee. In re Sherman's Estate, 166 N. Y. S. 19, 179 App. Div. 497, order affirmed (N. Y.) 118 N. E. 1078.

Federal estate tax, imposed by Act Cong. Sept. 8, 1916, is not a direct tax, nor a legacy tax, but a tax on transfer of property, and a charge against decedent's estate, like any other debt or claim, even gross estate, within limitations, being subject to lien of tax. In re Hamlin (Sup.) 172 N. Y. S. 787.

Effect on state tax laws.—Tax imposed by federal Revenue Act of 1916, being on transfer of decedent's property under will and laws of state, cannot be deducted from decedent's gross estate before transfer tax due under laws of state is calculated. In re Sherman's Estate, 166 N. Y. S. 19, 179 App. Div. 497, order affirmed (N. Y.) 118 N. E. 1078; In re Bierstadt's Estate, 166 N. Y. S. 168, 178 App. Div. 836, affirming order (Sur.) 163 N. Y. S. 1104, 99 Misc. Rep. 457.

The death duty imposed by the War Revenue Act of 1916 is a tax upon decedents' estates, and in assessing the state transfer inheritance tax is to be deducted from the value of the estate in ascertaining the clear market value of the property transferred. In re Roebling's Estate (N. J. Prerog.) 104 A. 295.

Net estate.—Under Inheritance Tax Act U. S. Sept. 8, 1916, the "net estate" to be used in computing the proportion of the tax to be paid by a lega-

tee is not the net estate as defined in the act, but the net estate as ascertained by the law of the state, by deducting funeral expenses, administration expenses, and debts from gross value of estate. In re Douglass' Estate (Sur.) 171 N. Y. S. 956.

Decisions under act of 1898.—See Rosenfeld v. Scott, 245 F. 646, 158 C. C. A. 74, reversing judgment (D. C.) 232 F. 509; Carleton v. U. S., 51 Ct. Cl. 60; Deford v. U. S., 52 Ct. Cl. 220.

Cited without definite application, Keister's Estate, 70 Pa. Super. Ct. 484.

§ 6336½bb. (Act March 3, 1917, c. 159, § 301.) [Repealed.]

See note at the beginning of this chapter.

The text of this section read as follows:

"The tax on the transfer of the net estate of decedents dying between September eighth, nineteen hundred and sixteen, and the passage of this Act shall be computed at the rates originally prescribed in the Act approved September eighth, nineteen hundred and sixteen."

§ 6336½bbb. (Act Oct. 3, 1917, c. 63, § 900.) [Repealed.]

See note at the beginning of this chapter.

The text of this section was as follows:

"In addition to the tax imposed by section two hundred and one of the Act entitled 'An Act to increase the revenue, and for other purposes,' approved September eighth, nineteen hundred and sixteen as amended—

"(a) A tax equal to the following percentages of its value is hereby imposed upon the transfer of each net estate of every decedent dying after the passage of this Act, the transfer of which is taxable under such section (the value of such net estate to be determined as provided in Title II of such Act of September eighth, nineteen hundred and sixteen):

"One-half of one per centum of the amount of such net estate not in excess of $50,000;

"One per centum of the amount by which such net estate exceeds $50,000 and does not exceed $150,000;

"One and one-half per centum of the amount by which such net estate exceeds $150,000 and does not exceed $250,000;

"Two per centum of the amount by which such net estate exceeds $250,000 and does not exceed $450,000;

"Two and one-half per centum of the amount by which such net estate exceeds $450,000 and does not exceed $1,000,000;

"Three per centum of the amount by which such net estate exceeds $1,000,000 and does not exceed $2,000,000;

"Three and one-half per centum of the amount by which such net estate exceeds $2,000,000 and does not exceed $3,000,000;

"Four per centum of the amount by which such net estate exceeds $3,000,000 and does not exceed $4,000,000;

"Four and one-half per centum of the amount by which such net estate exceeds $4,000,000 and does not exceed $5,000,000;

"Five per centum of the amount by which such net estate exceeds $5,000,000 and does not exceed $8,000,000;

"Seven per centum of the amount by which such net estate exceeds $8,000,000 and does not exceed $10,000,000; and

"Ten per centum of the amount by which such net estate exceeds $10,000,000."

§ 6336½bbbb. (Act Oct. 3, 1917, c. 63, § 901.) [Repealed.]

See note at the beginning of this chapter.

The text of this section was as follows:

"The tax imposed by this title shall not apply to the transfer of the net estate of any decedent dying while serving in the military or naval forces of the United States, during the continuance of the war in which the United States is now engaged, or if death results from injuries received or disease contracted in such service, within one year after the termination of such war. For the purposes of this section the termination of the war shall be evidenced by the proclamation of the President."

§§ 6336½c–6336½h. [Repealed.]

See note at the beginning of this chapter.

§ 6336½i. [Repealed.]

See note at the beginning of this chapter.

Apportionment of tax.—Though federal estate tax imposed by Act Cong. Sept. 8, 1916, provides for equitable contribution to payment of tax among beneficiaries, it lays down no specific rule of contribution, recognizing right of decedent or transferor to apportion tax among beneficiaries and charge shares as he sees fit, and where decedent's will made specific bequests and legacies, and then disposed of the residue, "the residue of the estate" meant what was left after payment of specific bequests and legacies, debts,

and other charges, including federal estate tax, levied under Act Cong. Sept. 8, 1916, which was not apportionable, so as to include specific legacies. In re Hamlin (Sup.) 172 N. Y. S. 787.

Where a will bequeathed a certain sum to each of testatrix's grandchildren to be held in trust during their lives, the federal estate tax imposed by Act Cong. Sept. 8, 1916, § 201, is to be paid out of the estate, and charged pro rata by all who share in the estate. Fuller v. Gale, 103 A. 308, 78 N. H. 544.

Under Inheritance Tax Law U. S. Sept. 8, 1916, providing that tax is on estate, and not on individual interest, where testator's will was made prior to passage of act, tax should not be charged on residuary legatees alone, but should be deducted proportionally from each legacy, and amount to be deducted is that proportion of the entire tax assessed against estate which individual legacy bears to entire net estate; and same rule should be applied to corpus of trust fund directed to be held for life beneficiaries. In re Douglass' Estate (Sur.) 171 N. Y. S. 956.

§§ 6336½k–6336½m. [Repealed.]

See note at the beginning of this chapter.

§ 6336¾a. (Act Feb. 24, 1919, c. 18, § 400.) Definitions.

When used in this title—

The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner. (40 Stat. 1096.)

This section is § 400 of the Revenue Act of 1918, cited above.

This section, and the ten sections next following, constitute Title IV of the Revenue Act of 1918, which said Title is entitled "Estate Tax."

For corresponding provisions in § 200 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336½a.

§ 6336¾b. (Act Feb. 24, 1919, c. 18, § 401.) Percentages of tax.

(In lieu of the tax imposed by Title II of the Revenue Act of 1916, as amended, and in lieu of the tax imposed by Title IX of the Revenue Act of 1917) a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 403) is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

1 per centum of the amount of the net estate not in excess of $50,000;

2 per centum of the amount by which the net estate exceeds $50,000 and does not exceed $150,000;

3 per centum of the amount by which the net estate exceeds $150,000 and does not exceed $250,000;

4 per centum of the amount by which the net estate exceeds $250,000 and does not exceed $450,000;

6 per centum of the amount by which the net estate exceeds $450,000 and does not exceed $750,000;

8 per centum of the amount by which the net estate exceeds $750,000 and does not exceed $1,000,000;

10 per centum of the amount by which the net estate exceeds $1,000,000 and does not exceed $1,500,000;

12 per centum of the amount by which the net estate exceeds $1,500,000 and does not exceed $2,000,000;

14 per centum of the amount by which the net estate exceeds $2,000,000 and does not exceed $3,000,000;

16 per centum of the amount by which the net estate exceeds $3,000,000 and does not exceed $4,000,000;

18 per centum of the amount by which the net estate exceeds $4,000,000 and does not exceed $5,000,000;

20 per centum of the amount by which the net estate exceeds $5,000,000 and does not exceed $8,000,000;

22 per centum of the amount by which the net estate exceeds $8,000,000 and does not exceed $10,000,000; and

25 per centum of the amount by which the net estate exceeds $10,000,000.

The taxes imposed by this title or by Title II of the Revenue Act of 1916 (as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917) or by Title IX of the Revenue Act of 1917, shall not apply to the transfer of the net estate of any decedent who has died or may die while serving in the military or naval forces of the United States in the present war or from injuries received or disease contracted while in such service, and any such tax collected upon such transfer shall be refunded to the executor. (40 Stat. 1096.)

This section is § 401 of the Revenue Act of 1918, cited above.

The taxes imposed by this section are in lieu of those imposed by § 201 of the Revenue Act of 1916, as amended, and § 900 of the Revenue Act of 1917 (see U. S. Comp. St. 1916, § 6336½b, and note to § 6336½bbb, ante).

For provisions corresponding to the last paragraph of this section in § 901 of the Revenue Act of 1917, see note to § 6336½bbb, ante.

Section 403 of this act, referred to in this section, is set forth post, § 6336¾d.

§ 6336¾c. (Act Feb. 24, 1919, c. 18, § 402.) Value of gross estate.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, courtesy, or by virtue of a statute creating an estate in lieu of dower or courtesy;

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this Act), except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent;

(e) To the extent of any property passing under a general power

of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth; and

(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life. (40 Stat. 1097.)

This section is § 402 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 202 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336½c.

§ 6336¾d. (Act Feb. 24, 1919, c. 18, § 403.) Value of net estate.

For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within five years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under the Revenue Act of 1917 or under this Act was collected from such estate, and if such property is included in the decedent's gross estate;

(3) The amount of all bequests, legacies, devises, or gifts, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

(4) An exemption of $50,000;

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the val-

ue of that part of his gross estate which at the time of his death is situated in the United States;

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within five years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under the Revenue Act of 1917 or under this Act was collected from such estate, and if such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States; and

(3) The amount of all bequests, legacies, devises, or gifts, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes within the United States. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 404 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent, and the amount receivable as insurance upon the life of a nonresident decedent where the insurer is a domestic corporation, shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (c) of section 402, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

In the case of any estate in respect to which the tax under existing law has been paid, if necessary to allow the benefit of the deduction under paragraph (3) of subdivision (a) or (b) the tax shall be redetermined and any excess of tax paid shall be refunded to the executor. (40 Stat. 1098.)

This section is § 403 of the Revenue Act of 1918, cited above.

For corresponding provisions in §§ 202, 203, of the Revenue Act of 1916, see U. S. Comp. St. 1916, §§ 6336½c, 6336½d.

Section 402 of this act, referred to in this section, is set forth ante, § 6336¾c.

§ 6336¾e. (Act Feb. 24, 1919, c. 18, § 404.) Notice of appointment of and returns by executor; mode of assessment of tax.

The executor, within sixty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section 403;

(c) the value of the net estate of the decedent as defined in section 403; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases where the gross estate at the death of the decedent exceeds $50,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes. (40 Stat. 1099.)

This section is § 404 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 205 of the Revenue Act of 1916, see U. S. Comp. St. 1916, §§ 6336½f.

Section 403 of this act, referred to in this section, is set forth ante, § 6336¾d.

§ 6336¾f. (Act Feb. 24, 1919, c. 18, § 405.) Returns by collector or deputy collector.

If no administration is granted upon the estate of a decedent, or if no return is filed as provided in section 404, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner shall assess the tax thereon. (40 Stat. 1099.)

This section is § 405 of the Revenue Act of 1918, cited above.

For corresponding provision in § 206 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336½g.

Section 404 of this act, referred to in this section, is set forth ante, § 6336¾e.

§ 6336¾g. (Act Feb. 24, 1919, c. 18, § 406.) Time for payment of tax; interest on non-payment.

The tax shall be due one year after the decedent's death; but in any case where the Commissioner finds that payment of the tax within one year after the decedent's death would impose undue hardship upon the estate, he may grant an extension of time for the payment of the tax for a period not to exceed three years from the due date. If the tax is not paid within one year and 180 days after the decedent's death, interest at the rate of 6 per centum per annum from the expiration of one year after the decedent's death shall be added as part of the tax. (40 Stat. 1099.)

This section is § 406 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 204 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336½e.

§ 6336¾h. (Act Feb. 24, 1919, c. 18, § 407.) Payment of tax by executor; refundment; receipts.

The executor shall pay the tax to the collector or deputy collector. If the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid, the collector shall notify the executor of the amount of such excess and demand payment thereof. If such excess part of the tax is not

paid within thirty days after such notification, interest shall be added thereto at the rate of 10 per centum per annum from the expiration of such thirty days' period until paid, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. (40 Stat. 1100.)

This section is § 407 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 207 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336½h.

§ 6336¾i. (Act Feb. 24, 1919, c. 18, § 408.) Sale of property for nonpayment of tax; reimbursement of persons paying tax; liability of beneficiaries of life policies.

If the tax herein imposed is not paid within 180 days after it is due, the collector shall, unless there is reasonable cause for further delay, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto.

If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of $40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio. (40 Stat. 1100.)

This section is § 408 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 208 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336½i.

§ 6336¾j. (Act Feb. 24, 1919, c. 18, § 409.) Lien of tax; liability of transferee or trustee of decedent; bona fide purchasers.

Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations pre-

scribed by him with the approval of the Secretary, issue his certificate releasing any or all property of such estate from the lien herein imposed.

If (a) the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) or (b) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth. (40 Stat. 1100.)

This section is § 409 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 209 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336½j.

§ 6336¾k. (Act Feb. 24, 1919, c. 18, § 410.) False statements; failure to disclose information.

Whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding $5,000, or imprisonment not exceeding one year, or both.

Whoever fails to comply with any duty imposed upon him by section 404, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding $500, to be recovered, with costs of suit, in a civil action in the name of the United States. (40 Stat. 1101.)

This section is § 410 of the Revenue Act of 1918, cited above.

For corresponding provisions in § 210 of the Revenue Act of 1916, see U. S. Comp. St. 1916, § 6336½k.

CHAPTER TEN B—TAX ON EMPLOYMENT OF CHILD LABOR

These provisions constitute Title XII of the Revenue Act of 1918. Said Title is entitled "Tax on Employment of Child Labor."

Sec.
6336⅞a. Tax on net profits of employers of certain children; amount.
6336⅞b. Same; computation of net profits.
6336⅞c. Same; sale price of products.
6336⅞d. Same; good faith in employment of children.
6336⅞e. Same; returns.
6336⅞f. Same; assessment of tax and notice thereof.
6336⅞g. Same; inspection of premises.
6336⅞h. Same; taxable year.

§ 6336⅞a. (Act Feb. 24, 1919, c. 18, § 1200.) Tax on net profits of employers of certain children; amount.

Every person (other than a bona fide boys' or girls' canning club recognized by the Agricultural Department of a State and of the United States) operating (a) any mine or quarry situated in the United States in which children under the age of sixteen years have been employed or permitted to work during any portion of the taxable year; or (b) any mill, cannery, workshop, factory, or manufacturing establishment situated in the United States in which children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen and sixteen have been employed or permitted to work more than eight hours in any day or more than six days in any week, or after the hour of seven o'clock post meridian, or before the hour of six o'clock ante meridian, during any portion of the taxable year, shall pay for each taxable year, in addition to all other taxes imposed by law, an excise tax equivalent to 10 per centum of the entire net profits received or accrued for such year from the sale or disposition of the product of such mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment. (40 Stat. 1138.)

This section is § 1200 of the Revenue Act of 1918, cited above.

§ 6336⅞b. (Act Feb. 24, 1919, c. 18, § 1201.) Same; computation of net profits.

In computing net profits under the provisions of this title, for the purpose of the tax there shall be allowed as deductions from the gross amount received or accrued for the taxable year from the sale or disposition of such products manufactured within the United States the following items:

(a) The cost of raw materials entering into the production;

(b) Running expenses, including rentals, cost of repairs, and maintenance, heat, power, insurance, management, and a reasonable allowance for salaries or other compensations for personal services actually rendered, and for depreciation;

(c) Interest paid within the taxable year on debts or loans contracted to meet the needs of the business, and the proceeds of which have been actually used to meet such needs;

(d) Taxes of all kinds paid during the taxable year with respect to the business or property relating to the production; and

(e) Losses actually sustained within the taxable year in connection with the business of producing such products, including losses from fire, flood, storm, or other casualties, and not compensated for by insurance or otherwise. (40 Stat. 1138.)

This section is § 1201 of the Revenue Act of 1918, cited above.

§ 6336⅞c. (Act Feb. 24, 1919, c. 18, § 1202.) Same; sale price of products.

If any such person during any taxable year or part thereof, whether under any agreement, arrangement, or understanding or otherwise, sells or disposes of any product of such mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment at less than the fair market price obtainable therefor either (a) in such manner as directly or indirectly to benefit such person or any person directly or indirectly interested in the business of such person; or (b) with intent to cause such benefit; the gross amount received or accrued for such year or part thereof from the sale or disposition of such product shall be taken to be the amount which would have been received or accrued from the sale or disposition of such product if sold at the fair market price. (40 Stat. 1139.)

This section is § 1202 of the Revenue Act of 1918, cited above.

§ 6336⅞d. (Act Feb. 24, 1919, c. 18, § 1203.) Same; good faith in employment of children.

(a) No person subject to the provisions of this title shall be liable for the tax herein imposed if the only employment or permission to work which but for this section would subject him to the tax, has been of a child as to whom such person has in good faith procured at the time of employing such child or permitting him to work, and has since in good faith relied upon and kept on file a certificate, issued in such form, under such conditions and by such persons as may be prescribed by a board consisting of the Secretary, the Commissioner, and the Secretary of Labor, showing the child to be of such age as not to subject such person to the tax imposed by this title. Any person who knowingly makes a false statement or presents false evidence in or in relation to any such certificate or application therefor shall be punished by a fine of not less than $100, nor more than $1,000, or by imprisonment for not more than three months, or by both such fine and imprisonment, in the discretion of the court.

In any State designated by such board an employment certificate or other similar paper as to the age of the child, issued under the laws of that State, and not inconsistent with the provisions of this title, shall have the same force and effect as a certificate herein provided for.

(b) The tax imposed by this title shall not be imposed in the case of any person who proves to the satisfaction of the Secretary that the only employment or permission to work which but for this section would subject him to the tax, has been of a child employed or permitted to work under a mistake of fact as to the age of such child, and without intention to evade the tax. (40 Stat. 1139.)

This section is § 1203 of the Revenue Act of 1918, cited above.

§ 6336⅞e. (Act Feb. 24, 1919, c. 18, § 1204.) Same; returns.

On or before the first day of the third month following the close of each taxable year, a true and accurate return under oath shall be made by each person subject to the provisions of this title to the collector for the district in which such person has his principal office or place of business, in such form as the Commissioner, with the approval of the Secretary, shall prescribe, setting forth specifically the gross amount of income received or accrued during such year from the sale or disposition of the product of any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment, in which children have been employed subjecting him to the tax imposed by this title, and from the total thereof deducting the aggregate items of allowance authorized by this title, and such

other particulars as to the gross receipts and items of allowance as the Commissioner, with the approval of the Secretary may require. (40 Stat. 1139.)

This section is § 1204 of the Revenue Act of 1918, cited above.

§ 6336⅞f. (Act Feb. 24, 1919, c. 18, § 1205.) Same; assessment of tax and notice thereof.

All such returns shall be transmitted forthwith by the collector to the Commissioner, who shall, as soon as practicable, assess the tax found due and notify the person making such return of the amount of tax for which such person is liable, and such person shall pay the tax to the collector on or before thirty days from the date of such notice. (40 Stat. 1140.)

This section is § 1205 of the Revenue Act of 1918, cited above.

§ 6336⅞g. (Act Feb. 24, 1919, c. 18, § 1206.) Same; inspection of premises.

For the purposes of this Act the Commissioner, or any other person duly authorized by him, shall have authority to enter and inspect at any time any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment. The Secretary of Labor, or any person duly authorized by him, shall, for the purpose of complying with a request of the Commissioner to make such an inspection, have like authority, and shall make report to the Commissioner of inspections made under such authority in such form as may be prescribed by the Commissioner with the approval of the Secretary of the Treasury.

Any person who refuses or obstructs entry or inspection authorized by this section shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both such fine and imprisonment. (40 Stat. 1140.)

This section is § 1206 of the Revenue Act of 1918, cited above.

§ 6336⅞h. (Act Feb. 24, 1919, c. 18, § 1207.) Same; taxable year.

As used in this title the term "taxable year" shall have the same meaning as provided for the purposes of income tax in section 200. The first taxable year for the purposes of this title shall be the period between sixty days after the passage of this Act and December 31, 1919, both inclusive, or such portion of such period as is included within the fiscal year (as defined in section 200) of the taxpayer. (40 Stat. 1140.)

This section is § 1207 of the Revenue Act of 1918, cited above.

Section 200 of this act, referred to in this section, is set forth ante, § 6336⅛a.

CHAPTER ELEVEN—PROVISIONS COMMON TO SEVERAL OBJECTS OF TAXATION

Sec.
6340a. [Repealed.]
6340aa. Tax on imports from and into Virgin Islands.
6346a. [Repealed.]
6346aa. [Obsolete.]
6346b, 6346c. [Repealed.]
6348a, 6348b. [Repealed.]
6349a, 6349b. [Repealed.]
6352. Removing or concealing articles with intent to defraud United States of tax; forfeiture and penalty.
6364. Search-warrants.
6370. [Obsolete.]

§ 6340a. (Act Oct. 3, 1917, c. 63, § 1000.) [Repealed.]

This section contained provisions substantially similar to those of Revenue Act of 1918, § 1304, post, § 6340aa. It was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6340aa. (Act Feb. 24, 1919, c. 18, § 1304.) Tax on imports from and into Virgin Islands.

There shall be levied, collected, and paid in the United States, upon articles coming into the United States from the Virgin Islands, a tax equal to the internal-revenue tax imposed in the United States upon like articles of domestic manufacture; such articles shipped from such islands to the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of such islands: Provided, That there shall be levied, collected, and paid in such islands, upon articles imported from the United States, a tax equal to the internal-revenue tax imposed in such islands upon like articles there manufactured; and such articles going into such islands from the United States shall be exempt from payment of any tax imposed by the internal-revenue laws of the United States. (40 Stat. 1142.)

This section is § 1304 of the Revenue Act of 1918 (Title XIII—General Administrative Provisions), cited above.

The corresponding provisions in the Revenue Act of 1917 were contained in section 1000 of said act. See note to § 6340a, ante.

§ 6346a. [Repealed.]

This section, which was § 411 of the Revenue Act of 1916, was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6346aa. (Act April 17, 1917, c. 3, § 1.) [Obsolete.]

This section was part of the deficiency appropriation act for the fiscal year 1917. It authorized the Commissioner of Internal Revenue subject to regulations prescribed by the Secretary of the Treasury to allow for or redeem stamps issued under Act Oct. 22, 1914, to increase internal revenue, extended by Joint Res. Dec. 17, 1915, which have not been used, if they were presented before Jan. 1, 1918. It was rendered obsolete by the expiration of the time for the presentation of the stamps.

§ 6346b. (Act Oct. 3, 1917, c. 63, § 1006.) [Repealed.]

This section contained provisions identical with those of Revenue Act of 1918, § 1311, post, § 6371½l. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a.

§ 6346c. (Act Oct. 3, 1917, c. 63, § 1008.) [Repealed.]

This section contained provisions identical with those of Revenue Act of 1918, § 1313, post, § 6371½n. It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a.

§ 6348a. (Act Oct. 3, 1917, c. 63, § 1001.) [Repealed.]

This section contained provisions identical with those of Revenue Act of 1918, § 1305, post, § 6371½c, except that the words "corporation, partnership or association" occurred after the word "person," the words "of Internal Revenue," after the word "Commissioner," and the words "of the Treasury," after the word "Secretary." It was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6348b. (Act Oct. 3, 1917, c. 63, § 1007.) [Repealed.]

This section read as follows:

"(a) If any person, corporation, partnership, or association has prior to May ninth, nineteen hundred and seventeen, made a bona fide contract with a dealer for the sale, after the tax takes effect, of any article (or, in the case of moving picture films, such a contract with a dealer, exchange, or exhibitor, for the sale or lease thereof) upon which a tax is imposed under Title III, IV, or VI, or under subdivision thirteen of Schedule A of Title VIII, or under this section, and (b) if such contract does not permit the adding of the whole of such tax to the amount to be paid under such contract, then the vendee or lessee shall, in lieu of the vendor or lessor, pay so much of such tax as is not so permitted to be added to the contract price.

"The taxes payable by the vendee or lessee under this section shall be paid to the vendor or lessor at the time the sale or lease is consummated, and collected, returned, and paid to the United States by such vendor or lessor in the same manner as provided in section five hundred and three.

"The term 'dealer' as used in this section includes a vendee who purchases any article with intent to use it in the manufacture or production of another article intended for sale."

It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a.

The corresponding provisions of Revenue Act of 1918 were contained in § 1312, post, § 6371½m.

§ 6349a. (Act Oct. 3, 1917, c. 63, § 1003.) [Repealed.]

This section contained provisions identical with those of Revenue Act of 1918, § 1307, post, § 6371½g, except that the words "of Internal Revenue" were inserted after the word "Commissioner," the words "of the Treasury" after the word "Secretary," and the figure "VIII," after the word "Title" in lieu of the figure "XI." It was repealed by § 1400 of the Revenue Act of 1918. See post, § 6371¾a.

§ 6349b. (Act Oct. 3, 1917, c. 63, § 1005.) [Repealed.]

This section contained provisions identical with those of Revenue Act of 1918, § 1309, post, § 6371½i, except that the words "of Internal Revenue" were inserted after the word "Commissioner," and the words "of the Treasury" after the word "Secretary." It was repealed by Revenue Act of 1918, § 1400, post, § 6371¾a.

§ 6352. (R. S. § 3450.) Removing or concealing articles with intent to defraud United States of tax; forfeiture and penalty.

Forfeiture as dependent on knowledge and intent.—Where the owner of an automobile sent an employé therewith on a lawful errand, and the employé used it in removing and concealing distilled spirits on which the tax had not been paid, with intent to defraud the United States, the automobile is subject to forfeiture, under this section, despite the owner's innocence of any fraud. U. S. v. Mincey (C. C. A.) 254 F. 287.

§ 6364. (R. S. § 3462.) Search-warrants.

Cited without definite application,
U. S. v. Jones (D. C.) 230 F. 262.

§ 6370. [Obsolete.]

Refundment of tax under Act July 27, 1902, c. 1160.—See Uterhart v. U. S., 36 S. Ct. 417, 240 U. S. 598, 60 L. Ed. 819, reversing judgment 49 Ct. Cl. 709.

CHAPTER ELEVEN A—INCREASE OF INTERNAL REVENUE (REVENUE ACT OF 1916)

The Revenue Act of 1916, Act Sept. 8, 1916, c. 463, entitled "An act to increase the revenue, and for other purposes," was divided into nine Titles, as follows:

TITLE I—INCOME TAX

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations provided in subdivision (b) of said section. See post, § 6371¾a; ante, §§ 6319–6336⅛z.

TITLE II—ESTATE TAX

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations provided in subdivision (b) of said section. See post, § 6371¾a; ante, §§ 6336½a–6336¾k.

TITLE III—MUNITION MANUFACTURER'S TAX

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations provided in subdivision (b) of said section. See post, § 6371¾a; ante, §§ 6336¼a–6336¼m.

TITLE IV—MISCELLANEOUS TAXES

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations provided in subdivision (b) of said section. See post, § 6371¾a.

TITLE V—DYESTUFFS

This title (see U. S. Comp. St. 1916, §§ 5291a–5291c) was not affected by the Revenue Act of 1918.

TITLE VI—PRINTING PAPER

This title (see U. S. Comp. St. 1916, § 5291, par. 322) was not affected by the Revenue Act of 1918.

TITLE VII—TARIFF COMMISSION

This title (see U. S. Comp. St. 1916, §§ 5326a–5326j) was not affected by the Revenue Act of 1918.

TITLE VIII—UNFAIR COMPETITION

This title (see U. S. Comp. St. 1916, §§ 8836l–8836r) was not affected by the Revenue Act of 1918.

TITLE IX

This title (see U. S. Comp. St. 1916, §§ 6371a, 6371b) was not affected by the Revenue Act of 1918, and a new section was added thereto by § 1403 of said Act. See post, § 6371bb.

§ 6371bb. (Act Sept. 8, 1916, c. 463, § 903, as added, Act Feb. 24, 1919, c. 18, § 1403.) Citation of act.

This Act may be cited as the "Revenue Act of 1916." (40 Stat. 1150.)

The Revenue Act of 1916 was amended by § 1403 of the Revenue Act of 1918, cited above, by adding thereto § 903, as set forth above.

CHAPTER ELEVEN B—WAR REVENUE (REVENUE ACT OF 1917)

Act Oct. 3, 1917, c. 63, entitled "An act to provide revenue to defray war expenses, and for other purposes," was divided into thirteen titles. The subject-matter of these titles has been distributed to appropriate places in the statutes, as follows:

TITLE I—WAR INCOME TAX

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations prescribed in subdivision (b) of said section. See post, § 6371¾a.

Of this title, §§ 1–5 are set forth in notes to §§ 6336aa, 6336aaa, 6336iii, 6336jj, and 6336vv, ante.

TITLE II—WAR EXCESS PROFITS TAX

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations prescribed in subdivision (b) of said section. See post, § 6371¾a.

Of this title §§ 200–213 are set forth in note to §§ 6336⅜a–6336⅜n. ante, and § 214 is set forth in the notes at the beginning of Chapter Nine C, ante, and to § 6336⅜o, ante.

TITLE III—WAR TAX ON BEVERAGES

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations prescribed in subdivision (b) of said section. See post, § 6371¾a.

The several sections of this title are set forth or their provisions indicated in notes as follows:

§ 300, in note to § 5986a, ante; § 301, in note to § 8739b, post; § 302, in notes to §§ 6024a, 6026a, 6028a, 6028b, ante; §§ 303–305, in notes to §§ 5986b–5986d, ante; § 306, in note to § 6017a, ante; § 307, in note to § 6144b, ante; § 308, in note to § 6151a, ante; §§ 309–311, in notes to §§ 6110c–6110e, ante; § 312, in note to § 6111a, ante; and §§ 313–315, in notes to §§ 6161½a–6161½c, ante.

TITLE IV—WAR TAX ON CIGARS, TOBACCO, AND MANUFACTURES THEREOF

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations prescribed in subdivision (b) of said section. See post, § 6371¾a.

The several sections of this title are set forth or their provisions indicated in notes as follows:

Of this title, § 400, in notes to §§ 6202a, 6204a, ante; § 401, in notes to §§ 6169a, 6174a, ante; § 402, in note to § 6174c, ante; § 403, in note to § 6174b, ante; and § 404, in note to § 6204b, ante.

TITLE V—WAR TAX ON FACILITIES FURNISHED BY PUBLIC UTILITIES AND INSURANCE

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations prescribed in subdivision (b) of said section. See post, § 6371¾a.

Of this title the several sections are set forth or their provisions indicated in notes as follows:

§§ 500–503, in note to §§ 6309⅛a–6309⅛d, ante, and §§ 504, 505, in note to §§ 6309¼a, 6309¼b, ante.

TITLE VI—WAR EXCISE TAXES

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations prescribed in subdivision (b) of said section. See post, § 6371¾a.

This title, consisting of §§ 600–603, is set forth in notes to §§ 6309¾a–6309¾d, ante.

TITLE VII—WAR TAX ON ADMISSIONS AND DUES

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations prescribed in subdivision (b) of said section. See post, § 6371¾a.

This title, consisting of §§ 700–702, is set forth in note to §§ 6309½a–6309½c, ante.

TITLE VIII—WAR STAMP TAXES

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations prescribed in subdivision (b) of said section. See post, § 6371¾a.

This title consisted of §§ 800–807. See notes to §§ 6318a–6318h, ante.

TITLE IX—WAR ESTATE TAX

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations prescribed in subdivision (b) of said section. See post, § 6371¾a.

This title, consisting of §§ 900, 901, is set forth in notes to §§ 6336½bbb, 6336½bbbb, ante.

TITLE X—ADMINISTRATIVE PROCEEDINGS

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations prescribed in subdivision (b) of said section. See post, § 6371¾a.

The several sections of the title are set forth or their provisions indicated in notes, as follows:

§ 1000, in note to § 6340a, ante; § 1001, in note to § 6348a, ante; § 1002, in note to § 5896a, ante; § 1003, in note to § 6349a, ante; § 1004, in note to § 5896b, ante; § 1005, in note to § 6349b, ante; § 1006, in note to § 6346b, ante; § 1007, in note to § 6348b, ante; § 1008, in note to § 6346c, ante; § 1009, in note to § 6336*oo*, ante; and § 1010, in note to § 6336qq, ante.

TITLE XI—POSTAL RATES

This title, except §§ 1100, 1107, thereof, was not affected by the Revenue Act of 1918. Sections 1100 and 1107 were repealed by § 1401 of the Revenue Act of 1918. See post, § 7354aa.

Of this title, § 1100 is set forth in notes to §§ 7354a, 7385a, post, § 1101 is set forth post, § 7358a, § 1102 is set forth post, § 7360a, §§ 1103–1105 are set forth post, §§ 7358b–7358d, § 1106, is set forth post, § 7361a, § 1107 is set forth in note to § 7354b, post, § 1108 is set forth post, § 7226a, § 1109 is set forth post, § 7231aa, and § 1110 is set forth post, § 10387e.

TITLE XII—INCOME TAX AMENDMENTS

This title was repealed by subdivision (a) of § 1400 of the Revenue Act of 1918, subject to the limitations prescribed in subdivision (b) of said section. See post, § 6371¾a.

The several sections of this title are set forth or their provisions indicated in notes as follows:

§ 1200, in notes to §§ 6336b, 6336d, ante; §§ 1201–1206, in notes to §§ 6336e–6336i, 6336j, ante; §§ 1207, 1208, in notes to §§ 6336*l*, 6336m, ante; § 1209 in note to § 6336q, ante; §§ 1210, 1211, in notes to §§ 6336xx–6336zz, ante; and § 1212, in note to § 6336ii, ante.

TITLE XIII—GENERAL PROVISIONS

This title was not affected by the Revenue Act of 1918, and a new section was added thereto by § 1404 of said Act. See post, § 6371⅛bb.

§ 6371⅛a. (Act Oct. 3, 1917, c. 63, § 1300.) Effect of partial invalidity of Act.

If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to

be invalid, such judgment shall not affect, impair, or invalidate the remainder of said Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. (40 Stat. 338.)

Section 1301 of this title repealed Act March 3, 1917, c. 159, Title I, 39 Stat. 1000.

See note following § 3115¹/₃₂f, ante.

§ 6371⅛b. (Act Oct. 3, 1917, c. 63, § 1302.) Time of taking effect of act.

Unless otherwise herein specially provided, this Act shall take effect on the day following its passage. (40 Stat. 338.)

§ 6371⅛bb. (Act Oct. 3, 1917, c. 63, § 1303, as added, Act Feb. 24, 1919, c. 18, § 1404.) Citation of act.

This Act may be cited as the "Revenue Act of 1917." (40 Stat. 1150.)

The Revenue Act of 1917 was amended by § 1404 of the Revenue Act of 1918, cited above, by adding thereto § 1303, as set forth above.

CHAPTER ELEVEN C—REVENUE ACT OF 1918

Sec.
6371¼a. Definitions.
6371½a. Appropriation for assessing and collecting internal revenue taxes under Act.
6371½b. Advisory Tax Board; appointment; salaries; powers and duties.
6371½c. Laws made part of act; records, statements, and returns; regulations.
6371½d. Returns on notice from Commissioner.
6371½e. Examination of books, papers, and records by Commissioner; taking testimony.
6371½f. Floor taxes; returns; time for payment; extension of time.
6371½g. Mode of collection of taxes not specifically provided for; stamp taxes.
6371½h. Failure to pay, collect, account for and pay over tax or to make return or supply information.
6371½i. Rules and regulations for enforcement of Act.
6371½j. Attestation to certain returns.
6371½k. (a) Credit of overpayments or overcollections.
(b) Payment of taxes on sales on credit.
(c) Taxes on articles sold or leased for export; refunds.
6371½l. Use of existing stamps.
6371½m. (1) Payment of taxes by vendee or lessee in certain cases.
(2) Same.
(3) Same.
(4) Same; to whom paid.
(5) Same; "dealer" defined.
(6) Same; exception.
6371½n. Fractional part of cent disregarded.
6371½o. Certificates of indebtedness and uncertified checks receivable in payment of certain taxes.
6371½p. Jurisdiction of district courts; compelling attendance of witness or production of books; issue of writs.
6371½q. False statements as to tax in connection with sales or leases.
6371¾a. (a) Acts and parts of acts repealed.
(b) Repealed acts in force for assessment and collection of taxes and imposition and collection of penalties; assessment and collection of taxes under Titles I and II of Revenue Act of 1916, and Titles I, II, and IX of Revenue Act of 1917; lien of taxes imposed by repealed acts; Title I of Revenue Act of 1916, as amended in force in Porto Rico and Philippines.
6371¾b. Effect of partial invalidity of act.
6371¾c. Citation of act.
6371¾cc. Filing copies of contracts with United States; access by Commissioner of Internal Revenue to data relative to contracts.
6371¾d. Time of taking effect of act.

TITLE I—GENERAL DEFINITIONS

The Revenue Act of 1918, Act Feb. 24, 1919, c. 18, entitled "An act to provide revenue, and for other purposes," is divided into fourteen titles. The subject-matter of these titles has been distributed to appropriate places in the Compiled Statutes as shown below.

§ 6371¼a. (Act Feb. 24, 1919, c. 18, § 1.) Definitions.

When used in this Act—

The term "person" includes partnerships and corporations, as well as individuals;

The term "corporation" includes associations, joint-stock companies, and insurance companies;

The term "domestic" when applied to a corporation or partnership means created or organized in the United States;

The term "foreign" when applied to a corporation or partnership means created or organized outside the United States;

The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term "Secretary" means the Secretary of the Treasury;

The term "Commissioner" means the Commissioner of Internal Revenue;

The term "collector" means collector of internal revenue;

The term "Revenue Act of 1916" means the Act entitled "An Act to increase the revenue, and for other purposes," approved September 8, 1916;

The term "Revenue Act of 1917" means the Act entitled "An Act to provide revenue to defray war expenses, and for other purposes," approved October 3, 1917;

The term "taxpayer" includes any person, trust or estate subject to a tax imposed by this Act;

The term "Government contract" means (a) a contract made with the United States, or with any department, bureau, officer, commission, board, or agency, under the United States and acting in its behalf, or with any agency controlled by any of the above if the contract is for the benefit of the United States, or (b) a subcontract made with a contractor performing such a contract if the products or services to be furnished under the subcontract are for the benefit of the United States. The term "Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive" when applied to a contract of the kind referred to in clause (a) of this paragraph, includes all such contracts which, although entered into during such period, were originally not enforceable, but which have been or may become enforceable by reason of subsequent validation in pursuance of law;

The term "military or naval forces of the United States" includes the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, and the Navy Nurse Corps, Female, but this shall not be deemed to exclude other units otherwise included within such term;

The term "present war" means the war in which the United States is now engaged against the German Government.

For the purposes of this Act the date of the termination of the present war shall be fixed by proclamation of the President. (40 Stat. 1057.)

This section is § 1 of the Revenue Act of 1918, cited above.

TITLE II—INCOME TAX

This title is set forth ante, as Chapter Nine AA—Income Tax, §§ 6336⅛a-6336⅛z.

TITLE III—WAR-PROFITS AND EXCESS-PROFITS TAX

This title is set forth ante, as Chapter Nine CC—War-Profits and Excess-Profits Tax, §§ $6336^{7}/_{16}$a–$6336^{7}/_{16}$p.

TITLE IV—ESTATE TAX

This title is set forth ante, as Chapter Ten A—Estate Tax, §§ 6336¾a–6336¾k.

TITLE V—TAX ON TRANSPORTATION AND OTHER FACILITIES, AND ON INSURANCE

This title is set forth ante, as Chapter Eight DD—Tax on Transportation and Other Facilities, and on Insurance, §§ 6309⅓a–6309⅓e.

TITLE VI—TAX ON BEVERAGES

Of this title, § 600 is found in §§ 5986e–5986i, § 601 is § 8739bb, § 602 is found in § 6024aa, 6028c, 6028d, 6089a, § 603 is § 6137a, § 604 is § 5986j, § 605 is § 5986k, § 606 is § 5986*l*, § 607 is § 6017aa, § 608 is § 6144bb, § 609 is § 6151aa, § 610 is § 6110f, § 611 is § 6110g, § 612 is § 6110h, § 613 is § 6114h, § 614 is § 6114i, § 615 is § 6111aa, § 616 is § 6114j, § 617 is found in §§ 6111, 6112, 6114, § 618 is found in §§ 6114ff, 6114g, § 619 is § 6114k, § 620 is § 6114*l*, § 621 is § 6114m, § 622 is § 6114n, § 623 is § 6002, § 624 is § 6127aa, § 625 is § 5990, § 626 is § 6070a, § 627 is § 6161, § 628 is § 6161½d, § 629 is § 6161½e, and § 630 is § 6161½f.

TITLE VII—TAX ON CIGARS, TOBACCO, AND MANUFACTURES THEREOF

Of this title, § 700 is § 6204c, § 701 is found in §§ 6169, 6174d, § 702 is § 6204d, § 703 is § 6204e, § 704 is § 6168.

TITLE VIII—TAX ON ADMISSIONS AND DUES

This title is set forth ante, as Chapter Eight EE—Tax on Admissions and Dues, §§ $6309^{5}/_{8}$a–$6309^{5}/_{8}$c.

TITLE IX—EXCISE TAXES

This title is set forth ante, as Chapter Eight G—Excise Taxes, §§ $6309^{4}/_{5}$a–$6309^{4}/_{5}$h.

TITLE X—SPECIAL TAXES

Of this title, § 1000 is § 5980n, § 1001 is § 5980o, § 1002 is § 5980p, § 1003 is § 5980q, § 1004 is § 5980r, § 1005 is § 5980s, § 1006 is § 6287g, § 1007 is § 6287*l*, § 1008 is § 6287r, and § 1009 is § 5980t.

TITLE XI—STAMP TAXES

This title is set forth ante, in Chapter Nine—Stamp Taxes on Specific Objects, as §§ 6318i–6318p thereof.

TITLE XII—TAX ON EMPLOYMENT OF CHILD LABOR

This title is set forth ante, as Chapter Ten B—Tax on Employment of Child Labor, §§ $6336^{7}/_{8}$a–$6336^{7}/_{8}$h.

TITLE XIII—GENERAL ADMINISTRATIVE PROVISIONS

Of this title, § 1300 is § 490a, § 1301 is found in §§ 493a, 5851a, 6371½a, and 6371½b, § 1302 is § 5877aa, § 1303 is § 106a, § 1304 is § 6340aa, § 1305 is found in §§ 6371½c–6371½e, §§ 1306–1314 are §§ 6371½f–6371½o, § 1315 is § 6097, § 1316 is found in §§ 5944, 5948, 6799a, § 1317 is found in §§ 5884, 5885, 5887, 5895, 5896, 5899, § 1318 is § 6371½p, § 1319 is § 6371½q, and § 1320 is § 3301a.

§ 6371½a. (Act Feb. 24, 1919, c. 18, § 1301(c).) Appropriation for assessing and collecting internal revenue taxes under Act.

There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1919, the sum of $7,500,000 for the expenses of assessing and collecting the internal-revenue taxes as provided in this Act, including the employment of necessary officers, attorneys, experts, agents, inspectors, deputy collectors, clerks, janitors, and messengers, in the District of Columbia and the several collection districts, to be appointed as provided by law, telegraph and telephone service, rental and repair of quarters, postage, and the purchase of such supplies, equipment, furniture, mechanical devices, printing, stationery, law books and books of reference, not to exceed $500 for street car fares in the District of Columbia, and such other articles as may be necessary for use in the District of Columbia and the several collection districts: Provided, That not more than $2,750,000 of the total amount appropriated by this section may be expended in the Bureau of Internal Revenue, in the District of Columbia. (40 Stat. 1140.)

This section is paragraph (c) of § 1301 of Title XIII of the Revenue Act of 1918, cited above. Paragraph (a) of said § 1301 is set forth ante, § 493a; paragraph (b) is set forth ante, § 5851a; and paragraph (d) is set forth post, § 6371½b.

§ 6371½b. (Act Feb. 24, 1919, c. 18, § 1301(d).) Advisory Tax Board; appointment; salaries; powers and duties.

(1) There is hereby created a board to be known as the "Advisory Tax Board," hereinafter called the Board, and to be composed of not to exceed six members to be appointed by the Commissioner with the approval of the Secretary. The Board shall cease to exist at the expiration of two years after the passage of this Act, or at such earlier time as the Commissioner with the approval of the Secretary may designate.

Vacancies in the membership of the Board shall be filled in the same manner as an original appointment. Any member shall be subject to removal by the Commissioner with the approval of the Secretary. The Commissioner with the approval of the Secretary shall designate the chairman of the Board. Each member shall receive an annual salary of $9,000, payable monthly, together with actual necessary expenses when absent from the District of Columbia on official business.

(2) The Commissioner may, and on the request of any taxpayer directly interested shall, submit to the Board any question relating to the interpretation or administration of the income, war-profits or excess-profits tax laws, and the Board shall report its findings and recommendations to the Commissioner.

(3) The Board shall have its office in the Bureau of Internal Revenue in the District of Columbia. The expenses and salaries of members of the Board shall be audited, allowed, and paid out of appropriations for collecting internal revenue, in the same manner as expenses and salaries of employees of the Bureau of Internal Revenue are audited, allowed, and paid.

(4) The Board shall have the power to summon witnesses, take

testimony, administer oaths, and to require any person to produce books, papers, documents, or other data relating to any matter under investigation by the Board. Any member of the Board may sign subpœnas and members and employees of the Bureau of Internal Revenue designated to assist the Board, when authorized by the Board, may administer oaths, examine witnesses, take testimony and receive evidence. (40 Stat. 1141.)

This section is paragraph (d) of § 1301 of Title XIII of the Revenue Act of 1918, cited above. For disposition of the other parts of said § 1301, see note to § 6371½a, ante.

§ 6371½c. (Act Feb. 24, 1919, c. 18, § 1305.) Laws made part of act; records, statements, and returns; regulations.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe. (40 Stat. 1142.)

This section is a part of § 1305 of Title XIII of the Revenue Act of 1918, cited above.

Corresponding provisions were contained in § 1001 of the Revenue Act of 1917. See note to § 6348a, ante.

§ 6371½d. (Act Feb. 24, 1919, c. 18, § 1305.) Returns on notice from Commissioner.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax. (40 Stat. 1142.)

This section is a part of § 1305 of Title XIII of the Revenue Act of 1918, cited above.

§ 6371½e. (Act Feb. 24, 1919, c. 18, § 1305.) Examination of books, papers, and records by Commissioner; taking testimony.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons. (40 Stat. 1142.)

This section is a part of § 1305 of Title XIII of the Revenue Act of 1918, cited above.

§ 6371½f. (Act Feb. 24, 1919, c. 18, § 1306.) Floor taxes; returns; time for payment; extension of time.

Where floor taxes are imposed by this Act in respect to articles or commodities, in respect to which the tax imposed by existing law has been paid, the person required by this Act to pay the tax shall, within thirty days after its passage, make return under oath in such form and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe. Payment of the tax shown to be due may be extended to a date not exceeding seven months from the passage of this Act, upon the filing of a bond for payment in such form and amount and with such sureties

as the Commissioner, with the approval of the Secretary, may prescribe. (40 Stat. 1142.)

This section is § 1306 of Title XIII of the Revenue Act of 1918, cited above. Corresponding provisions were contained in § 1002 of the Revenue Act of 1917. See note to § 5896a, ante.

§ 6371½g. (Act Feb. 24, 1919, c. 18, § 1307.) Mode of collection of taxes not specifically provided for; stamp taxes.

In all cases where the method of collecting the tax imposed by this Act is not specifically provided in this Act, the tax shall be collected in such manner as the Commissioner, with the approval of the Secretary, may prescribe. All administrative and penalty provisions of Title XI of this Act, in so far as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be paid by stamp. (40 Stat. 1143.)

This section is § 1307 of Title XIII of the Revenue Act of 1918, cited above. Corresponding provisions were contained in § 1003 of the Revenue Act of 1917. See note to § 6349a, ante.

For Title XI of this Act, see §§ 6318i–6318p, ante.

§ 6371½h. (Act Feb. 24, 1919, c. 18, § 1308.) Failure to pay, collect, account for and pay over tax or to make return or supply information.

(a) Any person required under Titles V, VI, VII, VIII, IX, X, or XII, to pay, or to collect, account for and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than $1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: Provided, however, That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended, or of section 605 or 620 of this Act, or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (40 Stat. 1143.)

This section is § 1308 of Title XIII of the Revenue Act of 1918, cited above. Corresponding provisions were contained in § 1004 of the Revenue Act of 1917. See note to § 5896b, ante.

For Title V of this Act, see ante, §§ 6309⅓a–6309⅓e; for Title VI, see ante, §§ 5986e–5986*l*, 5990, 6002, 6017aa, 6024aa, 6028c, 6028d, 6070aa; 6089a, 6110f–6110h, 6111, 6111aa, 6112, 6114, 6114ff–6114n, 6127aa, 6137a, 6144bb,

6151aa, 6161, 6161½d–6161½f, and post, § 8739bb; for Title VII, see ante, §§ 6168, 6169, 6174d, 6204c–6204e; for Title VIII, see ante, §§ 6309⅝a–6309⅝c; for Title IX, see ante, §§ 6309⁴/₅a–6309⁴/₅h; for Title X, see ante, §§ 5980n–5980t, 6287g, 6287*l*, 6287r; for Title XII, see ante, §§ 6336⁷/₈a–6336⁷/₈h.

R. S. § 3176, as amended, referred to in this section, is set forth ante, § 5899.

Sections 605 and 620 of this act, also referred to in this section, are set forth ante, §§ 5986k, 6114*l*.

For R. S. § 3256, also referred to in this section, see U. S. Comp. St. 1916, § 5992.

§ 6371½i. (Act Feb. 24, 1919, c. 18, § 1309.) Rules and regulations for enforcement of Act.

The Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act. (40 Stat. 1143.)

This section is a part of § 1309 of Title XIII of the Revenue Act of 1918, cited above.

Corresponding provisions were contained in § 1005 of the Revenue Act of 1917. See note to § 6349b, ante.

§ 6371½j. (Act Feb. 24, 1919, c. 18, § 1309.) Attestation to certain returns.

The Commissioner with such approval may by regulation provide that any return required by Titles V, VI, VII, VIII, IX, or X to be under oath may, if the amount of the tax covered thereby is not in excess of $10, be signed or acknowledged before two witnesses instead of under oath. (40 Stat. 1143.)

This section is a part of § 1309 of Title XIII of the Revenue Act of 1918, cited above.

For Title V of this Act, see ante, §§ 6309⅓a–6309⅓e; for Title VI, see ante, §§ 5986e–5986*l*, 5990, 6002, 6017aa, 6024aa, 6028c, 6028d, 6070aa, 6089a, 6110f–6110h, 6111, 6111aa, 6112, 6114, 6114ff–6114n, 6127aa, 6137a, 6144bb, 6151aa, 6161, 6161½d–6161½f, and post, § 8739bb; for Title VII, see ante, §§ 6168, 6169, 6174d, 6204c–6204e; for Title VIII, see ante, §§ 6309⅝a–6309⅝c; for Title IX, see ante, §§ 6309⅝a–6309⅝h; for Title X, see ante, §§ 5980n–5980t, 6287g, 6287*l*, 6287r.

§ 6371½k. (Act Feb. 24, 1919, c. 18, § 1310.) (a) Credit of overpayments or overcollections.

In the case of any overpayment or overcollection of any tax imposed by section 628 or 630 or by Title V, Title VIII, or Title IX, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

For sections 628 and 630 of this Act, referred to in this paragraph, see ante, §§ 6161½d, 6161½f.

For Title V of this Act, also referred to in this paragraph, see ante, §§ 6309⅓a–6309⅓e; for Title VIII, see ante, §§ 6309⅝a–6309⅝c; for Title IX, see ante, §§ 6309⅝a–6309⅝h.

(b) Payment of taxes on sales on credit.

Wherever in this Act a tax is required to be paid by the purchaser to the vendor at the time of a sale, and such sale is made on credit, then, under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax may, at the option of the vendor, be returned and paid by him to the United States as if paid to him by the purchaser at the time of the sale, and in such case the vendor shall have a right of action in any court of competent jurisdiction against the purchaser for the amount of the tax so returned and paid to the United States.

(c) Taxes on articles sold or leased for export; refunds.

Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the taxes imposed under the provisions of Titles VI, VII or IX shall not apply in respect

to articles sold or leased for export and in due course so exported. Under such rules and regulations the amount of any internal-revenue tax erroneously or illegally collected in respect to exported articles may be refunded to the exporter of the article, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded. (40 Stat. 1143.)

This section is § 1310 of Title XIII of the Revenue Act of 1918, cited above. For Title VI of this Act, referred to in this section, see ante, §§ 5986e–5986*l*, 5990, 6002, 6017aa, 6024aa, 6028c, 6028d, 6070aa, 6089a, 6110f–6110h, 6111, 6111aa, 6112, 6114, 6114ff–6114n, 6127aa, 6137a, 6144bb, 6151aa, 6161, 6161½d–6161½f, and post, § 8739bb; for Title VII, see ante, §§ 6168, 6169, 6174d, 6204c–6204e; for Title IX, see ante, §§ 6309⁴/₅a–6309⁴/₅h.

§ 6371½*l*. (Act Feb. 24, 1919, c. 18, § 1311.) Use of existing stamps.

Where the rate of tax imposed by this Act, payable by stamps, is an increase over previously existing rates, stamps on hand in the collectors' offices and in the Bureau of Internal Revenue may continue to be used until the supply on hand is exhausted, but shall be sold and accounted for at the rates provided by this Act, and assessment shall be made against manufacturers and other taxpayers having such stamps on hand on the day this Act takes effect for the difference between the amount paid for such stamps and the tax due at the rates provided by this Act. (40 Stat. 1144.)

This section is § 1311 of Title XIII of the Revenue Act of 1918, cited above. Corresponding provisions were contained in § 1006 of the Revenue Act of 1917. See note to § 6346b, ante.

§ 6371½m. (Act Feb. 24, 1919, c. 18, § 1312.) (1) Payment of taxes by vendee or lessee in certain cases.

If any person has prior to May 9, 1917, made a bona fide contract with a dealer for the sale or lease, after the tax takes effect, of any article in respect to which a tax is imposed under Title VI, VII, or IX, or under subdivision 13 of Schedule A of Title XI, or under this subdivision, and (b) if such contract does not permit the adding of the whole of such tax to the amount to be paid under such contract, then the vendee or lessee shall, in lieu of the vendor or lessor, pay so much of such tax as is not so permitted to be added to the contract price. If a contract of the character above described was made with any person other than a dealer, the tax collected under this Act shall be the tax in force on May 9, 1917.

For Title VI of this act, referred to in this paragraph, see ante, §§ 5986e–5986*l*, 5990, 6002, 6017aa, 6024aa, 6028c, 6028d, 6070aa, 6089a, 6110f–6110h, 6111, 6111aa, 6112, 6114, 6114ff–6114n, 6127aa, 6137a, 6144bb, 6151aa, 6161, 6161½d–6161½f, and post, § 8739bb; for Title VII, see ante, §§ 6168, 6169, 6174d, 6204c–6204e; for Title IX, see ante, §§ 6309⅘a–6309⅘h; for subdiv. 13 of Schedule A of Title XI, see ante, § 6318p(13).

(2) Same.

If (a) any person has prior to September 3, 1918, made a bona fide contract with a dealer for the sale or lease, after the tax takes effect, of any article in respect to which a tax is imposed under Title VI, VII, or IX, or under subdivision 13 of Schedule A of Title XI, or under this subdivision, and in respect to which no corresponding tax was imposed by the Revenue Act of 1917, and (b) such contract does not permit the adding, to the amount to be paid under such contract, of the whole of the tax imposed by this Act, then the vendee or lessee shall, in lieu of the vendor or lessor, pay so much of the tax imposed by this Act as is not so permitted to be added to the contract price. If a contract of the character above described was made with any person other than a dealer, no tax shall be collected under this Act.

See notes to paragraph (1) of this section, ante.

(3) Same.

If (a) any person has prior to September 3, 1918, made a bona fide contract with a dealer for the sale or lease, after the tax takes effect, of any article in respect to which a tax is imposed under Title VI, VII, or IX, or under subdivision 13 of Schedule A of Title XI, or under this subdivision, and in respect to which a corresponding tax was imposed by the Revenue Act of 1917, and (b) such contract does not permit the adding, to the amount to be paid under such contract, of the whole of the difference between such tax and the corresponding tax imposed by the Revenue Act of 1917, then the vendee or lessee shall, in lieu of the vendor or lessor, pay so much of such difference as is not so permitted to be added to the contract price. If a contract of the character above described was made with any person other than a dealer, the tax collected under this Act shall be the tax in force on September 3, 1918.

See notes to paragraph (1) of this section, ante.

(4) Same; to whom paid.

The taxes payable by the vendee or lessee under this section shall be paid to the vendor or lessor at the time the sale or lease is consummated, and collected, returned, and paid to the United States by such vendor or lessor in the same manner as provided in section 502.

For § 502 of this act, referred to in this paragraph, see ante, § 6309½c.

(5) Same; "dealer" defined.

The term "dealer" as used in this section includes a vendee who purchases any article with intent to use it in the manufacture or production of another article intended for sale.

(6) Same; exception.

This section shall not apply to any tax imposed by section 906. (40 Stat. 1144.)

This section is § 1312 of Title XIII of the Revenue Act of 1918, cited above.

Corresponding provisions were contained in § 1007 of the Revenue Act of 1917. See note to § 6348b, ante.

For § 906 of this act, referred to in this paragraph, see ante, § 6309⅘g.

§ 6371½n. (Act Feb. 24, 1919, c. 18, § 1313.) Fractional part of cent disregarded.

In the payment of any tax under this Act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. (40 Stat. 1145.)

This section is § 1313 of Title XIII of the Revenue Act of 1918, cited above.

Corresponding provisions were contained in § 1008 of the Revenue Act of 1917. See note to § 6346c, ante.

§ 6371½o. (Act Feb. 24, 1919, c. 18, § 1314.) Certificates of indebtedness and uncertified checks receivable in payment of certain taxes.

Collectors may receive, at par with an adjustment for accrued interest, certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered. (40 Stat. 1145.)

This section is § 1314 of Title XIII of the Revenue Act of 1918, cited above.

§ 6371½p. (Act Feb. 24, 1919, c. 18, § 1318.) Jurisdiction of district courts; compelling attendance of witness or production of books; issue of writs.

If any person is summoned under this Act to appear, to testify, or to produce books, papers or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions. (40 Stat. 1148.)

This section is § 1318 of Title XIII of the Revenue Act of 1918, cited above.

§ 6371½q. (Act Feb. 24, 1919, c. 18, § 1319.) False statements as to tax in connection with sales or leases.

Whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both. (40 Stat. 1148.)

This section is § 1319 of Title XIII of the Revenue Act of 1918, cited above.

TITLE XIV—GENERAL PROVISIONS

Of this title, § 1400 is § 6371¾a, § 1401 is § 7354aa, § 1402 is § 6371¾b, § 1403 is § 6371bb, § 1404 is § 6371½bb, § 1405 is § 6371¾c, § 1406 is § 2165a, § 1407 is § 10387ee, § 1408 is § 6371¾cc, and § 1409 is § 6371¾d.

§ 6371¾a. (Act Feb. 24, 1919, c. 18, § 1400.) (a) Acts and parts of acts repealed.

The following parts of Acts are hereby repealed, subject to the limitations provided in subdivision (b):

(1) The following titles of the Revenue Act of 1916:

Title I (called "Income Tax");

Title II (called "Estate Tax");

Title III (called "Munitions Manufacturers' Tax"), as amended;

Title IV (called "Miscellaneous Taxes").

(2) The following parts of the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917:

Title III (called "Estate Tax");

Section 402 (called "Returns of Dividends").

(3) The following titles of the Revenue Act of 1917:
Title I (called "War Income Tax");
Title II (called "War Excess-Profits Tax");
Title III (called "War Tax on Beverages");
Title IV (called "War Tax on Cigars, Tobacco, and Manufactures Thereof");
Title V (called "War Tax on Facilities Furnished by Public Utilities, and Insurance");
Title VI (called "War Excise Taxes");
Title VII (called "War Tax on Admissions and Dues");
Title VIII (called "War Stamp Taxes");
Title IX (called "War Estate Tax");
Title X (called "Administrative Provisions");
Title XII (called "Income-Tax Amendments").

(b) Repealed acts in force for assessment and collection of taxes and imposition and collection of penalties; assessment and collection of taxes under Titles I and II of Revenue Act of 1916 and Titles I, II, and IX of Revenue Act of 1917; lien of taxes imposed by repealed acts; Title I of Revenue Act of 1916, as amended in force in Porto Rico and Philippines.

Such parts of Acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued and may accrue in relation to any such taxes, and except that the unexpended balance of any appropriation heretofore made and now available for the administration of any such part of an Act shall be available for the administration of this Act or the corresponding provision thereof: Provided, That, except as otherwise provided in this Act, no taxes shall be collected under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, or Title I or II of the Revenue Act of 1917, in respect to any period after December 31, 1917: Provided further, That the assessment and collection of all estate taxes, and the imposition and collection of all penalties or forfeitures, which have accrued under Title II of the Revenue Act of 1916 as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917, or Title IX of the Revenue Act of 1917, shall be according to the provisions of Title IV of this Act. In the case of any tax imposed by any part of an Act herein repealed, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 shall remain in force for the assessment and collection of the income tax in Porto Rico and the Philippine Islands, except as may be otherwise provided by their respective legislatures. (40 Stat. 1149.)

This section is § 1400 of the Revenue Act of 1918, cited above.

The provisions of Act March 3, 1917, § 6159, repealed by this section, are § 300, which amended § 201 of the Revenue Act of 1916, § 301, and § 402, which amended § 26 of the Revenue Act of 1916 (see notes to §§ 6336½b, 6336½bb, 6336xx, ante).

§ 6371¾b. (Act Feb. 24, 1919, c. 18, § 1402.) Effect of partial invalidity of act.

If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the

remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered. (40 Stat. 1150.)

This section is § 1402 of the Revenue Act of 1918, cited above.

§ 6371¾c. (Act Feb. 24, 1919, c. 18, § 1405.) Citation of act.

This Act may be cited as the "Revenue Act of 1918." (40 Stat. 1151.)

This act is § 1405 of the Revenue Act of 1918, cited above.

§ 6371¾cc. (Act Feb. 24, 1919, c. 18, § 1408.) Filing copies of contracts with United States; access by Commissioner of Internal Revenue to data relative to contracts.

Every person who on or after April 6, 1917, has entered into any contract, undertaking, or agreement, with the United States, or with any department, bureau, officer, commission, board, or agency under the United States or acting in its behalf, or with any other person having contract relations with the United States, for the performance of any work or the supplying of any materials or property for the use of or for the account of the United States, shall, within thirty days after a request of the Commission therefor, file with the Commissioner a true and correct copy of every such contract, undertaking, or agreement.

Whoever fails to comply with such request of the Commissioner shall be guilty of a misdemeanor and shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both.

The Commissioner shall (when not violative of the technical military or naval secrets of the Government) have access to all information and data relating to any such contract, undertaking, or agreement, in the possession, control or custody of any department, bureau, board, agency, officer or commission of the United States, and may call upon any such department, bureau, board, agency, officer or commission for a full statement and description of any allowance for amortization, obsolescence, depreciation or loss, or of any valuation, appraisal, adjustment or final settlement, made in pursuance of any such contract, undertaking, or agreement. (40 Stat. 1151.)

This section is § 1408 of the Revenue Act of 1918, cited above.

§ 6371¾d. (Act Feb. 24, 1919, c. 18, § 1409.) Time of taking effect of act.

Unless otherwise herein specially provided, this Act shall take effect on the day following its passage. (40 Stat. 1152.)

This section is § 1409 of the Revenue Act of 1918, cited above.

[END OF VOLUME 1]